

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 3146 of 2014 (O&M)
Date of decision:- 06.08.2015

Gobind and anr.

...Appellants

Versus

Lachhman and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. B.R. Vohra, Advocate
for the appellants.

RITU BAHRI J.

Plaintiff-Appellant (for short 'the appellant') is in second appeal against the concurrent finding of fact recorded by both the Courts below whereby the suit of the appellants (for short 'the appellants'), was dismissed.

Brief facts of the case are that the agricultural land total measuring 54 kanals 19 marlas (fully described in the plaint), is situated in the revenue estate of village Bhora Rasulpur, Tehsil Ganaur, District Sonapat in which the appellants and defendants-respondents (for short 'the respondents') are having 1/6th share each. The property is ancestral in nature. The father of the appellants has been living in Delhi for the last many years with his family and the respondents are his real brothers and have been living in village Bhora Rasulpura. Nobat Singh was the real father of the parties to the suit and after his death, his estate/the suit

land was transferred in the names of the parties to the suit and Smt. Sarbhi, widow, Smt. Santo, Smt. Lichho, Bhooli daughters of Nobat Singh in equal shares of $\frac{1}{2}$ share of deceased Nobat Singh. On 27.05.1996, the respondents made an illegal will bearing No. 12 in their favour in equal shares from the name of the father (Nobat Singh) of the parties to the suit, as Nobat Singh had no right to make a will of his share in the name of the respondents only excluding the appellants. Mutation No. 1149 was entered in the name of the respondents and it was sanctioned on 10.04.1989. On 03.04.2006, the appellants visited Halqa Patwari, who told the appellants that he was not owner of any land of the share of his father, as the father of the appellants had executed a will dated 27.05.1986 in favour of his brothers Licchman and Paras of $\frac{1}{2}$ share, which was total share of the father of the appellants out of the suit land.

On notice of the suit, the respondents filed their joint written statement and took preliminary objections regarding maintainability, locus standi, valuation, non-joinder of necessary parties and limitation. On merits, it was denied that the respondents have $\frac{1}{6}^{\text{th}}$ share in the suit land and the suit land is ancestral property of the parties to the suit. Rather, it was self acquired property of the deceased Nobat Singh. It has been admitted that the appellants are living in Delhi for the last many years. It has been denied

that the respondents have procured the will illegally. The appellants had got partitioned his another land from the respondents in the year 1991-92 and this fact of the will was well within the knowledge of the appellants at that time. The father of the appellants expired about 20 years back and the inspection made by the appellants at a later stage creates the shadow on his part.

From the pleading of the parties, following issues were framed by the learned trial Court on 19.04.2007:-

“1. Whether the registered will bearing No. 12 dated 27.05.1986 and mutation No. 1149 sanctioned on 10.04.1989 are liable to be declared wrong, illegal, null and void and liable to be set aside? If so, to what effect? OPP

2. If issue No. 1 is proved, whether the plaintiff is entitled to a decree for permanent injunction with regard to the suit land detailed in para No. 1 of the plaint as prayed for? OPP

3. Whether the suit of the plaintiff is not maintainable in the present form? OPD

4. Whether the suit of the plaintiff has not been properly valued for the purposes of Court fee and jurisdiction? OPD

5. Whether the suit of the plaintiff is bad for non-joinder of necessary parties? OPD

6. Whether the suit is barred by period of limitation in time? OPD

7. Relief.”

Both the Courts below dismissed the suit of the appellants on the ground that the will dated 27.05.1986 has been duly proved by Raj Kumar D.W.2 and Zile Singh, Lamberdar, D.W.4 and further it was not proved that the suit land is ancestral property of the parties and Nobat Singh was competent to execute the will in favour of the respondents according to his own taste. The suit of the appellants was held to be time barred.

The learned lower Appellate Court referred to Jamabandi for the year 1963-64 which shows that the suit land was allotted to Nobat Singh vide letter dated 24.06.1959. It means the suit land is the self acquired property of the deceased Nobat Singh. It has been clearly mentioned in the registered will by Nobat Singh that his wife Smt. Sarbhi was alive at the time of execution and registration of will Ex P3 and he had three daughters namely Bhooli, Lichhmi and Santo. Smt. Sarbhi Bhooli, Lichhmi and Santo have also not been given any share of the deceased Nobat Singh. It has further been mentioned that he and his wife Sarbhi lived with their sons Lichhman and Paras, who used to serve them and that is why, the will was executed in their favour. Merely, because the name of the appellants

has not been mentioned in the will, it cannot be presumed that the registered will is surrounded by suspicious circumstances, which has been duly proved by attesting witnesses i.e. Dharamdev D.W.3 and Zile Singh, Lamberdar, D.W.4, Rajesh Kumar, Registration Clerk, D.W.1, Raj Kumar Verma, Deed Writer, D.W.2. Nobat Singh expired on 01.09.1986 and the present suit has been filed on 18.04.2006 i.e after about 20 years of the execution and registration of the impugned will Ex P3. Further, during this period, appellant Dhoom Singh sold his land measuring 7 kanals situated in the same village Bhora Rasulpur, Tehsil Gannaur, District Sonapat vide registered sale deed dated 15.06.1993 Ex D1 and this land had come to the share of the appellant vide mutation of partition No. 1342 Ex D3. Thus, he was very much in knowledge about the execution and registration of the impugned will dated 27.05.1986. The receipt dated 29.12.1994 shows that the appellant had received Rs.23,000/- as earnest money regarding his land measuring 03 kanals 01 marla situated at village Bhora Rasulpur, Tehsil Gannaur, District Sonapat from Mauji Ram.

Both the Courts below rightly dismissed the suit of appellant on the ground that the suit was barred by limitation and on account of the fact that he has the knowledge about the execution and registration of the will Ex P3, which was duly proved by the witnesses.

No substantial question of law arises for adjudication by this Court.

Accordingly, regular second appeal is dismissed.

August 06, 2015
G Arora

(RITU BAHRI)
JUDGE