

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.1830 of 2013(O&M)
Date of decision: 05.02.2015

Vikram Singh

...Appellant

Versus

Shiksha and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Dr. Anand Kumar Bishnoi, Advocate,
for the appellant.

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

ARUN PALLI J. (Oral)

Suit filed by the plaintiff was dismissed by the trial court vide judgment and decree dated 07.09.2010. Appeal preferred against the said decree failed and was dismissed on 10.11.2012. This is how, plaintiff is before this court, in this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, plaintiff-Vikram Singh prayed for a declaration that he was the owner/co-sharer in actual physical possession to the extent of 1/3rd share out of a land measuring 38 kanals 2 marlas, comprised in khewat No.197/186, khatauni No.278. Further, a decree for injunction was also claimed, restraining the defendants from causing dispossession of the plaintiff from the suit property

and also alienating the same in any manner. It was averred that Har Kishan was a co-sharer in a joint khata to the extent of 1/3rd share and plaintiff being his sole heir or a successor-in-interest had succeeded to his estate after his death on 23.08.1997. It was maintained that Har Kishan had died intestate, however, defendant hatched a conspiracy against the plaintiff and had forged a will dated 26.05.1986, purported to have been executed by Har Kishan, in their favour. Plaintiff came to know of the said will only on 02.06.1999, as defendants threatened to take forcible possession of the suit land. Thus, the suit.

In defence, it was pleaded, inter alia, by defendant No.1, that Har Kishan son of Umrao executed his last will on 26.05.1986, and mutation No.3359 dated 13.05.1998, was sanctioned pursuant thereto. And by virtue of the said will, defendants No.1 to 4 and even the plaintiff had acquired title in the land set out in para 1 of the plaint. And thus, the parties had become owner in possession to the extent of 1/5th share each. Further, plaintiff was not son of Har Kishan, rather he was son of Jhagru son of Umrao and was their real brother. Har Kishan died issueless. It was denied that Har Kishan died intestate on 23.08.1997. Accordingly, it was denied that plaintiff alone had inherited the estate of Har Kishan and had acquired his 1/3rd share. It was also denied

that the will dated 26.05.1986, that was executed by Har Kishan, was a forged and fabricated document.

On a consideration of the matter in issue and the evidence on record, both the courts below found that plaintiff to prove his claim had examined Girraj (PW1), who proved the school record (Ex.P1 & Ex.P2), but the said witness showed total ignorance as to when and by whom the appellant was got admitted in the school. He also testified in his deposition that at the time of admission of the plaintiff in the school, his date of birth certificate was never obtained or taken on record. Plaintiff himself while appearing as PW2, could not even tell the name of his mother. Partap (PW3), who claimed to be a friend of late Har Kishan, could not tell the name of the wife of Har Kishan and also as to in which village Har Kishan was married. He also admitted that no one ever told him that plaintiff Vikram Singh was son of Har Kishan. In fact, he simply observed so. Accordingly, it was observed that the testimony of the said witness was not worthy of any credence. As regards the documents, that were brought on record by the plaintiff to substantiate his claim, it was concluded that the same could not be relied upon, as all these documents were not proved, as required in law by examining the concerned witnesses. Thus, claim of the plaintiff that he was son of Har Kishan, remained unsubstantiated on record. Plaintiff in his statement even denied that Mahender Kaur was his wife,

though document (Ex.D3), proved that Mahender Kaur was wife of the plaintiff (Vikram). Further, an analysis of the will dated 26.05.1986 (Ex.D6), executed by Jhagru son of Umrao i.e. brother of deceased Har Kishan, revealed that he had bequeathed his estate in favour of his sons, namely, Richhpal, Dharambir, Jagdish, Rohtash (defendants No.1 to 4) and Vikram (plaintiff) and also his six daughters. That being so, it was observed that if at all plaintiff was the son of Har Kishan, there was hardly any occasion for Jhagru to have bequeathed his estate in favour of the plaintiff. Likewise, even Har Kishan, pursuant to a will dated 26.05.1986 (Ex.D1) bequeathed his estate in favour of his nephews i.e. plaintiff and defendants No.1 to 4, in equal shares. Though, the first appellate court, on a consideration of both the wills i.e. dated 26.05.1986, executed by Jhagru (Ex.D6) and dated 26.05.1986, executed by Har Kishan (Ex.D1), observed that these were not proved by the defendants as required in law, but yet for plaintiff to be entitled to the declaration prayed for, he was required to make good his case, which he apparently failed to. On the contrary, revenue record in the shape of jamabandis (Ex.D4, Ex.D5, Ex.D8 & Ex.D9) showed that post death of Jhagru, even plaintiff became owner of the land left by him. It was never the case of the plaintiff that he ever questioned the correctness of the said position, that was reflected in the revenue record. Resultantly, it was concluded that in fact plaintiff was son of

Jhagru only. That being so, the suit and thereafter, even the appeal preferred by the plaintiff was dismissed.

I have heard learned counsel for the appellant at length and perused the RSA paper book.

Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is wholly devoid of merit and is thus, liable to be dismissed for the reasons that are being recorded hereinafter. Needless to assert, for plaintiff to be entitled to the declaration prayed for, he was required to substantiate that he indeed was son of Har Kishan. The documents that were brought on record by the plaintiff in support of his claim, were never proved as required in law. And were thus, rightly not looked into. As the plaintiff failed to examine any of the concerned witnesses from the respective departments. Likewise, even the oral evidence led by the plaintiff was hardly of any credence. Girraj (PW1) feigned ignorance as to when and by whom the plaintiff was admitted in the school. He testified in his statement that at the time of admission of the plaintiff, his date of birth certificate was never obtained by the school authorities. And, thus, none was on record.

On the contrary, mutation (Ex.D2), electoral roll (Ex.D3) and jamabandis for the years 1997-98 (Ex.D4), 2002-03 (Ex.D5), 1987-88 (Ex.D8) & jamabandi for the year 1992-93 (Ex.D9) reflect that plaintiff-Vikram Singh, post death of Jhagru son of Umrao, inherited his estate along with other heirs of Jhagru. The position which he never questioned ever. Thus, plaintiff Vikram Singh was son of Jhagru and defendants No.1 to 4 were his real brothers. Claim of the plaintiff that he was son of Har Kishan and was alone entitled to succeed to his 1/3rd share remained unsubstantiated on record. Learned counsel for the appellant could not point out as to how the conclusions that were concurrently recorded by both the courts below were either contrary to the position on record or suffered from any material illegality.

In the wake of the position, as set above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is, accordingly, dismissed.

February 5, 2015
Rajan

(Arun Palli)
Judge