

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

Regular Second Appeal No.1983 of 2015 (O&M)

Date of decision: **17.09.2015**

Veerinder Singh and others

... Appellants

versus

Sukhdev Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ajay Pal Singh, Advocate,
for Mr. G.S. Sidhu, Advocate,
for the appellants.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J.

CM No.5233-C of 2014

For the reasons stated in the application, delay of 160 days in filing the appeal is condoned.

Application stands disposed of.

Regular Second Appeal No.1983 of 2015

1. The plaintiffs are the appellants before this court. The plaintiffs filed a suit claiming that the decree and judgment rendered on 19.01.1995 as amended on 11.03.1995 in a Civil Suit No.611 of 1994 allowing for a decree to be passed in favour of the defendants

1 and 2 with regard to 2/3rd share of the agricultural lands mentioned in the suit was fraudulent, null and void and for declaring the mutations effected based on the decree to be not binding on the plaintiffs. The plaintiffs have also sought for a decree for declaration with reference to the property and for injunction or in the alternative for possession of property.

2. The plaintiffs' suit was rested on a plea that the estate belonged to Raghbir Singh. Raghbir Singh had a wife by name Gurcharan Kaur. Gurcharan Kaur died on 20.11.1994. Raghbir Singh had a brother by name Rajender Singh. He is now no more and the plaintiffs are the sons and daughters of Rajender Singh. The contention is that Raghbir Singh did not have any children through his wife and the plaintiffs are the natural class-II heirs of Raghbir Singh. They would contend that the 1st defendant, who is the father of the 2nd defendant, is setting up a case of adoption as having been made by Raghbir Singh but there was no such adoption. It is a fabricated case of the 1st defendant to lay a false claim to the property.

3. The 1st defendant claimed himself to be the adopted son of Raghbir Singh even when he was about 6 years old. The contention was that after the adoption was complete, the 1st defendant was always living with his adoptive parents and his adoptive father filed a suit pursuant to a family arrangement

conceding to himself only 1/3rd share and admitting the right to the properties to 2/3rd share. Raghbir Singh had earlier executed a Will during the lifetime of his wife on 24.03.1982 and still later, another Will on 09.12.1994 and after her death, he executed another Will on 22.02.1995 bequeathing all his right in the property to him. The Will was the last Will and testament and as per the recitals, the right in the property had devolved only on the 1st defendant and the plaintiffs have no right to the property at all.

4. During the time of evidence, both parties had let in considerable oral and documenary evidence. The trial court, while considering the evidence of Numberdar that he had not seen the 1st defendant living along with Raghbir Singh also stated that Raghbir Singh and Rajender Singh were not on talking terms. The defendant was able to bring evidence of proof of adoption and made reference to a voter list that showed him to be residing along with Raghbir Singh describing him as a father. The court observed that there was no document of adoption but there was enough oral evidence through witnesses who spoke to the adoption as having taken place some years back. It obtained corroboration of the fact of adoption through the recitals in the decree itself which had admitted that the status of the 1st defendant as adopted son of Raghbir Singh. The last Will, namely, the Will propounded by the defendant on 22.02.1995 was a registered one and the original produced by the 1st defendant

showed the photograph of the executant Raghbir Singh as also having been affixed at the time of registration. The scribe had been examined as a DW6 and the attesting witness had been examined as DW13. The trial court found the evidence to be adequate to prove the genuineness of the document. The trial court also found that the plaintiffs themselves had admitted that they were not taking care of Raghbir Singh.

5. Having regard to the conduct of Raghbir Singh during his lifetime executing Wills and duly registering them at various points of time, it showed that he clearly wanted to dictate the line of succession to his property and did not want intestate succession to his estate. If the plaintiffs had also not been taking care of Raghbir Singh, there was nothing unusual about Raghbir Singh executing a Will in favour of 1st defendant. The court raised a question of whether there was anything suspicious about the decree that had been passed whereunder he had conceded to himself only 1/3rd share and allowed for 2/3rd share to the defendants 1 and 2. The court found that there was nothing suspicious about the decree that had been passed, especially when he had himself had not taken any action during his lifetime. In my view, the trial court and the appellate court considered the case from proper perspective, namely, of the conduct of parties, the evidence that was available for long-standing relationship between the defendants 1 and 2 and

Raghubir Singh and the fact that the Will had been executed in favour of the 1st defendant which was duly registered and attested by witnesses.

6. The dismissal of the suit of the plaintiffs were on substantial evidence adduced by the defendant and by proper appreciation of oral and documentary evidence produced on both sides. I do not find that there is any error in the judgments of the courts below for a reversal in appeal.

7. The second appeal is without merit and it is dismissed as involving no substantial questions of law for consideration.

(K.KANNAN)
JUDGE

17.09.2015
sanjeev