

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

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Regular Second Appeal No.2910 of 2014

Date of Decision: December 02, 2015

Sardool Singh

...Appellant

Versus

Kehar Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vivek Salathia, Advocate
for Mr. Ashish Aggarwal, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Patti, dated 20.04.2011, whereby the suit of respondent Nos.1 to 3-plaintiffs for declaration to the effect that they are in possession as co-sharers of the land measuring 216 kanals 10 marlas as detailed in the head note, situated at village Sur Wind, Tehsil Patti, District Tarn Taran, as per jamabandi for the year 2007-2008, which is 3/4th share from the estate of Sher Singh son of Gurdit Singh and the alleged mutation of inheritance of Sher Singh bearing No.1214 ordered by the Court of Sub Divisional Magistrate-cum-Assistant Collector 1st Grade, Patti, by order dated 25.03.2010, is illegal, null and void and further mutation No.1298 entered in favour of respondent No.4-defendant No.3 is illegal, null and void and not effected the rights of the plaintiffs with permanent injunction, stands partly decreed, appeal against which preferred by appellant-defendant Nos.1 and 2 stands dismissed by the Additional District Judge, Tarn Taran, on 21.01.2014.

2. It is the contention of learned counsel for the appellant that the mutation which is impugned, has been duly sanctioned by the competent authority on the basis of an attested copy of the Will, which has come on record in the statement of PW-2 Amandeep Singh, Ahlmad of the Court of Sub Divisional Magistrate-cum-Assistant Collector 1st Grade, Patti, who had produced the summoned file of the impugned mutation No.1214 from the office. Although there is no original Will on the record but since there is an attested copy, the existence of the Will cannot be disputed and without challenge to the validity of the said Will, the suit as filed by respondent Nos.1 to 3-plaintiffs, could not be decreed. He, however, could not dispute the fact that no written statement was filed by the appellant-defendants nor has any evidence been produced contesting the claim of the respondent Nos.1 to 3-plaintiffs.

3. I have considered the submissions made by learned counsel for the appellant and on perusal of the impugned judgments, it is apparent that respondents 1 to 3-plaintiffs had based their claim on the assertion that there was, in fact, no Will. If that be so, in the absence of the stand of the appellant-defendants that there was indeed a Will on the basis of which they became the owner of the property, the Courts have rightly proceeded to decide the matter as there was no one to assert such a claim. As admitted, there was no written statement filed nor was any evidence produced by the appellant-defendants. The Courts had to, therefore, proceed to decide the matter on the basis of the pleadings as mentioned in the suit and the evidence as led by the plaintiffs. The findings as returned by the Courts below are based upon proper appreciation of the pleadings and the evidence led by respondents 1 to 3-plaintiffs, which cannot be faulted with.

4. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

5. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

December 02, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE