

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.2873 of 2012 (O&M)

Date of Decision: September 27th, 2016

Avtar Singh & others

...Appellants

Versus

Gurdip Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Arihant Jain, Advocate,
for the appellants.

AMIT RAWAL, J.

Appellant-plaintiffs are aggrieved of the concurrents findings of fact and law, whereby the claim in the suit seeking possession of agricultural land bearing Khasra Nos.7//11 (8-0), 8//15 (8-0), 14//12/11 (0-2), situated in Village Jogipur, Tehsil and District Patiala and for permanent injunction restraining the defendants from excavating or digging the earth from the land bearing Khasra Nos.7//11 (8-0) and 8//15 (8-0), measuring 16 kanals situated in Village Jogipur, Tehsil and District Patiala, has been partly decreed.

Mr.Arihant Jain, learned counsel for the appellant-plaintiffs submits that Gajjan Singh survived by four children, i.e., two sons and two daughters, namely, Karam Singh, Dharam Singh, Bachan Kaur and Dharam Kaur. Plaintiff Nos.1, 3 and 4 are sons, whereas plaintiff No.2 is the widow of Karam Singh. Defendant Nos.1, and 2 are sons, defendant No.3 is daughter and defendant No.4 is the widow of Dharam Singh. A dispute

arose between the parties resulting into filing of the civil suit titled as “Dharam Singh Versus Karam Singh etc.” and on the basis of a compromise dated 9.2.2000, the said suit was decreed on 25.2.2000. It was agreed that all the daughters would get 6 kanals each and remaining 22 kanals go to the remaining sons.

All was going well, but on demise of Bachan Kaur, who died on 2.3.2000, a dispute arose whether the Will dated 4.1.1999 executed by her in favour of the plaintiffs, i.e., sons of Karam Singh, her share would devolve upon them or not, whereas the plaintiffs were in excess of share. In that regard, suit, aforementioned was filed, but the Courts below have disbelieved the Will on the premise that the same was registered on 30.4.2003, i.e., after lapse of three years. He further submits that there is no limitation for getting the Will registered. The Will has been proved through the testimony of the attesting witnesses. In the absence of the Will, the share of Bachan Kaur would be divided amongst all the other legal heirs, i.e., children of Dharam Singh, plaintiffs and Dharam Kaur.

The defendants did not deny the execution of the Will, but denied that Bachan Kaur and Dharam Kaur had any exclusive right over the land measuring 6 kanals each to execute any Will. The appellants have proved the genuineness of the Will by examining Registration Clerk and the Finger Print Expert, but the Courts below have discarded the Will only on the point that the same was not registered within time. Both the Courts below have misread, misinterpreted and misconstrued the proposition of law and facts on the file and, therefore, the judgments and decrees are liable to be set-aside.

I have heard the learned counsel for the appellant-plaintiffs,

appraised the paper book and of the view that after the passing of the judgment and decree dated 25.2.2000, Karam Singh, father of plaintiff Nos.1, 3 and 4 had filed a civil suit on 1.6.2000, but did not disclose about the factum of Will. By that time, Bachan Kaur had died and had there been any Will, it could have been disclosed and aforementioned factum has weighed in the mind of the Court in discarding the Will. No explanation has come forth regarding the aforementioned Will in the previously instituted suit by Karam Singh. Copy of the plaint has been proved as Ex.D1. In fact, Karam Singh had challenged the legality and validity of the compromise, much less the decree. In the earlier suit, which resulted into passing the decree dated 25.2.2000, Bachan Kaur was also a party. It is a matter of record that Bachan Kaur had died due to drowning, which fact has surfaced during the cross-examination of PW-1.

Another plea that the decree dated 25.2.2000 requires registration is neither here nor there as it has been proved on record that it was later registered on

For the foregoing reasons, I am of the view that the findings rendered by both the Courts below are perfectly correct and justified, which are based upon the appreciation of oral and documentary evidence. No substantial question of law arises for determination.

Appeal stands dismissed.

September 27th, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No