

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

1. RSA No.3981 of 2007 (O&M)
Date of decision : 04.08.2016

Charan Kaur and others ...Appellants

Versus

Amarjit Singh and others ...Respondents

2. RSA No.2331 of 2008 (O&M)
Date of decision : 04.08.2016

Kulwaran Singh ...Appellant

Versus

Amarjit Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. R.S. Ghuman, Advocate for the appellants.
(In RSA No.2331 of 2008 and for respondent No.6 in RSA No.3981 of 2007)

Mr. Harsh Bunker, Advocate
for appellant (In RSA No.3981 of 2007)
& for respondent No.15 to 20 and 22 (In RSA No.2331/08)

Mr. Babbar Bhan, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two regular second appeals bearing No. 3981 of 2007 titled as Charan Kaur and others Vs. Amarjit Singh and others and RSA No.2331 of 2008 titled as Kulwaran Singh Vs. Amarjit Singh and others.

The appellant-defendant No.19 in RSA No.3981 of 2007 and defendant Nos.6 in RSA No.2331 of 2008, are aggrieved of the judgment and decree rendered by the trial Court, whereby suit of the respondent-plaintiff granting 1/6th share vis-a-vis estate of Milkha Singh in respect of land measuring 34 kanals 5 marlas, has been decreed.

Mr. R.S. Ghuman, and Mr. Harsh Bungar, learned counsel appearing on behalf of appellants submits that Chain Kaur wife of Milkha Singh was given registered general power of attorney dated 17.06.1993. On the basis of the aforementioned attorney, she executed two sale deeds dated 13.10.1993 and 14.10.1993 of land measuring 33 kanals 18 marlas in favour of appellant-defendant No.19-predecessor of the present appellant. The respondent-plaintiff came out with a plea that Milkha Singh had died on the intervening night of 12.10.1993 in UP as he was murdered and, therefore, Chain Kaur did not have authority as the principle had died i.e. agent could not have acted on the authority/power to execute the sale deed. Though, the respondent had also setup a Will dated 10.10.1982 but the same was disbelieved. The Courts below by relying upon the statement of Dr. V.P. Bhatnagar and Chain Kaur, concluded that Milkha Singh had died in the intervening night of 12.10.1993, whereas PW2 Paramjit Singh their own witness stated that Milkha Singh died in month of December, 1993 and he attended the cremation. Thus, there was stark contradictions amongst witnesses of the respondent-plaintiff.

Mr. Ghuman, Advocate submits that estate of Bawa Singh was partitioned amongst three siblings namely Karnail Singh (predecessor-in-

interest of Kulwaran Singh), Milkha Singh and Darshan Singh and as per the judgment and decree dated 31.10.2003 of the lower Appellate Court, Nawanshahar, passed in regular civil appeal No.13 of 2003 (Annexure A-1) sought to be placed on record by way of application filed under Order 41 Rule 27 of the Code of Civil Procedure and partition proceeding was accepted and yet there is a finding vis-a-vis issue No.14 against the appellant-defendant Nos.6 and 7.

Mr. Bunger, submits that since respondent-plaintiff has miserably failed to prove the death of Milkha Singh by not proving on record the FIR or any police record, and other connected documents except statement of Dr. V.P. Bhatnagar who alleged to have performed the postmortem/autopsy of Milkha Singh son of Sadha Singh, whereas, other person was Milkha Singh son of Bawa Singh, thus urges this Court for formulation of the following substantial questions of law:-

1. Whether the respondent-plaintiff has failed to prove the pleaded case, much less, discharge the onus as enshrined under Section 101 of the Indian Evidence Act?
2. Whether the factum of death of Milkha Singh has been proved, in accordance with law?
3. Whether the judgment and decree of both the Courts below misconstruing the oral and documentary evidence resulting into perversity?

Mr. Babbar Bhan, learned counsel appearing on behalf of respondent-plaintiff submits that findings rendered by the trial Court has

been upheld by the lower Appellate Court on the basis of the evidence brought on record particularly the statement of Chain Kaur which have been discussed in extenso. On going through the statement of DW1, Chain Kaur, it is evident that she received information qua the death of Milkha Singh and thereafter proceeded to the place, where Milkha Singh died in a vehicular accident. Even otherwise, Will has been proved in accordance with law but did not weigh the mind of the Courts regarding authenticity and genuinity of the same, but the fact remains that Milkha Singh died intestate, therefore, all the siblings will have shares. Since Milkha Singh was survived by five children i.e. three sons and two daughters and one wife and rightly so, the Courts below granted the 1/6th share. Chain Kaur could not have alienated the property as it was ancestral in nature and thus urges this Court for affirmation of the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is merit in the submission of Mr. Bunker, and Mr. Ghuman, for, respondent-plaintiff has miserably failed to discharge the onus vis-a-vis the death of Milkha Singh. Dr. V.P. Bhatnagar, from U.P. who is alleged to have conducted autopsy, though suffered a statement that he performed the postmortem of Milkha Singh son of Sadha Singh. Whereas dispute revolves around the estate of Milkha Singh son of Bawa Singh. Except self-serving statement of Chain Kaur, there is no other corroborative evidence produced on record i.e. death certificate, performance of the last rites and immersing of the ashes in the holy river etc., thus, there is no compliance of provision of Indian Evidence Act. FIR

or any police record qua alleged murder has also been not placed on record whereas on going through the cross-examination of Chain Kaur and judgment rendered by the trial Court reveals that Milkha Singh had died in some road accident. There is stark contradictions vis-a-vis date of death and mode of death. The respondents-plaintiffs have also failed to prove on record any evidence that property at the hands of Milkha Singh was ancestral in nature and could not alienate the same, in all probabilities, presumption would be that it is self-acquired property. Since he was owner to the extent of 34 kanals 5 marlas and on the basis of the registered power of attorney executed in favour of Chain Kaur, sold the land to the appellant-defendant No.19 vide sale deed aforementioned. Registered document carries presumption unless rebutted. Respondents-plaintiffs failed to rebut the aforementioned sale deed.

All these facts have not been noticed by the Courts below.

In view of what has been noticed above, judgment and decree of the Courts below suffers from illegality and perversity, much less, substantial questions of law as noticed above are answered in favour of appellant-defendant and against the respondents-plaintiff.

Resultantly, suit of the respondents-plaintiff is dismissed.

Both appeals are allowed.

04.08.2016

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(AMIT RAWAL)
JUDGE

Whether speaking/reasoned:-

Yes

Whether reportable:-

No