

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4146 of 2012 (O&M)
Date of Decision: May 26, 2015

Dayalo Bai and others

...Appellants

Versus

Swaran Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Mehar Singh Rai, Advocate
 for the appellants.

INDERJIT SINGH, J.

Appellants-plaintiffs Dayalo Bai and others have filed this regular second appeal against Swaran Singh etc. respondents and Seema Bai and Shanno Bai proforma respondents, challenging the impugned judgment and decree dated 14.09.2010 passed by learned Addl. Civil Judge (Senior Division) Fazilka vide which the suit for declaration filed by the plaintiffs was dismissed and also the judgment and decree dated 22.05.2012 passed by learned District Judge, Ferozepur vide which the appeal filed by the appellants-plaintiffs was also dismissed.

The brief facts of the case are that plaintiffs-appellants have filed a suit against Swaran Singh, Bachan Singh and Jangiro Bai for declaration stating therein that plaintiffs are owners in possession of land measuring 6 kanals 13 marlas i.e. 1/3 share of the total land

measuring 20 kanals, as per jamabandi for the year 2000-01 on the basis of registered valid Will dated 03.12.2003 executed by Kehar Singh, their grandfather in favour of plaintiff No.1 and 2 to the extent of 1/3 share in equal shares and the alleged sale deed dated 22.06.2004 got procured and managed from Kehar Singh by defendant No.1 qua the entire land in dispute mentioned in the head note of the plaint is illegal, null and void without consideration and without legal necessity.

On the other hand, the case of defendants No.1 and 2 is that plaintiffs have not approached the Court with clean hands and concealed the material facts. The execution of the alleged Will by Kehar Singh has been specifically denied and the said Will is alleged to be false, forged and fabricated document.

After framing of the issues, none of the plaintiff appeared into the witness box nor they examined any other witness despite availing nine effective opportunities and ultimately the evidence of the plaintiffs was closed by Court order. On the other hand, the defendants have also not led any evidence.

Learned Addl. Civil Judge (Senior Division) Fazilka dismissed the suit filed by the plaintiffs vide judgment and decree dated 14.09.2010. An appeal was filed by the plaintiffs before learned District Judge, Ferozepur and the same was also dismissed by learned District Judge, Ferozepur vide judgment and decree dated 22.05.2012.

Aggrieved from the above-said judgments and decrees,

present regular second appeal has been filed by the appellants-plaintiffs.

At the time of arguments, learned counsel for the appellants argued that the case should be remanded back and the plaintiffs-appellants should be given opportunity to prove their case.

I have heard learned counsel for the appellants and have gone through the record.

From the record, I find that it is a case of no evidence. None of the plaintiffs has appeared as witness nor any other witness on their behalf has been examined to prove their case. No reason or ground has been given as to why the plaintiffs failed to examine at least one of them in the evidence. As per the judgment and decree dated 14.09.2010 passed by learned Addl. Civil Judge (Senior Division) Fazilka, nine effective opportunities have been granted to the plaintiffs. Nothing has been shown as to why this order has not been challenged in this Court nor any application has been filed under Order 41 Rule 27 before learned District Judge, Ferozepur nor before this Court.

As it is the case of no evidence, the suit has been rightly dismissed by learned Addl. Civil Judge (Senior Division) Fazilka as well as the appeal has been rightly dismissed by learned District Judge, Ferozepur. Learned District Judge, Ferozepur has also discussed regarding reasonable opportunities given to the plaintiffs to lead evidence.

In view of the above discussion, I find that the findings

given by the Courts below are correct, as per law and do not require any interference from this Court and the same are upheld. Moreover, no substantial question of law arises in the present regular second appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

May 26, 2015
Vgulati

(INDERJIT SINGH)
JUDGE