

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

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RSA-3096-2014 (O&M)

Date of Decision: 17.11.2015

PRABHPAL SINGH AND ORS

... Appellants

Versus

HARJIT SINGH AND ORS

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vinod S. Bhardwaj, Advocate
for the appellants.

RAJ MOHAN SINGH, J. (Oral)

1. Plaintiffs are in second appeal against concurrent judgments and decrees passed by the Courts below in a suit for declaration and permanent injunction.

2. Plaintiffs have become owners in possession to the extent of shares as shown in the head note of the plaint and defendant has also become owner of specified share as depicted in the plaint. Plaintiffs further alleged that they have inherited 3/4th share of Gurmukh Singh whereas defendant No.1 has inherited 1/4th share. Jagga Singh and Ranga Singh were two real brothers. Ranga Singh died in Pakistan before partition of the country. Jagga Singh was married to Thakri who gave birth to 4 sons namely Teja Singh, Gurmukh Singh, Dalip Singh and Gopal Singh. Ranga Singh was married to Kartar Kaur. No issue took birth from this wedlock. After the death of Ranga Singh, Kartar Kaur started living with Jagga

Singh as his second wife. Harjit Singh took birth from this wedlock. After partition of the country land was allotted to Jagga Singh in three different villages namely Daddian, Rakh Nag and Chappa Ram Singh. Harjit Singh Defendant No.1 was living in Chappa Ram Singh. Plaintiffs were having joint cultivation possession in three villages. Voter ID of Gurmukh Singh and his wife Amar Kaur was of village Daddian where Teja Singh also resided. Plaintiffs further alleged that Gurmukh Singh was served by the plaintiffs being second elder person in the family and was suffering from paralysis and other related diseases and was not of sound and disposing mind. Gurmukh Singh died issueless on 08.12.2001 and he had bequeathed his entire share in the property in the ratio of 3/4th and 1/4th share in favour of plaintiffs as well as defendant No.1 Harjit Singh respectively vide Will dated 07.06.1999. The alleged Will dated 25.05.2001 executed by Gurmukh Singh in favour of defendants No.2 and 3 sons of defendant No.1 has been claimed to be forged and fabricated. The suit was contested by the defendants on customary pleas besides taking the ground that Gurmukh Singh was living with defendant No.1 along with his wife who ultimately died on 25.01.2003 during pendency of the suit. Voter list as well as other related evidence also corroborated the factum of Gurmukh Singh being living in the house of Harjit Singh.

3. From the pleadings of the parties following issues were framed:-

"1. Whether Gurmukh Singh executed Will on

07.06.1999 in favour of plaintiff and defendant No.1? OPP If so its effect

2. Whether defendant No.1 is step brother of Gurmukh Singh? OPP If so its effect

3. Whether defendants threatened the plaintiffs to alienate the suit property? OPP

4. Whether Gurmukh Singh executed a Will on 25.5.2001 in favour of defendant No.2 and 3? OPD If so its effect

5. Whether Amar Kaur wife of Gurmukh Singh was alive at the time of filing of the present suit? OPD

6. Whether plaintiffs are estopped by their own act and conduct from filing the present suit? OPD

7. Whether plaintiffs have no cause of action to file the present suit? OPD

8. Whether the present suit has not been properly valued for the purposes of court fee and jurisdiction? OPD

9. Relief.”

4. Parties were put to trial and they led respective evidence.

5. The entire controversy hinges upon validity of two Wills dated 07.06.1999 in favour of plaintiffs and defendant No.1 and the second Will dated 25.05.2001 in favour of defendants No.2 and 3 which has recital of cancelation of earlier Will dated 07.06.1999. The Courts have found as a matter of fact that the subsequent Will was lawfully executed which has a recital of revocation of earlier Will. No evidence much less the evidence of medical unfitness of Gurmukh

Singh for executing Will has come forth on record. The only argument of depriving one set of claimants in Will has been discarded by both the Courts for want of other evidence on record to presume that the Will was shrouded by suspicious circumstances. Rather the observations have been made that proper care has been taken by making arrangement qua life interest of Amar Kaur wife of Gurmukh Singh in the Will itself. Both the Courts have discarded the plaintiffs case on that premise.

6. Following legal questions have been framed by the appellants in ground No.5 of grounds of appeal.

“1. Whether the registered Will dated 07.06.1999 was ipso facto revoked by the execution of the second Will dated 25.05.2001 in favour of defendant No.2 and 3?

2. Whether the respondent-defendant had proved the execution of the Will dated 25.05.2001 in accordance with law?

3. Whether the impugned judgments and decrees passed by the Courts below are perverse to the facts and law?

4. Whether the executant Gurmukh Singh had lost his sound disposing state of mind and had become mental unfit due to the attack of paralysis at the time of the execution of the alleged Will dated 25.05.2001?”

7. Question No.1 has been duly answered in the light of observations made that subsequent Will dated 25.05.2001 has a categoric recital of revocation of earlier Will dated 07.06.1999.

Factum of Gurmukh Singh living with defendant No.1 and want of

any medical evidence on record further corroborates the background in which earlier Will was revoked. Once the execution of Will dated 25.05.2001 is proved with reference to evidence on record, this question has to be answered in favour of the defendants that the earlier Will stood validly revoked. Question No.2 concededly does not arise as execution of second Will dated 25.05.2001 has been validly proved.

8. In the light of observations made by the Courts below, no misreading or perversity of nature can be presumed and accordingly question No.3 is also answered against the appellant. Since no medical evidence has come forth on record, Gurmukh Singh having lost his sound disposing state of mind cannot be entertained, therefore, question No.4 also does not arise.

9. Having considered the submissions made by the learned counsel for the appellants, this Court finds that no illegality has been detected in the findings recorded by both the Courts below. Consequently, this appeal is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

November 17, 2015

prince