

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

**RSA No. 4304 of 2015 (O&M)
Decided on : 31.08.2015**

Kashmir Kaur

...Appellant

Versus

Karmi and others

...Respondents

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

Present : Mr. G.S. Pannu, Advocate and
Mr. Satinder Khanna, Advocate,
for the appellant.

K. C. PURI, J.

The plaintiff No.4-appellant has directed this appeal against the judgment and decree dated 20.5.2015 passed by Sh. Rajesh Kumar, Additional District Judge, Ludhiana vide which the appeal filed by the plaintiffs was dismissed and the judgment and decree dated 16.11.2012 passed by Sh. Amrinderpal Singh, PCS, Additional Civil Judge (Senior Division), Ludhiana were upheld.

Briefly stated, the plaintiffs filed suit for declaration that plaintiffs and defendants No.1 & 2 are owners in joint possession to the extent of 1/7th share of land measuring 27 kanals 18 marlas out of land measuring 195 kanals fully detailed in the head note of the plaint.

The plaintiffs also challenged sale deeds No.1125 dated 10.12.2002;

sale deed No. 234 dated 18.5.2004 and; sale deed No.1340 dated 22.1.2004. It was pleaded that originally Gian Singh was owner in possession of suit land and during his life time, he sold land measuring 8 kanals out of 104 kanals and 17 marlas to one Mohinder Singh. Thereafter, said Gian Singh remained owner of 27 kanals 18 marlas till his death. Gian Singh was father of plaintiffs and defendant No.2 and husband of defendant No.1. He died on 8.6.2002 intestate. Thus, the plaintiffs and defendants No.1 & 2 succeeded to the estate of Gian Singh in equal share i.e. 1/7th share each on the basis of natural inheritance. He has not executed any Will in favour of defendant No.1. Consequently, the aforesaid sale-deeds executed by defendant No.1 in favour of defendants No.3 to 7 are null and void and not binding on the rights of the plaintiffs.

Upon notice, the defendants No.5 to 7 appeared and filed written statement taking preliminary objections of maintainability, locus-standi, cause of action, limitation and the suit being misconceived. It was pleaded that the plaintiffs have not come to the Court with clean hands as Gian Singh executed the Will on 15.9.2001 and he died on 8.6.2002. On the basis of said Will, mutation No.340 was entered in the revenue record. The plaintiffs and defendants No.1 & 2 appeared before the revenue authorities and admitted the execution and correctness of the aforesaid Will. The answering defendants purchased the suit property for valuable consideration. The ownership of Gian Singh and relationship between the parties was not denied. The

remaining allegations were denied.

The remaining defendants did not appear and as such they were proceeded exparte.

The plaintiffs filed replication to the written statement in which they reiterated the version of the plaint and controverted the version of written statement.

The issues were framed and both the parties led their respective evidence. Learned trial Court vide judgment and decree dated 16.11.2012 dismissed the suit of the plaintiffs.

Feeling dis-satisfied with the aforesaid judgment and decree dated 16.11.2012 the plaintiffs filed first appeal and the same was dismissed by the first appellate Court on 20.5.2015.

Still feeling dis-satisfied with the aforesaid judgments and decrees, the plaintiff No. 4-appellant has directed this regular second appeal.

Learned counsel for the appellant, in para no.5 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the instant appeal :-

- 1) Whether a Will can be held to have been proved even though no attesting witness of the Will has been examined ?
- 2) Whether a Will, can be said to be proved even though no Will in question has been produced in the Court and no permission for leading secondary evidence

has been taken ?

- 3) Whether a person can pass a better title than he himself has to the purchaser ?
- 4) Whether the impugned judgments are the result of misreading/non-reading the evidence on record ?

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

Learned counsel for the appellant has submitted that case of the contesting defendants is that Gian Singh executed a Will in favour of Karmi widow and Makhan Singh son. It is submitted that said Will has not been proved on the file. So, in these circumstances, the sale deeds executed on the strength of mutation on the basis of Will are null and void. The contesting defendants cannot be said to be bonafide purchasers of the property. The defendants No.1 & 2 are not the owners of the whole of the suit property and as such they cannot pass better title. Judgments of both the Courts below are the result of misreading and misinterpreting the evidence on the file.

I have considered the submissions made by learned counsel for the appellant but do not find any force in those submissions.

The registered Will is in favour of widow and son of Gian Singh and the appellant is the daughter of Gian Singh. The mutation has been attested on the basis of registered Will which has not been challenged by the plaintiffs for years together. The revenue record shows that defendants No.3 to 7 the vendees of defendants No.1 and 2

are the bonafide purchasers for valuable consideration. No explanation has been given for not challenging the mutation for years together. There is a concurrent finding of fact of bonafide purchaser in favour of the defendants No.3 to 7 and that finding of fact cannot be said to be result of misreading or misinterpreting the evidence. So, I have no hesitation in holding that no substantial question of law has arisen in the present regular second appeal. Consequently, the appeal is without any merit and the same stands dismissed.

31.8.2015
SN

(K.C.PURI)
JUDGE