

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

RSA No.4314 of 2016 (O&M)

Date of Decision.29.08.2016

Piara Singh (deceased) through LRs

.....Appellant

Vs.

Binder Singh alias Mohinder Singh and others

.....Respondents

Present: Mr. H.K. Aurora, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether Reporters of local papers 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?

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AMIT RAWAL J. (ORAL)

C.M. No.11239-C of 2016

For the reasons stated in the application, delay of 75 days in refiling the appeal is condoned.

Application is allowed.

C.M. No.11240-C of 2016

The application for impleading the legal representatives of deceased respondent No.2(ii) is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record.

C.M. No.11241-C of 2016

The application for impleading the legal representatives of deceased respondent No.2(vii) is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record.

C.M. No.11242-C of 2016

The application for impleading the legal representatives of

deceased respondent No.2(x) is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record.

RSA No.4314 of 2016

The appellant-defendant No.1 (since deceased) represented through his legal heirs is aggrieved of the concurrent finding of fact whereby the civil suit at the instance of the respondents-plaintiffs for declaration that he and defendant Nos.1 to 3 are owners to the extent of 1/8th share each in total land measuring 44 kanals 7 marlas, has been decreed and the appeal filed against the same has also met with the same fate.

Mr. H.K. Aurora, learned counsel appearing for the appellantK submits that both the Courts below have committed illegality and perversity in decreeing the suit. In fact, the suit aforementioned, was filed by the plaintiff on the ground that his grandfather Nanak was the owner of the suit land, who died on 30.05.1979 leaving behind plaintiff and defendant Nos.1 to 3 as legal heirs. The grand mother and father of the plaintiff had died during the life time of grand father, Nanak. The plaintiff was in service in Dubai since long. In fact, Nanak was the owner of the property prior to execution of the Will dated 03.09.1962 which was cancelled by him on 10.06.1976 by executing the Will in favour of defendant No.1 because relationship of plaintiff with his grand father were not good as he remained abroad. The Will was validly executed and has been proved on record but the Courts below have erroneously overlooked the same. Though the Will from the office of Sub Registrar, Garhshankar has been proved but it has not been accepted. The fact remains that signatures of Nanak had been proved through the testimony of DW4, Arvind Sood, handwriting and finger print expert through his report Ex.DW4/A. There is no rebuttal to the

aforementioned evidence. The Courts below have also committed illegality and perversity in not appreciating the fact that thumb impression of the attesting witness namely Subedar Bakhshish Singh has been proved by examining Mohinder Pal, Chowidar of the village as DW5, who admitted that he had seen Subedar Bakhshish Singh signing the Will. The Courts below gave undue weightage to the statement of Jagat Ram who was summoned as DW3, being attesting witness of the Will, but he did not support his case for some ulterior consideration and was declared hostile. In his examination-in-chief, he stated that he has not put his thumb impression on the cancellation deed executed by Nanak on 10.06.1976 but in the same breathe stated that he is an illiterate and could not read or write. In cross-examination, he admitted that he might have gone to the Tehsil complex in connection with execution of the sale deed. Before the lower Appellate Court, application for leading additional evidence for bringing on record the revenue record i.e. jamabandis for the years 1981-82 to 2002-2003 had been sought to be placed on record to show possession. The Appellant had also set up the alternative plea of adverse possession through the documentary evidence through additional evidence but the same has erroneously been dismissed, thus, urges this Court for setting aside the judgments and decrees of the Courts below by formulating the substantial questions of law as drawn in the memorandum of appeal.

I have heard learned counsel for the appellant, appraised the paper book and of the view that the certified copy of the Will brought on record from the office of Sub Registrar is not a primary evidence. Nothing prevented the appellant to bring on record the original Will. In the absence of the original Will, in my view, the appellant had failed to discharge the

onus. The attesting witness, Jagat Ram, even despite having declared hostile, submitted that he had never put his thumb impression or signature on the Will dated 10.06.1976 propounded by appellant-defendant No.1. The evidence of Chowkidar, who identified the signatures of Subedar Bakhshish Singh, is meaningless, for, in my view, the appellant-defendant No.1 has failed to prove the ingredients of Section 68 of the Indian Evidence Act, much less, Section 63(c) of Indian Succession Act. Since the property belonged to Nanak, the plaintiff had only claimed 1/8th share each along with defendant Nos.1 to 3 in the total land measuring 44 kanals 7 marlas whereas in my view, the defendant attempted to grab the entire property, which was/is an act of greed by propounding the Will which, as already noticed above, has not been proved.

For the foregoing reasons, I do not differ with the findings rendered by the Courts below as there is no illegality and perversity and the same are based upon correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 29, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No