

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 586 of 2015

Date of decision : July 14, 2015

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Radeshwar Singh

.....Appellant

Versus

Sansar Singh and Kartar Singh

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Ajay Pal Singh Rehan, Advocate for the appellant.

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1. *Whether Reporters of Local Newspapers 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?*

RITU BAHRI, J

C.M No. 7805-C of 2015

C.M is allowed as prayed for subject to all just exceptions.

RSA No. 586 of 2015

The defendant no. 4-appellant (hereinafter referred to as 'the defendant no.4') has come up in this regular second appeal against the judgment dated 1.9.2011 passed by the Civil Judge (Junior Division) Pathankot and the judgment 1.12.2014 passed by the Additional District Judge, Pathankot whereby the suit of the plaintiffs-respondents no. 1 & 2 (hereinafter referred to as 'the plaintiffs') has been decreed by holding that the sale deed dated

29.8.1986 executed by Smt. Kash Kaur in favour of defendants no. 1 to 4 with regard to the suit land is void and ineffectual upon the rights of the plaintiffs. The defendants were directed to hand over the possession of the suit land within period of two months from the date of the order.

Plaintiffs had filed suit for declaration to the effect that the sale deed executed by Kash Kaur widow of Bhagat Singh in favour of defendants no. 1 to 4 are illegal, null and void on the grounds that Smt. Kash Kaur had only a life interest in the suit property vide Will dated 25.1.1965 executed by her husband Bhagat Singh and she had no right or authority to execute the sale deed. During the present suit the plaintiffs have also sought possession over the suit property as a consequential relief which has been pleaded by the plaintiffs that Kash Kaur had only life interest in the property in dispute by virtue of the Will dated 25.1.1965 executed by Bhagat Singh in favour of Kash Kaur and was to be reverted to them after death of Kash Kaur. The plaintiffs have also proved on record the judgment passed by the Court of B.S Bedi, Sub Judge Ist Class, Pathankot, which was passed on 20.10.1972 (Annexure P-1), perusal of which shows that the case had been instituted by Sansar Singh and Kartar Singh, plaintiffs against Kash Kaur and other defendants. In that suit one of the issue was to the effect that whether Bhagat Singh had executed valid Will in favour of the plaintiffs, if so its effect?. A finding on this issue was returned in favour of the plaintiffs and it was further held that the right in the suit

property was restricted. Kash Kaur was party to the above said suit and the judgment dated 20.10.1972 has attained finality with regard to the validity of the Will dated 25.1.1965.

One of the plaintiffs Jasbir Singh stepped into the witness box as PW-1 and proved on record power of attorney as Ex. PW/A, Will dated 25.1.1965 Ex.P-1. He deposed that all the witnesses to the Will had died and the Will in question is more than 30 years old and there was a presumption of the document being a valid document. The document had been upheld by the competent Court of jurisdiction up to the District Judge and as per the Will Ex P.1, Kash Kaur had only life interest with regard to the property situated in Village Alikhan, Tehsil Pathankot and with regard to other property of deceased Bhagat Singh.

The defendants took the plea that deceased Bhagat Singh had executed a registered Will dated 20.1.1965 and the Will produced by the plaintiffs is not a valid document as deceased Bhagat Singh has put his signatures on the Will dated 20.1.1965 while the Will produced by the plaintiffs bears thumb impression of deceased Bhagat Singh. However, no attempt was made to compare the thumb impressions of Bhagat Singh on the Will 25.1.1965.

The defendant no.4 has placed on record the judgment dated 20.10.1970 (Annexure P-1) whereby the validity of the Will 25.1.1965, Ex. P-1 was examined in detail by the trial Court. The scribe Harnam Singh appeared as PW-1 and one of the attesting witness Lab Singh appeared as PW-2. Sh. Bua Dass, attesting

witness was stated to have been died. The Will has been registered at Ranbir Singh Pura Sub Registry. The Will has been duly proved. Smt. Kash Kaur had appeared in the trial Court but did not contest the suit against the plaintiffs. In paragraph 9 of the judgment (Annexure P-1), a reference has been made to Civil Suit No. 229 dated 6.6.1967 Ex. P-6 (Subedar Sansar Singh vs. Kash Kaur and others) in the Court of Sh. J.C Aggarwal Sub Judge 1st Class Pathankot. A perusal of this judgment shows that the plaintiffs had sued Kash Kaur and her mortgagess on the basis of the same Will and it was held that Kash Kaur was not entitled to transfer the property during the pendency of the suit to the detriment of the plaintiffs.

Both the Courts returned a finding in favour of the plaintiffs that the Will dated 25.1.1965 had been duly executed and the same has been upheld in the earlier suit which was decreed by the Sub Judge First Class Pathankot on 20.10.1972. Once Kash Kaur had a limited interest in the estate she could not sell the property to the defendants. This suit has been rightly decreed by both the Courts by setting aside the sale deed dated 29.8.1986.

In view of all that has been discussed above, no substantial question of law arises for consideration in this regular second appeal. Hence the same is dismissed.

July 14, 2015
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(**RITU BAHRI**)
JUDGE