

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

RSA No.1666 of 2011 (O&M)

Decided on: 16.03.2016

Nirmala Devi and others

....Appellants

Versus

State Bank of India and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Kulvir Narwal, Advocate
for the appellants.

Mr. Vikas Chatrath, Advocate
for respondent No.1.

Mr. K.S. Malik, Advocate
for respondents No.2 and 3.

REKHA MITTAL J.

The present appeal lays challenge to the judgment and decree dated 08.12.2010 passed by the District Judge, Rohtak, affirming the judgment and decree dated 09.08.2010 passed by the Civil Judge (Junior Division), Rohtak (hereinafter to be referred as 'trial Court') whereby the suit filed by Rohtas now represented by his legal heirs (Nirmala Devi and others-appellants) for grant of permanent injunction was dismissed.

Rohtas prayed for issuance of an injunction restraining the State Bank of India (in short 'the bank) from encashment of the Fixed Deposit Receipts (for brevity 'FDRs') in the name of his father along with either Jai Bhagwan or Sat Narain, payable to either or survivor. It is further pleaded that even if the FDRs are payable to either or

survivor, he along with his brother Ved Pal is entitled to receive the amount whereas Jai Bhagwan and Sat Narain have no right thereto.

Defendants No.2 and 3 filed the written statement, raised certain preliminary objections with regard to the suit being bad for mis-joinder or non-joinder of parties and the plaintiff having not approached the Court with clean hands. They have denied that Attar Singh died intestate and the plaintiff along with his brother is entitled to inherit his property. It is further averred that payment of money deposited in FDRs can be made to the nominee as per law. All other material averments of the plaint have been denied with a prayer for dismissal of the suit.

Defendant No.1 filed a separate written statement alleging that no details of any deposit in the name of Sh. Attar Singh have been furnished, therefore, the plaintiff is not entitled to equitable relief of injunction.

The plaintiff filed separate replications to the written statements filed by defendants.

The learned trial Court on due consideration of pleadings of the parties, issues framed for determination, evidence adduced and submissions made by their respective counsel non-suited claim of the plaintiff. The appeal preferred by the appellants (legal heirs of Rohtas (since deceased)) did not find favour with the District Judge, Rohtak and the Court concurred with the findings and held in Para 12 of the judgment to the following effect:-

“I have considered the rival contentions of the parties and I agree with the learned trial Court that the above referred authorities are not applicable on the facts of the present case. Because in this case apart from the

fact that the witness of the bank appeared in the witness box and has stated that as per the bank policy, the amount is payable to the survivor after the death of former, there is also evidence to show that the deceased was living with the defendants Jai Bhagwan and Sat Narain, who were looking after him and further the fact that the original FDRs were also with them and they have produced the same in the Court. The plaintiff is even not knowing the amount deposited in the FDRs. This also shows that there was contrary intention for payment to the defendants, instead of legal heirs. Even otherwise, the bank cannot be restrained from releasing the amount to the lawful owner as per the bank policy. Even if for argument sake, it is taken that the respondents No.2 and 3 will get the amount for being disbursed to the legal heirs, in that situation, the suit for permanent injunction and mandatory injunction is not maintainable. Thus, by taking from any angle, I do not find any force in the appeal and the same is hereby dismissed. Decree-sheet be prepared accordingly. The trial Court record be sent back with a copy of this judgment. The appeal file be consigned to record room after due compliance.”

Counsel for the appellants would contend that FDRs detailed in para 4 and 5 of the plaint were issued in the joint names of Attar Singh and Sat Narain and Attar Singh and Pappu, payable to former or survivor. He has fairly conceded that in view of instructions of the bank, maturity value of these FDRs is payable to the former or survivor and in the circumstances, the same can be collected by Sh. Sat Narain or Pappu respectively whose name is joined with the name of Sh. Attar Singh in respective FDRs. However, it is argued that right of collection does not entitle the private defendants to deprive the

appellants of their right to have the amount in question being the successors-in-interest of Sh. Attar Singh on the basis of natural succession. It is vehemently argued that the First Appellate Court committed a serious error rather illegality by making certain observations in favour of the defendants more particularly in the circumstances that it has been proved that the amount invested in FDRs belonged to Attar Singh.

Counsel for the contesting respondents, Sh. K.S. Malik, Advocate, on the contrary, has supported the judgments passed by the Courts below. It is argued that in addition to the fact that the respondents are entitled to collect the amount of FDRs being survivor after death of former, sufficient evidence has been adduced to prove that the deceased was residing with defendants-Jai Bhagwan and Sat Narain, looked after by them and the original FDRs were in their possession and produced by them. The First Appellate Court has rightly held that the facts on record suggests that the deceased had a contrary intention for payment to the defendants instead of legal heirs. The last submission made by counsel is that neither the appellants can seek an injunction against respondent No.1 *qua* release of the FDRs nor can they stake any right on the basis of natural succession.

I have heard counsel for the parties and perused the records.

It is an undisputed position of the case that FDRs in question were prepared in the joint name of deceased Attar Singh and one of the defendants No.2 or 3 and the amount is payable to the former or survivor. Counsel for the appellants has not disputed that as per

instructions of the bank, the amount of these FDRs is payable to the survivor after the demise of Sh. Attar Singh. In this view of the matter, no error much less illegality can be noticed in the findings recorded by the Courts below that the appellants are not entitled to permanent injunction as prayed for.

The question that calls for determination is whether findings recorded by the Court in appeal that Attar Singh had an intention to pay the amount of FDRs to the private defendants instead of legal heirs can be allowed to sustain.

There is no such plea raised in the written statement by defendants No.2 and 3 that deceased was living with them or looked after by them thus had an intention to divert the amount of FDRs in their favour. Counsel for the contesting respondents has urged that though there are no such pleadings in the written statement but sufficient evidence has been adduced to support the findings recorded by the Court in appeal. I am afraid if evidence led beyond pleadings can be looked into much less to form the basis for a factual finding to the dis-advantage of either of the parties. In absence of any such pleadings in the written statement that defendants No.2 and 3 have a preferential right viz-a-viz, the appellants, the class Ist heirs of deceased Attar Singh, the findings recorded by the Appellate Court that deceased Attar Singh intended to divert the amount of FDRs in favour of the defendants instead of legal heirs cannot be allowed to sustain and accordingly set-aside. Conversely, the appellants shall be at liberty to take recourse to appropriate proceedings, in accordance with law, for recovery of the amount received by the survivor, in view of the bank

policy.

In view of what has been discussed hereinabove, the appeal stands disposed of in the aforesaid terms. No order as to costs.

(REKHA MITTAL)
JUDGE

16.03.2016
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