

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

**Regular Second Appeal No.719 of 1987 (O&M)
Date of Decision: February 11, 2016**

Jit Singh (dead) through his LRsAPPELLANT(s).

VERSUS

Jaswant Singh @ Jee and othersRESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. G.S. Virk, Advocate for
Mr. G.S. Nagra, Advocate
for the appellant(s)

None for the respondents.

SURINDER GUPTA, J.

Heard.

2. Plaintiffs Jaswant Singh and Tejinder Kaur filed suit seeking the relief of declaration to the effect that plaintiff no.1 is exclusive owner of ¼th share of the suit land measuring 191 kanals 06 marlas and 43 kanals 06 marlas, situated in Village Naushehra Panuan, Tehsil Tarn Taran, as fully described in the headnote of the plaint and in the alternate for joint possession of the above land and also of land measuring 12 kanals situated in Village Fateh Chak, Tehsil Tarn Taran (then District Amritsar). The plaintiffs have also sought the relief of declaration to the effect that they are owners of Kothi known as Sewak Niwas and shops attached thereto situated at Amritsar

road, Tarn Taran in the area of Village Fateh Chak.

3. As per the plaintiffs, the suit land as described above was owned by Sewa Singh, who died on 11th November, 1976, leaving behind two sons i.e. plaintiff No.1-Jaswant Singh, defendant no.1-Jit Singh, wife Tejinder Kaur-plaintiff No.2 and four daughters. As per the Will executed on 19th April, 1976 by Sewa Singh, his entire property had fallen to the share of plaintiff no.1 except the Kothi along with shops, given to plaintiff no.2 till her death, which will revert to plaintiff No.1, after the death of plaintiff No.2.

4. Defendants No.1 and 2 contested the claim of plaintiffs, inter alia pleading that Will dated 19th April, 1976 executed by Sewa Singh was not a genuine and valid Will and has already been rejected by the Assistant Collector, Tarn Taran, vide order dated 3rd August, 1978. They claimed the properties left by Sewa Singh by way of natural inheritance.

5. The suit was decided by the then Sub Judge, IInd Class, Tarn Taran, vide judgment dated 21st January, 1981. The Will executed by Sewa Singh was held to be a genuine and valid document and the suit of the plaintiffs was decreed.

6. Defendant No.1-Jit Singh, preferred an appeal, wherein, application filed by defendant-appellant seeking amendment of written statement pleading therein that the suit land is ancestral qua the defendant-appellant, was allowed and an additional issue was framed, which reads as follows:-

“Whether the land in suit was ancestral qua the defendant-appellant and whether the Will is not binding on the defendant-appellant on that count.”

The case was sent to the trial court for sending the report on the additional issue.

7. Report dated 06.08.1984 was sent by Additional Senior Sub Judge, Tarn Taran, wherein, it was concluded about the ancestral nature of the suit property in para 10 as follows:-

“As a result of the aforesaid discussion, I hold that if the Will made by Sewa Singh deceased is held to be genuine, in that event the same Will operate against 1/3 share in the disputed land i.e. 1/4 share in land measuring 191K-6M and another 1/4 share in the land measuring 43K-16M in Village Naushehra Pannuan and the remaining 2/3 share in the same would go to Jaswant Singh plaintiff and Jit Singh defendant in equal shares, in lieu of their share in the joint property. The remaining property in village Fateh Chak including the house and the attached shops etc. were the self-acquired properties of Sewa Singh deceased and the plaintiffs will be entitled to succeed the same in entirety on the basis of that Will. However, without the Will Jaswant Singh plaintiff and Jit Singh defendant No.1 would be entitled to 1/3 share each i.e. 1/12 share each in the entire landed property in village Naushehra Pannuan and the remaining 1/12 share in the land in village Naushehra Pannuan and the entire property in village Fateh Chak including the house shops etc. would be equally inherited by the plaintiffs and defendants No.1 to 5...”

8. The First Appellate Court affirmed the findings of the trial court regarding the Will executed by Sewa Singh and also the findings recorded in para 10 of the report, regarding the ancestral nature of the land situated in

Village Naushehra Pannuan. In para 13 of the judgment, the First Appellate

Court observed as follows:-

“In the result, therefore, I come to the conclusions that the findings recorded by the court below both in regard to the validity of the Will and the nature of the various items of property involved in this case are fully and wholly justiciable at law and they are, therefore, affirmed and consequently, this appeal fails and is dismissed.”

9. Being not satisfied, defendant No.1 has come up with this second appeal.

10. I have heard learned counsel for the appellant and have perused the record of Courts below with his assistance.

11. At the very outset, learned counsel for the appellant has argued that the findings of the learned Additional Senior Sub Judge, Tarn Taran, contained in para 10 of the judgment were affirmed by First Appellate Court and despite confirming that findings, the first appeal of the appellant was dismissed in toto. This appears to be either by way of oversight or due to inadvertence.

12. Perusal of the judgment of First Appellate Court shows that it has affirmed the findings of the Court below with regard to the validity of the Will and also about ancestral nature of the land situated in Village Naushehra Pannuan, recorded as ownership of Sewa Singh. Vide report dated 6th August, 1984, learned Additional Senior Sub Judge, Tarn Taran has held the property of Village Naushehra Pannuan as ancestral property and has also recorded the findings of its devolution, which was not differed or upset by the First Appellate Court. As the above findings have been affirmed by the

First Appellate Court, the appeal was required to be partly accepted, but it appears that due to apparent error on the face of it, the First Appellate Court dismissed the appeal of defendant No.1 in toto under the impression that these findings are already recorded in his favour in the judgment of the Court below. In fact, these findings have come in the report sought by the First Appellate Court and on being approved, were required to be incorporated in the judgment passed by First Appellate Court. The submission of counsel for the appellant to this effect is accepted.

13. The other contention of learned counsel for the appellant is that the other property owned by Sewa Singh in Village Fateh Chak was purchased by him from the income of the ancestral property, as such, the same was also ancestral property.

14. The above contention of learned counsel for the appellant has no merit. The Courts below has held that Sewa Singh was an educated person. He was in employment as teacher and had also authored many books. There was no evidence on record that he had purchased the property at Village Fateh Chak from the income of the ancestral property. There is no evidence as to when father of Sewa Singh had died and when he became *karta* with regard to the ancestral property. The onus was heavily on the appellant to prove that the property situated at Village Fateh Chak was purchased from the income of ancestral property, which they have utterly failed to prove. On perusal of the judgment of Courts below, I find no legal or factual infirmity therein on this issue.

15. In view of the above discussion, this appeal is partly allowed, without framing any substantial question of law because only the error

apparent in the judgment of First Appellate Court has been rectified without modifying or differing with any finding recorded by the First Appellate Court.

16. Consequently, this appeal stands partly allowed, in terms of the findings of Additional Senior Sub Judge, Tarn Taran contained in para 10, reproduced in para 7 of this judgment.

February 11, 2016.
deepak/jv.

(SURINDER GUPTA)
JUDGE