

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

RSA No. 1779 of 2014 (O&M)

Date of decision:- September 30, 2015

Pritam Singh and another

.....Appellants..

Vs.

Bhand Singh and others

....Respondents..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Malkeet Singh, Advocate,
for the appellants.

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?

JASPAL SINGH, J.

CM Nos.4340 and 4341-C of 2014

For the reasons mentioned in these applications, delay of
33 days in filing and 366 days in refiling the appeal is condoned.

CMs stand disposed of.

CM No. 4342-C of 2014

Heard.

In view of the contents of application, which is duly
supported with an affidavit of Jaswant Singh son of Bhagat Singh,
same is allowed and legal representatives of Gurjit Singh-respondent

No.9 are ordered to be impleaded as depicted in paragraph No.2 of the application.

CM stands disposed of.

Main case

Briefly stated, the facts giving rise to instant lis are that appellants-plaintiffs preferred a suit seeking declaration that they are owners of the land measuring 57 Kanal 01 Marla bearing killa Nos.3//9, 10/1, 10//9/2, 10, 22, 17//2, 8, 9 Khata Khatauni Nos. 13/30 as per jamabandi for the year 1987-88 situated at village Saidpur, Tehsil Ajnala, District Amritsar and that mutation No. 194 sanctioned in favour of defendants with regard to the inheritance of Bhagat Singh son of Gurdit Singh is illegal, null and void and is the result of fraud and misrepresentation as well as for possession of land in suit with consequential relief for permanent injunction restraining the defendants from alienating, mortgaging and transferring the land in dispute in any manner. The said suit was dismissed by the Id. lower court vide judgment and decree dated February 04, 2005.

2. An appeal preferred by appellants-plaintiffs against the aforesaid judgment and decree was also dismissed vide judgment and decree dated August 11, 2012 affirming the judgment and decree passed by the Id. trial court.

3. Dissatisfied with the aforesaid judgments and decrees, appellants-plaintiffs have preferred the instant appeal.

4. Shortly put, case of appellants-plaintiffs is that the suit land was previously owned and possessed by Bhagat Singh, their father, who breathed his last on June 03, 1976. After his demise,

appellants-plaintiffs being his natural heirs became owners in possession of suit property. However, mutation regarding inheritance of Bhagat Singh could not be sanctioned in their favour. Taking, undue advantage thereof, respondents-defendants took forcible possession of the suit land. When appellants-plaintiffs came to know about the non-sanctioning of mutation of inheritance of their father from Halqa Patwari, they immediately preferred the suit before the Civil Court.

5. It has further been averred that defendants-respondents are strangers. They have got no relations with Bhagat Singh son of Gurdit Singh. Mutation No. 194 has been wrongly incorporated and sanctioned in their favour on the basis of forged and fabricated will dated October 28, 1981. In fact, Bhagat Singh neither executed any will nor there was any such occasion as he had already left for heavenly abode on June 03, 1976 at village Saleempur Afgana. The question of executing any will in the year 1981, does not arise at all. Mutation sanctioned on the basis of said will being illegal, null and void has got no bearing upon the rights of appellants-plaintiffs. Thus, same are liable to be set aside.

6. Upon notice, suit was resisted by defendants-respondents by way of filing written statement raising preliminary objections inter alia on the grounds that suit is time barred and that plaintiffs-appellants have never been in possession any part of suit land since 1981 onwards i.e. after the death of Bhagat Singh son of Gurdit Singh, real owner of the suit land. Said Bhagat Singh died in the year 1981. Some other objections with regard to the valuation

and wrong impleadment of defendant No.12 have also been taken. However, on merits, it has been averred that suit land never belonged to Bhagat Singh, father of plaintiffs-appellants. Rather, it belongs to another Bhagat Singh son of Gurdit Singh, village Saidpur, Tehsil Ajnala. Said Bhagat Singh was resident of village Raoke, Tehsil Narowal, District Sialkot prior to the partition of the country. He was owner of 76 kanals of land at village Raoke and in lieu of said land, he was allotted land measuring 4 standard acres and 15½ units in village Saidpur Kalan, Tehsil Ajnala, after he migrated in the year 1947. Labh Singh son of Dalu, father of defendants No. 1 to 9 and grand-father of defendants No. 10 and 11 was mortgagee in possession. Even in certificate of allotment issued by East Punjab Government, name of Labh Singh has been recorded as mortgagee. Infact, plaintiffs are taking undue advantage of their alleged father's name being Bhagat Singh son of Gurdit Singh. The real facts are that father of plaintiffs-appellants was resident of village Kalas Gorayan, Tehsil Narowal, District Sialkot, who was allotted 6¾ units of land after partition of the country in village Saidpur. Said allotment in the name of Bhagat Singh, who belonged to village Kalas Gorayan was cancelled as the same was mortgaged with Mohmadans in village Kalas Gorayan and, thereafter, Bhagat Singh son of Gurdit Singh from whom the defendants-respondents derive their right, title and interest had migrated from village Raoke, who expired on November 15, 1981. He was issue-less and used to reside with defendants and predecessor-in-interest Labh Singh. Since, he was being looked after by defendants-respondents, he

executed will dated October 28, 1981 in lieu of service rendered by defendants, which was duly registered with the office of Sub-Registrar, Ajnala. After his demise, defendants became owners in possession of suit property by way of will. Mutation on the basis of will has rightly been sanctioned. Thus, in view of the aforesaid averments, defendants-respondents prayed for dismissal of suit.

7. Various issues were framed by Id. trial court in order to settle the matter in controversy between the parties and ultimately, after hearing learned counsel for the parties and appraisal of evidence brought on record by them in support of their respective claims, suit was dismissed vide judgment and decree dated February 04, 2005.

8. Said judgment and decree was challenged by way of appeal by appellants-plaintiffs before the lower appellate court but that also met with the same fate.

9. Being aggrieved against the dismissal of suit as well as that of appeal, appellants-plaintiffs preferred instant appeal.

10. Before delving deep into the merits of the instant case, it would be pertinent to mention here that most crucial issue, which arises for consideration in this appeal is whether Bhagat Singh son of Gurdit Singh, predecessor-in-interest of appellants-plaintiffs was owner of the property in dispute and if the answer to this question is in the negative, whether appellants-plaintiffs have any locus standi to challenge will dated October 28, 1981 propounded by respondents-defendants. The findings recorded by Id. trial court on other issues and affirmed by lower appellate court are of not much relevance.

11. While assailing impugned judgments and decrees, it has been ebulliently argued by learned counsel for appellants that Bhagat Singh son of Gurdit Singh, father of appellants-plaintiffs breathed his last on June 03, 1976. To buttress his contention, death certificate Ex. P-4 has been placed on record, which clearly depicts that Bhagat Singh son of Gurdit Singh died at village Saleempura but Id. trial court as well as lower appellate court has erroneously discarded and disbelieved said material document. Even otherwise, appellants-plaintiffs have produced evidence on record to prove their relationship with Bhagat Singh son of Gurdit Singh. One of the plaintiffs namely Jaswant Singh, who appeared in the witness-box as PW-3 has also clearly deposed that he was born in village Saleempur Afgana, Tehsil and District Gurdaspur and there is no other person of village Kalas Gorayan residing in Village Saleempur Afgana. The name of Bhagat Singh son of Gurdit Singh, who was allotted land in village Saidpur, Tehsil Ajnala, District Amritsar to the extent of $6\frac{3}{4}$ units, respondents-defendants have miserably failed to adduce evidence in this regard. Moreover, respondents have also admitted that Gurdit Singh predecessor-in-interest was allotted $6\frac{3}{4}$ units in lieu of land left by Bhagat Singh son of Gurdit Singh in Pakistan but there is no evidence brought on record that said allotment was ever cancelled. Mere statement with regard to alleged cancellation of allotment is not suffice to discard the overwhelming evidence adduced by appellants-plaintiffs. Thus, impugned judgments and decrees are not sustainable in the eyes of law and are liable to be set aside by way of acceptance of instant appeal.

12. After bestowing due consideration to the aforesaid submissions and scrutinizing impugned judgments and decrees as well as appreciating the evidence available on file, this Court is of the considered view that submissions made by learned counsel for appellants-plaintiffs are without any substance.

13. In fact, onus to prove that Bhagat Singh son of Gurdit Singh was father/predecessor-in-interest of plaintiffs heavily lies upon them. In order to discharge the said onus, they have only placed on record death certificate Ex.P-4. According to which, their father-Bhagat Singh left for heavenly abode on June 03, 1976. Death certificate Ex.P-4 has not been issued by the office of Registrar, Death and Birth. Rather, same has been issued by Sarpanch, Gram Panchayat of village Saleempur Afgana. Even Sarpanch, who issued certificate Ex.P-4 has not been examined for the reason best known to plaintiffs. The certificate, so, issued is not admissible. Moreover, father's name of Bhagat Singh does not find mention in the said certificate. Rather, respondents-defendants have proved on record in unequivocal terms that Bhagat Singh, father of appellants-plaintiffs was some other person than that of Bhagat Singh son of Gurdit Singh, predecessor-in-interest of respondents-defendant. It is the categorical stand of respondents-defendants that Bhagat Singh son of Gurdit Singh, resident of Bhakhna Hari Singh, who had migrated from village Raoke, District Sialkot expired on November 15, 1981 as is evident from death certificate Ex.D-3 issued by Additional Registrar, Deaths and Births, Amritsar. Apart from death certificate, he has also been listed as voter in the voter list Ex. D-4 of village

Bhakhna Hari Singh and not of village Saleempur Afgana. Not only this, it has also emerged in the cross-examination of PW-3 plaintiff that Bhagat Singh son of Gurdit Singh was resident of Raoke Narwal whereas his father was resident of Kalas Gorayan. It has also been admitted by him that allotment made in the name of his father at village Saidpur was cancelled. Similarly, there is also an admission on the part of plaintiffs that Bhagat Singh son of Gurdit Singh is the brother of Labh Singh. So, from the aforesaid facts, circumstances and evidence, it stands clearly proved that Bhagat Singh, father of plaintiffs was a different person than that of Bhagat Singh son of Gurdit Singh, predecessor-in-interest of respondents-defendants. Litigation initiated by appellants-plaintiffs can be said to be a frivolous one, just to usurp the property belonging to some other person.

14. Now, coming to will dated October 28, 1981 Ex.D-1 executed by Bhagat Singh son of Gurdit Singh in favour of defendants. Firstly, appellants-plaintiffs have no locus standi to challenge the will as they are strangers to the property in dispute as well as executant or testator of the will. Will stands proved from the testimony of one of the attesting witnesses namely Joginder Singh DW-1 as well as Giani Uttam Singh, scribe of the will. Mutation, on the basis of registered Will Ex.D-1 has also been rightly incorporated and sanctioned. In fact, appellants-plaintiffs have nothing to do with the property in question. On the basis of Will, respondents-defendants have become owners in possession of property in suit. There is also nothing on record to suggest that will in question is either forged or fabricated document. Appellants-plaintiffs have also

got no right to challenge the said will.

15. In the light of aforesaid discussion, this Court does not find any merit in the instant appeal. As such, same is dismissed.

**(JASPAL SINGH)
JUDGE**

September 30, 2015
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