

209

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1181-2012 (O&M)
Date of decision : 05.12.2016

Gurbachan Kaur (deceased through LRs) and others

... Appellants

Versus

Dalbir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. B.S. Sudan, Advocate
for the appellants.

Mr. Vipin Mahajan, Advocate
for respondent Nos.1 to 6.

AMIT RAWAL, J. (ORAL)

CM-14191-C-2012

For the reasons stated in the application which is duly supported by an affidavit, the application is allowed and the LRs of the appellant, namely, Gurbachan Kaur, are permitted to be brought on record for the purpose of prosecuting the appeal.

CM stands disposed of.

RSA-1181-2012

The appellants-plaintiffs i.e. three sisters out of five sisters, are aggrieved of the concurrent findings of fact and law, whereby the suit seeking declaration of ownership to the extent of 5/7th share out of half share of total land measuring 427 kanals 3 marals, description of which

given in the suit, has been dismissed by both the Courts below.

Mr. B.S. Sudan, learned counsel appearing on behalf of the appellants-plaintiffs submits that the respondent(s)-defendant(s) propounded Will dated 22.05.1987 of their father, namely, Piara Singh. The Will suffered from suspicious circumstances as both the attesting witnesses and the scribe have not been consistent and coherent, rather there had been a stark contradiction in their statements. There is no compliance of the provisions of Section 63 (c) of the Indian Succession Act, 1925 (for short 'the 1925 Act'), therefore, the Will was surrounded by the suspicious circumstances. Both the witnesses are the relatives of the respondent(s)-defendant(s), who are none-else, but the brothers of the plaintiffs. There is a typing error on the date of the Will, earlier it was 24.05.2007, but given as 22.05.2007, though, Piara Singh died on 01.06.1987. Both the Courts below abdicated in not referring to the aforementioned fact, much less, documents, therefore, there is gross illegality and perversity. There is no limitation claiming the inheritance and therefore, the suit filed in 2003 viz-a-viz the mutation in 1987, cannot be said to be barred by law of limitation.

Per contra, Mr. Vipin Mahajan, learned counsel appearing on behalf of respondent Nos.1 to 6/defendants submits that on demise of Piara Singh, in the mutation proceedings, the Will was produced and daughter of Piara Singh, did not dispute, the same. The mutation was effected in 1987, whereas the suit has been filed on 05.04.2003. The Will has been proved through the testimony of the attesting witnesses noticed above. There is a compliance of the provisions of the 1925 Act. They have been cross-examined *in extenso*, but nothing contrary surfaced, thus, judgments and

decrees of the Courts below dismissing the suit are liable to be upheld.

I have heard the learned counsel for the parties and appraised the paper book and of the view that five sisters had instituted the suit. Only 3 out of them, have come to this Court. It is a common practice amongst the sisters, who have been married and settled during the life time of their father, to drag the brothers in the Court claiming the right in the property despite having been looked after and taken care of at the time of the marriage. It is a classic case of such nature. Piara Singh stated to have been died on 01.06.1987. Mutation effected in the year 1987, whereas the suit has been filed on 2003. No doubt the suit cannot be hit to be barred by law of limitation under Article 58 of the Limitation Act as mutation does not confer cause of action, but the fact remains that the defendant(s) are in continuous possession of the same. The Will produced on record, though unregistered, but, has been proved through the testimony of the attesting witnesses. Both of them deposed in terms of the provisions of Section 63 (c) of the 1925 Act. No contrary evidence has been led to belie the suspicious circumstances. It is the only known person, but not stranger, would be the witness to the Will, therefore, it would not be fatal that in case the brother-in-laws of the defendant(s) are the attesting witnesses. The alleged acquisition of knowledge just prior to the filing of the suit is, thus, creation of a cause of action particularly when the defendant(s) are in possession of the property.

For the foregoing reasons, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below as 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.

05.12.2016 Yogesh Sharma	(AMIT RAWAL) JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No