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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2745-2012 (O&M)
Date of decision : 06.09.2016

Dalip Singh and others

... Appellants

Versus

Sinder Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kamal Sharma, Advocate
for the appellants.

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?

AMIT RAWAL, J. (ORAL)

CM-7399-C-2012

For the reasons stated in the application which is duly supported by an affidavit, the delay of 134 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA-2745-2012

The appellants-plaintiffs are aggrieved of the concurrent findings of fact, whereby the suit seeking declaration to the effect that they are the exclusive owners in equal shares of land measuring 13 bighas 3 biswas represented by Khasra No.192, Khautauni No.377, Khasra

Nos.1544/837(2-0) and 838(10-15) situated in Village Mehas, Tehsil Nabha as per Jambandi for the year 1981-82 and claim for decree of possession of the above said land and as well as decree for accounts of mesne profits, has been dismissed by both the Courts below.

Mr. Kamal Sharma, learned counsel appearing on behalf of the appellants-plaintiffs submits that the aforementioned suit was filed on the premise that the suit land owned and possessed by Bir Kaur widow of Suba Singh son of Jaggu son of Mihaan and the appellants-plaintiffs being related to Bir Kaur, as per the pedigree table as described therein, are entitled to succeed her estate. After partition of India, Jaggu migrated to India and in lieu of the land left in Pakistan was allotted land in Village Gurusar, Tehsil Narwana, District Sangrur. After his death, the land was mutated in the name of Bir Kaur widow of Suba Singh. Later on, Bir Kaur sold the land at Village Gurusar to some other person and from sale proceed, she acquired the suit property. It is, in this backdrop of the matter, the land came to Bir Kaur from her father-in-law. Bir Kaur died on 15.03.1987. However, the defendants stealthily and clandestinely at the back of the appellants-plaintiffs got the mutation of the suit land entered and sanctioned in their favour on the basis of the forged and fabricated Will dated 04.05.1996. In fact she was not in her fit state of mind to execute a Will, thus, the Will was nothing, but a sham and paper transaction. The respondent(s)-defendant(s) have no right, title or interest in the estate of Bir Kaur deceased. In fact, they forcibly and illegally entered into possession of the suit land and enjoying it. It is, in this background of the matter, the possession was sought. Both the Courts below have erred in deciding issue

Nos.1 and 2, in fact the oral and documentary evidence brought on record proved the relationship of Bir Kaur with the appellants-plaintiffs. It was disclosed that the appellants-plaintiffs, namely, Dalip Singh and Rattan Singh (deceased) sons of Waryam Singh have written their residence as Village Singhra, Tehsil and District Karnal while in the plaint a pedigree table had been mentioned regarding the appellants-plaintiffs, wherein they have been shown to be as sons of Indan widow of Waryam Singh, who has been shown as sister of Suba Singh-husband of Bir Kaur. Dhara Singh and Banta Singh have been shown as sons of Ishro widow of Wazir Singh. In fact by way of amendment, the appellants-plaintiffs wanted to mention that they were allotted land not in the village where they were residing at the time of filing of the suit, but in Village Takhana, Tehsil and District Karnal. The pedigree table of 1954-55 of the Village Takhana has been produced as Ex.P-3, while they came to Village Singhra after selling the land vide sale deed dated 29.11.1956. Similarly, Dhara Singh and Banta Singh sons of Wazir Singh, after partition came in village Safidon regarding which pedigree table (Ex.P-4) has been produced. They also sold the land vide sale deed dated 18.01.1954 and purchased in Village Nimnabad vide sale deed dated 07.03.1955. The mutations have also been sanctioned. An application seeking aforementioned amendment was moved before the lower Appellate Court, but the same was dismissed vide order dated 25.07.2011 which has also been challenged. Learned Courts below failed to appreciate that the appellants being close relative of Bir Kaur are only entitled to inherit the suit property, whereas the respondent(s)-defendant(s) have no relation. In order to prove the aforementioned fact, the appellants-

plaintiffs examined PW-1 Vir Singh, who was cross-examined at length, but nothing surfaced to shake his credibility. The original Will has not been produced, therefore, the onus has not been discharged. The respondent(s)-defendant(s) have tried to explain that the original Will was produced before the Revenue Authorities, but the copy of the mutation sanctioned on the basis of the Will, did not prove that the original of the same ever produced before the Revenue Authorities. Even in the order of mutation (Ex.P-15), there is no reference of the Will. The respondent(s)-defendant(s) have failed to discharge the onus. Both the Courts below did not appreciate that Bir Kaur was not related to the defendant, namely, Harbans Singh. No evidence has come on record whether Harbans Singh was related to Bir Kaur, thus, submits that the judgment and decree of the Courts below are liable to be set aside and urges this Court for formulation of the substantial questions of law as drawn in the memorandum of appeal.

I have heard the learned counsel for the appellants-plaintiffs and appraised the paper book and of the view that there is no merit and substance in the submissions Mr. Kamal Sharma, for, the appellants-plaintiffs have failed to prove the evidence with regard to the provisions of Section 50 of the Indian Evidence Act. PW-1 Vir Singh admitted that he was not the relative of the parties. It is also not the case of the appellants-plaintiffs that Vir Singh was residing at the same house. Fact that Jaggu and Vir Singh resided in the same Village in Pakistan has not been proved. In order to claim inheritance, mere drafting of pedigree table is not sufficient. The pedigree tables, aforementioned, are in respect of different villages. It does not remotely show the lineage. The appellants-plaintiffs have

miserably failed to prove on record to show that Vir Singh had special means of knowledge. Even the death of Bir Kaur has not been proved. PW-1 Vir Singh also admitted that the land was inherited by Bir Kaur and Bal Kaur after the death of Jaggu. No steps were taken to examine the Bal Kaur except self-serving statement of Vir Singh. No other evidence has been placed on record. The documents Ex.P-3 and Ex.P-4 are the pedigree tables of the appellants-plaintiffs *inter se*, these documents do not remotely prove the relationship of plaintiffs with Bir Kaur. The jamabandi for the year 1966-67 (Ex.P-5) is also to that effect, rather it supports the case of the defendant(s) showing that the defendant(s) along with the brother had been cultivating in possession of the land since 1966-67. Pedigree table (Ex.D-13) brought on record by the defendant(s) proved that Bir Kaur widow of Suba Singh son of Jaggu son of Mihan Singh was collateral of Bhagat Singh. Bir Kaur had inherited the land at Village Bhola collateral of Suba Singh. Even if, the defendant(s) failed to prove on record the Will, but the fact remains that it has been proved on record that the mutation (Ex.D-1) is based upon the Will executed by Bir Kaur. The mutation was sanctioned by Baldev Singh, who appeared as DW-10 and admitted that the original Will was produced before him. Even the witnesses produced were when mutation was under challenge. DW-12 Gurbachan Singh the Lambardar of Village Mehs, was also Sarpanch and attesting witness of the Will. He deposed that the Will was scribed at instructions of Bir Kaur. Even no evidence has been brought on record by the appellants-plaintiffs that they performed the last rites of Bir Kaur, in case, she has actually died.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and accordingly, the appeal is dismissed.

06.09.2016
yogesh

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No