

IN THE HIGH COURT OF PUNJAB AND HARYANA,
CHANDIGARH

219

RSA-4392-2012 (O&M)
DATE OF DECISION:08.12.2015

JASPAL SINGH AND OTHERS
VS.
ATMA SINGH AND ORS.

...Appellants
... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. M.K. Garg, Advocate
for the appellants No.1 and 3.

Mr. Sharad Aggarwal, Advocate
for appellant No.2.

Mr. Dhirinder Chopra, Advocate
for respondents.

AMIT RAWAL, J. (ORAL)

CM-5262-C-2014

Prayer in the application is for amendment of the grounds of appeal.

For the reasons stated in the application, which is duly supported by an affidavit, application is allowed.

MAIN CASE

The appellant-plaintiff is in regular second appeal against the denial of the relief with regard to 1/4th share vis-a-vis Pritam Singh and 1/12th share vis-a-vis Niranjana Singh who is alleged to have died unmarried, issueless and alleged to have executed a will dated 11.10.1976. The beneficiaries of the Will are none else but other brothers and sons of other brothers.

Mr. M.K. Garg, learned counsel appearing on behalf of the

appellant-plaintiff submits that Talok Singh had 4 sons Pritam Singh, Puran Singh, Niranjana Singh and Dalip Singh. Pritam Singh sold his 1/4th share to Harnam Singh vide sale deed dated 29.3.1957 who further sold to the appellant-plaintiff vide sale deed dated 7.3.1958 and thus he had become owner of half share in the estate of Talok Singh. Niranjana Singh died intestate, unmarried and issueless on 20.9.1977 and thus appellants are entitled to the extent of 1/12th share from 1/4th share of Niranjana Singh. He submits that both the Courts below have erroneously and perversely non-suited the appellant of his half share vis-a-vis 1/4th share alleged to have been transferred through registered sale deed dated 07.03.1958 on the premise that the original sale deed dated 29.03.1957 has not been proved on record. Only certified copy thereof has been brought on record. The certified copy as per Section 74 and Section 65 F of the Indian Evidence Act is permissible in evidence. Not only this even the categorical pleading with regard to sale of the property and purchasing of the same by the plaintiff in the plaint have not specifically been denied. He further submits that as per the report of the expert the Will dated 11.10.1976 was not bearing thumb impression of Niranjana Singh and thus, the Will has not been proved and therefore he is also entitled to share.

Mr. Dhirinder Chopra, learned counsel appearing on behalf of respondents submits that Courts below have rightly non-suited the appellant-defendant from the 1/4th share acquired by virtue of sale deed dated 07.03.1958 as the original sale deed dated 29.03.1957 has not been proved on record in accordance with law. Vis-a-vis this Will the attesting witnesses have been proved and they have deposed as per the provisions of Section 63-C of Indian Succession Act much less the requirement of

Section 68 of Indian Evidence Act has also been complied with. Therefore, no substantial question of law arises for determination.

I have heard learned counsel for the parties and appraised the paper book and am of the view that the following substantial questions of law arise for determination/adjudication of the appeal:-

- I. Whether in the absence of original sale deed dated 29.03.1957 and having not proved on record, whether certified copy, as per Section 74 and Section 65 F of the Indian Evidence Act would be admissible in the evidence or not?
- II. Whether the Will dated 11.10.1976 executed by Niranjana Singh in favour of brother Dalip Singh and sons of Dalip Singh is surrounded by suspicious circumstances or not?

From perusal of the pleadings, it is evident that the defendants have not denied the execution of the sale deed in favour of Harnam Singh and by Harnam Singh in favour of Puran Singh. It is settled law that once the specific averment in the corresponding paragraph of the plaint is admitted, the plaintiff is not required to prove the same.

There is another aspect of the matter, even DW1 Atma Singh in cross-examination also admitted the factum of sale by Pritam Singh in favour of Harnam Singh. The relevant portion of cross-examination of Atma Singh is reproduced hereinbelow:-

“Pritam Singh also inherited 1/4th share each from their father. Pritam Singh had sold his entire share to Harnam Singh. Harnam Singh sold the said land to plaintiff.”

In view of the aforementioned fact I am of the view that the

reasoning given by both the Courts below that the plaintiff has failed to prove the execution of the sale deed dated 29.3.1957 is not sustainable and therefore, set aside. Thus the appellant-plaintiff has been held declared to be owner to the extent of half share in respect of the estate of Talok Singh.

Vis-a-vis the second substantial question of law I am of the view that respondent-defendant has been able to discharge the onus by proving the Will as per the provision of Section 68 of the Indian Evidence Act and Section 63 C of the Indian Succession Act as the witness to the Will has deposed as the testator has thumb marked the Will in his presence and he also identified/witnessed the same on the direction of the testator.

The plea that the expert has given a report in favour of the plaintiff is not sustainable as it is the settled law that the expert engaged by the respective party toes to their lines.

Keeping in view the aforementioned facts the impugned judgment and decree of the both Courts below is modified to the following extent that the appellant-plaintiff is hereby declared owner to the extent of half share in respect of the estate of Talok Singh whereas defendants are declared to be owner of other half sharer in respect of estate of Talok Singh. In essence, the Will dated 11.10.1976 executed by Niranjn Singh in favour of the defendant is upheld.

Appeal is partly allowed. Decree sheet be prepared.

(AMIT RAWAL)
JUDGE

December 08, 2015.

SwarnjitS