

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.555 of 2012

Date of Decision:- 10.03.2015.

Sukhwant Singh and others

.....Appellants

Versus

Saroop Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. G.P. Vashisht, Advocate for the appellants.

Mr. Kanwaljeet Singh, Senior Advocate with
Mr. Ajaivir Singh, Advocate for the respondent.

SHEKHER DHAWAN, J.

The present regular second appeal is directed against the judgment and decree dated 09.12.2011, passed by Additional District Judge, Tarn Taran, whereby, the judgment and decree dated 21.07.2010, passed by Civil Judge (Junior Division), Patti, was set aside.

For the sake of convenience, the parties are being referred to as per their status before the Court of First Instance.

Detailed facts of the case have already been recapitulated in the judgments of Courts below. However, facts relevant for the purpose of decision of the present Regular Second Appeal are that plaintiff Saroop Singh had filed suit for declaration to the effect that he is owner in possession of land measuring 32 kanals 3 marls as mentioned in Khata/Khatauni Nos.51/84, 52/85, 57/90, 58/91, 59/62, 60/93, 61/94, 62/95, 63/96 Rect. and Killa Nos.49/4 (6-12), 5 (1-9), 6 (8-0), 7/1 (0-16), 7/2 (4-16), 15/1 (4-9), 15/2 (0-2), 15/4 (0-6), 15/8 (0-2), 15/9 (0-5), 15/10 (0-9), 15/13 (0-2), 15/17 (1-11), 16/1 (0-9), 7/3/1 (1-0), 240 (1-1), 49//15/7 (0-1), 49//15/5 (0-2), 49//15/6 (0-3), 49//15/3 (0-1), 49//15/14 (0-2), 49//15/15 (0-11), 15/16 (0-1), 15/11 (0-1), 15/12 (0-2), situated in village Blair, Tehsil Patti, District Amritsar, as per Jamabandi for the year 1999-2000 with consequential relief of permanent injunction for restraining the defendants from dispossessing the plaintiff from the suit land forcibly. As per plaintiff, Puran Singh son of Narain Singh was the original owner of the suit land. He died leaving behind the plaintiff as his only son. Defendants No.1 to 3 have no right, title or interest in the suit property. However, they are alleging that they got executed some Will from Puran Singh. The same has been denied by the plaintiff on the ground that Will, if any, is result of fraud and must have been prepared in connivance with scribe and attesting witnesses. On the basis of such forged Will, defendants are threatening to dispossess the plaintiff and alienate the suit land forcibly, without any title or

interest in the property. Plaintiff claims himself to be the only son of Puran Singh and as such, entitled to the property left by Puran Singh.

The defendants version as set up in the written statement that suit is not maintainable as plaintiff is not the son of Puran Singh because Puran Singh never performed marriage during his lifetime. However, he had executed a registered Will dated 28.11.1987 in favour of defendants and the same was duly registered on 30.11.1987. The Will was executed by Puran Singh during his life time in lieu of services rendered by defendants. Plaintiff has no relation with Puran Singh, whereas, the plaintiff is son of Narain Singh and Mathro of village Bainka, Tehsil Patti and he belongs to Arora Caste, whereas, Puran Singh belongs to Jat Sikh Caste. Mutation was also sanctioned in favour of defendants on the basis of registered Will after visiting the spot and in presence of residents of village Blair on 17.05.2004. Appeal against order dated 08.06.2004, passed by the Assistant Collector, 1st Grade, Amritsar was dismissed on 22.04.2005. No further appeal was preferred against the said order and as such, the said order attained finality. Plaintiff has completely concealed this fact. Plea was taken in the written statement that suit is bad for non-joinder of necessary parties. More so, the suit land was cultivated by Piara Singh during his life time and thereafter, defendants came in possession and now cultivating the suit land.

On this fact, parties were put to trial on the following

issues and additional issues framed on 19.07.2010.

1. Whether plaintiff is entitled to declaration as prayed for?
OPP.
2. Whether plaintiff is entitled to permanent injunction as prayed for? OPP.
3. Whether suit is not maintainable in the present form? OPP.
4. Whether plaintiff is estopped by his act and conduct from filing the present suit? OPD.
5. Whether suit is bad for non-joinder and mis-joinder of necessary parties? OPD.
6. Whether this court has no jurisdiction to try and entertain the present suit? OPD.
7. Relief.

Additional Issues.

8. Whether the deceased Puran Singh executed valid Will dated 28.11.1987 registered on 30.11.1987 in favour of defendants No.1 to 3? OPD.
9. Whether the defendant Nos.1 to 3 are owner in possession over the suit land after the death of Puran Singh (deceased) as per Will? OPD.

Learned Court of First Instance, after appreciating the oral as well as documentary evidence led by both the parties, decided issue Nos.1, 2, 7 and 8 against the plaintiff and in favour of the defendants. Issue Nos.3 to 6 were decided against the

defendants and consequently, the suit filed by the plaintiff was dismissed vide judgment and decree dated 21.07.2010.

Being aggrieved of passing of findings recorded by Court of First Instance, plaintiff preferred an appeal against the judgment and decree and the Court of First Appeal accepted the said appeal, thereby reversing the findings and judgment passed by the Court of First Instance. Hence, the present appeal before this Court.

At the time of arguments, Mr. G.P. Vashishst, Advocate learned counsel for the appellant raised the main contention that the Court of First Appeal has reversed the findings recorded by the Court of First Instance which are otherwise based on evidence available on file and correct proposition of law. As per learned counsel for the appellant, plaintiff has mainly come with the plea that he is son of Puran Singh but there is absolutely no document available on the file including birth certificate or school certificate showing his inheritance through Puran Singh. To the contrary, appellant has been able to prove the Will executed by Puran Singh in their favour as Puran Singh died unmarried and during his lifetime, defendants used to look after and serve him. The Will Exhibit D-1 was duly registered and was conscious act of Puran Singh. The said Will has been duly proved on file as per oral testimony of DW-1 to DW-4 on the record. The attesting witness of the Will could not be produced as both the attesting witnesses had died. The scribe of the Will as well as Sub-Registrar who had registered the said Will have been examined and

they have deposed in so many words that Will was duly scribed and registered and same has been proved on file as per law. In support of his arguments, learned counsel for the appellant has placed reliance upon the judgment of this Court in case **Bhim Sain Vs. Kaushalaya Devi alias Prem Lata and others** 2010(1) HLR 128, wherein identical matter was before the Court and both the attesting witnesses could not be produced as they were dead. This Court had observed that the Will may be proved by examining the witnesses who were able to prove the handwriting of executant. If signatures of one of the attesting witnesses were identified by the Sub-Registrar who registered the Will, the validity of the Will stood proved.

While arguing further, learned counsel for the appellant also took the plea that plaintiff-respondent has filed simplicitor suit for declaration and permanent injunction, whereas, in fact he is not in possession of the suit property. He should have filed suit for possession if he asserts his claim on the basis of his natural succession. The possession on the suit land is with the appellant as recorded in revenue record regularly. On this point reliance was placed upon the judgment from Hon'ble the Supreme Court in case **Ram Saran and another Vs. Ganga Devi** AIR 1972 Supreme Court 2685, wherein such a law was laid down that if defendant is in possession of suit property, the suit filed by plaintiff for mere declaration that he is owner of the suit property is not maintainable.

While arguing on these points, Mr. Kanwaljeet Singh,

Senior Advocate took the plea that the present one is a regular second appeal and there is no substantial question of law involved in the present case. The controversy in question is whether Puran Singh had executed valid Will during his lifetime and whether the same has been proved as per law. The next controversy involved in the case is whether Sarup Singh is son of Puran Singh or not. Both these questions are primarily questions of fact and no substantial question of law is involved. Both the Court below have already appreciated the evidence available on the file and given specific findings. The said findings are not required to be interfered by this Court while entertaining the present regular second appeal.

I have considered rival contentions raised by learned counsel for both the parties. There is no dispute that the main controversy in the case is whether Sarup Singh is son of Puran Singh and whether Puran Singh had executed any valid Will during his lifetime and the same has been proved on the file or not. Both these controversies are merely question of fact and no substantial question of law is involved. Both the Courts below have already recorded findings on these facts and as such, present regular second appeal is not maintainable.

More so in the case in hand, the Court of First Appeal has already recorded the finding that Saroop Singh has been able to prove that he is son of Puran Singh. The said fact has been proved on the basis of oral as well as documentary evidence. Plaintiff

Saroop Singh himself appeared before the Court of First Instance and stated all these facts. His version is supported and corroborated by his Uncle Major Singh who appeared as PW-2 and his cousin Sewa Singh who appeared as PW-3. Both these witnesses had made specific deposition that Saroop Singh is son of Puran Singh. Apart from that, plaintiff proved on file electoral roll Exhibit P-1 for the year 01.01.1976. Learned Court of First Appeal was justified in saying that there is no reason to disbelieve the electoral roll as the same was prepared much earlier to the controversy arisen in this case between the parties. The said document was produced from proper custody and was prepared by public servants in discharge of their official duties and there are absolutely no grounds to record the finding that the said document is false, frivolous or fabricated.

It is also settled proposition of law that relationship between the parties can be proved by way of conduct as well. Learned Court of First Appeal has rightly recorded the findings that plaintiff has been able to prove his relationship with Puran Singh to be of son and father by conduct as well as by examining himself as PW-1 and by examining PW-2 and PW-3 who were none else but his uncle and cousin.

As regard to execution of Will Exhibit D-1, undisputedly, no attesting witness has been examined to prove the Will. Reliance was placed upon testimony of DW-1 Mohinder, retired Naib Tehsildar

who had registered the Will in his capacity as Sub-Registrar. However, in the cross-examination, the said witness has specifically admitted that he was not knowing Puran Singh personally. He never knew scribe as well as attesting witnesses personally but he was knowing Numberdar only. The testimony of DW-1 cannot be made basis so as to come to the conclusion that Will was proved by examining one of the attesting witnesses or any alternative by examining any witness who could depose that he was aware of handwriting and signatures of attesting witness as required under Section 69 of the Evidence Act. Similar is the deposition of DW-2 Ninder Singh as he has admitted in his cross-examination that he was not knowing Puran Singh and both the attesting witnesses were also not known to him. On this fact the judgment of this Court in **Bhim Sen's** case (supra) is distinguishable as DW-1 has not been able to prove the handwriting of executant and he was not in a position to depose that he had seen the attesting witnesses while signing and writing on various documents during his discharge of duties as Sub-Registrar. So DW-1 and DW-2 cannot substitute the attesting witnesses and on the basis of statement of DW-1 and DW-2 when Exhibit D-1 cannot be said to be proved as required under Sections 68 and 69 of the Evidence Act. Learned Court of First Appeal has already recorded these findings on facts and the same do not call for any interference.

In view of the above, the present regular second appeal is

devoid of any merit and same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

March 10, 2015.

sandeep sethi