

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

**RSA No. 1432 of 2014 (O&M)
Decided on : 17.08.2015**

Sant Singh

...Appellant

Versus

Joginder Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. S.K. Singla, Advocate.

K. C. PURI, J.

The plaintiff has filed the present regular second appeal against the judgment and decree dated 26.8.2013 passed by Sh. K.C. Gupta, Additional District Judge, Patiala whereby appeal filed by the defendants was allowed and the suit of the plaintiff was dismissed and the judgment and decree dated 30.9.2011 passed by Sh. Bikramjit Singh, PCS, Civil Judge (Junior Division), Patiala was reversed.

In brief, the plaintiff filed suit for declaration and for permanent injunction. It was pleaded that Partap Singh was the son of Chanda Singh and was father of plaintiff, defendants no.1 to 8 and husband of defendant no.5 and maternal grand father of defendants no. 9 to 12 and expired on 11.5.1998 leaving behind the parties as his legal heirs. It was alleged that said Partap Singh was owner of different

properties at the time of his death as fully detailed in the head note of the plaint. It was alleged that after his death, the entire property has been inherited by his legal heirs in equal shares i.e. plaintiff and defendants no. 1 to 8 to the extent of 1/10 share each and defendants no. 9 to 12 to the extent of 1/40 share each. It was alleged that Partap Singh never executed any will dated 30.1.1985 registered on 31.1.1985 in favour of defendants no. 1 to 4, as such the alleged will and mutations sanctioned on that basis, are illegal, null and void and are liable to be set aside on the grounds that the said will is surrounded with suspicious circumstances, as no reason has been given for exclusion of some of the legal heirs from inheritance and no reason has been given regarding not mentioning of all the legal heirs of Partap Singh. There are two thumb impressions of Partap Singh on the over leaf of first page of alleged will. The alleged witnesses to the alleged will are not of same village and the mutations have been sanctioned without any notice to the plaintiff and other legal heirs. It was alleged that the plaintiff is owner of the said land left by his father, but defendants have refused to admit his claim and thereafter, he filed suit for declaration, joint possession and permanent injunction.

Upon notice, defendants no. 1 to 4 put in appearance and filed joint written statement, wherein preliminary objections of maintainability, mis-joinder of necessary parties, locus standi and cause of action were taken. It was pleaded that the plaintiff has wrongly alleged himself to be the son of Partap Singh, as though he was the

natural son of Partap Singh, but when he was of the age of just 2½ years, he was given in adoption to Sheel Kaur, who has no issue and plaintiff was brought up by said Sheel Kaur, he was admitted in the school at Patiala and he used to reside with her in House No. 1534/3, Gali Gurudwara Jangi Jatha, Raghomajra, Patiala and after the death of Sheel Kaur, he inherited her property being her adopted son. The plaintiff has not come to the court with clean hands as the mother of plaintiff, namely, Bhag Kaur made statement in the mutation proceedings that the will executed by Partap Singh in favour of defendants no.1 to 4 is legal and valid and her son, namely, Sant Singh was given in adoption to Sheel Kaur when he was of the age of just 2½ years. It was admitted that Partap Singh was owner of the property in question, but it was denied that the plaintiff is entitled to inherit the property being adopted son of Sheel Kaur. It was admitted that said Partap Singh used to reside with defendants no. 1 to 4 and due to the services rendered by them towards Partap Singh, he executed a will with the consent of Bhag Kaur, his wife in their favour, which is legal and valid and on the basis of which, mutations have already been sanctioned in their favour and as such, they are owners in possession of the property in dispute. It was denied that the Will is illegal, null and void or it is surrounded with suspicious circumstances. It was also pleaded that as the plaintiff started residing with Sheel Kaur, there was no need of mentioning of his name in the Will and all other daughters, as they have already married. It was further pleaded that the Will is

attested by witnesses and the mere fact that they do not belong to same village, does not create any suspicion. It was pleaded that as the defendants are owners in possession of the property in dispute, the plaintiff has no concern with the property in dispute.

Defendants no. 9 to 12 also filed separate joint written statement, wherein, they have admitted the claim of the plaintiff and it was prayed that they are also entitled to their respective shares in the properties left by Partap Singh.

Remaining defendants did not appear before the trial Court and as such they were proceeded against exparte.

Replication was filed by the plaintiff reiterating the facts mentioned in the plaint and denied those made in the written statement. It was pleaded that the plaintiff is the natural son of Partap Singh and it was denied that he was given in adoption to Sheel Kaur, when he was of the age of 2½ years. It was denied that he ever resided with Sheel Kaur being her adopted son or he was brought up by said Sheel Kaur or she gave education to him.

From the pleadings of the parties, following issues were framed:-

1 Whether the plaintiff along with defendants no. 1 to 8 are legal heirs of deceased Partap Singh to the extent of 1/10 share each and defendants no. 9 to 12 to the extent of 1/40 share each of land owned by Partap Singh? OPP

2 Whether the will dated 30.1.1985 registered on 31.1.1985 is forged and fabricated document and is illegal, null and void? OPP

3 Whether the plaintiff is entitled to joint possession of the suit property? OPP

4 Whether the plaintiff is entitled for injunction? OPP

5 Whether the suit is within limitation? OPP

6 Whether the suit is not maintainable in the present form? OPD

7 Whether the suit is bad for mis joinder of necessary parties? OPD

8 Relief.

Both the parties led their respective evidence. After appraisal of the evidence, learned trial Court vide judgment and decree dated 30.9.2011 decreed the suit of the plaintiff.

Feeling dis-satisfied with the judgment and decree dated 30.9.2011, the defendants filed appeal. Sh. K.C. Gupta, Additional District Judge, Patiala vide judgment and decree dated 26.8.2013 accepted the appeal and set aside the judgment and decree dated 30.9.2011 and dismissed the suit of the plaintiff.

Feeling dis-satisfied with the judgment and decree dated 26.8.2013 passed by Sh. K.C. Gupta, Additional District Judge, Patiala, the plaintiff has filed the present regular second appeal.

Learned counsel for the appellant has mentioned in

paragraph No.6 of the grounds of appeal that following substantial questions of law have arisen in the present appeal:-

(i) As to whether the judgment and decree under appeal are perverse and vitiated in view of the facts and evidence produced in the case?

(ii) As to whether a finding recorded without considering the material and relevant evidence is sustainable in law ?

(iii) As to whether the well reasoned judgment and decree passed by the learned trial Court could be set aside by the learned lower appellate Court without meeting with the reasoning given by the learned trial Court ?

I have heard learned counsel for the appellant and have gone through the case file.

Learned counsel for the appellant has submitted that controversy in the present lis revolves around the Will dated 30.1.1985 alleged to be executed by Partap Singh father of plaintiff in favour of the defendants. It is submitted that the trial Court after appreciating the evidence on the file discarded the Will giving reasons that natural heirs have been deprived of. It has been further mentioned in the said judgment by the trial Court that even the detail of legal heirs has not been given and as such the Will dated 30.1.1985 is surrounded by

suspicious circumstances so, the Will was rightly ignored. However,

the lower appellate Court has set aside the well reasoned judgment of the trial Court without meeting the grounds discarding the Will so, the judgment passed by the lower appellate Court is liable to be set aside.

I have carefully considered the said submission but do not find any force in that submission.

Admittedly, Partap Singh has five sons and the Will was executed in favour of four sons, namely, Joginder Singh, Jawala Singh, Pritpal Singh and Harlal Singh and plaintiff Sant Singh was the fifth son and Will has not been executed in his favour. Partap Singh has also daughters who are stated to be married. Wife of Partap Singh was alive but she has supported the Will dated 30.1.1985 in favour of defendants No.1 to 4. There is a finding of fact recorded by the lower appellate Court that some other property was given to the plaintiff so, the registered Will has rightly been accepted by the lower appellate Court. The trial Court has ignored the Will on the ground that names of natural heirs have not been mentioned and that they have been ignored. However, the trial Court has lost sight of the fact that plaintiff Sant Singh has been given another land whereas the daughters are married and Bhag Kaur widow of Partap Singh has supported the Will before the trial Court. It is a tendency amongst the villagers to give property to the sons. The defendants have explained the reason for not executing the Will in favour of plaintiff as he has been given another land.

The Will in favour of defendants No.1 to 4 is duly proved in accordance with law and no suspicious circumstance has

been brought on the file. The daughters of Partap Singh were married and duly settled and this fact has not been disputed during the course of arguments. No doubt, in the Will the detail of other legal heirs has not been mentioned but this itself does not make the Will as a suspicious document. No doubt, the Will is not compulsorily registrable document but once the Will is registered, it guarantees due execution of the Will and most of the suspicious circumstances are explained unless the person challenging the Will can prove some strong suspicious circumstances. There is nothing on the record that judgment of the lower appellate Court is the result of misreading or misinterpreting the evidence on the file. The judgment of the lower appellate Court cannot be said to be perverse. So, I have no hesitation in holding that no substantial question of law has arisen in the present appeal. The factum of execution of Will has been duly proved and consequently, the appeal is without any merit and the same stands dismissed.

17.8.2015.
SN

(K.C.PURI)
JUDGE