

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A. No. 3230 of 2014 (O&M)

Date of decision : February 10, 2015

Ram Mehar and others

... Appellants

vs.

Phool Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Pratibha Yadav, Advocate
for the appellants.

Surinder Gupta, J

The dispute in this case pertains to the property owned by Bani Singh brother of father of plaintiffs-appellants. Bani Singh suffered a consent decree dated 1.2.2001, in suit titled as *Phool Singh vs. Bani Singh* (C.S. No. 122 of 03.06.2010), passed by Civil Judge (Jr. Division), Gurgaon with regard to the property owned by him. The appellants filed suit challenging the decree suffered by Bani Singh terming the same as illegal, null and void and not binding on the right of plaintiffs. It has been alleged that Bani Singh died issueless on 8.5.2006. He had executed a registered Will dated 17.11.1992 bequeathing his entire property in favour of his nephews i.e. plaintiffs-appellants as well as defendant-respondent. The decree in question was obtained by respondent No.1 in a secret manner without the consent and knowledge of plaintiffs-appellants.

The defendant-respondent contested the claim of plaintiffs. Learned Civil Judge (Jr. Division), Gurgaon, dismissed the suit with the observations that Bani Singh had transferred his land vide decree dated 1.2.2001. During his life time, he was competent to alienate the property.

The mere fact that he had executed a registered Will dated 17.11.1992 do not come in the way of that decree.

Not satisfied, plaintiffs-appellants filed appeal which was also dismissed by the learned District Judge, Gurgaon. The first appellate court observed that plaintiffs-appellants have failed to prove that the decree dated 1.2.2001 was the result of misrepresentation, fraud and impersonation. It also reached the conclusion that decree did not require any registration.

I have heard learned counsel for the appellant and perused the file.

This fact is not disputed that Bani Singh was exclusive owner of property which was the subject matter of the decree dated 1.2.2001. He remained alive for a period of more than five years after the decree and never alleged any fraud or misrepresentation with him or challenged the decree. The plaintiffs are sons of brother of deceased Bani Singh and have no right, title or interest in the suit property owned by him. The mere fact that Bani Singh at one point of time had executed a registered Will with regard to his estate, in no manner debar him from alienating his property during his life time. The appellants have no locus standi to challenge the decree suffered by Bani Singh.

Learned counsel for the appellant has relied on the observations in case ***Smt. Kamla Devi vs. Smt. Gainda Devi and others***, 2007 (4) *Law Herald* 2979 and has argued that when there were no pre-existing right in the property of Bani Singh in favour of defendant/respondent, he could not suffer any collusive decree in their favour and any such decree passed by the court required registration. She has also placed reliance on the observations

of Hon'ble the Supreme Court in case ***Bhoop Singh vs. Ram Singh Major*** 1995 (5) SCC 709.

The above arguments and citation referred by learned counsel for appellant in no manner help the appellant. Firstly, Bani Singh being exclusive owner was entitled to transfer his property in the manner he liked. Secondly, defendant/respondents were none else than the nephews of Bani Singh who died issueless as such they were the heirs to his property as per natural succession being Class-II heirs. The consent decree could be challenged by the plaintiff-appellant only on the ground of fraud, misrepresentation etc. which they have not been able to prove.

On perusal of paper book and judgments of both the courts below, I find no infirmity of facts or law therein calling for any interference.

No substantial question of law arises for determination.

Dismissed.

(Surinder Gupta)
Judge

February 10, 2015
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