

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No. 3926 of 2012

Date of decision: February 08, 2016

Karanjit Singh and others

...APPELLANTS

Versus

Gurdial Singh and others

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. L.M.Gulati, Advocate,
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Senior Division) Tarn Taran dated 18.01.2010, whereby the suit filed by the appellants-plaintiffs against the respondents-defendants for possession of the property i.e. two residential houses marked 'A' and 'B' in the head note of the plaint, as explained therein in Village Thathian Mahantan Tehsil Tarn Taran on the basis of a registered Will dated 04.04.1978, has been dismissed by the Court by holding that there was a family partition during the life time of Narain Singh, the original owner of the property, who is father of the plaintiffs and grandfather of the respondents-defendants, which has been acted upon and that after the family partition, house mark 'A' was constructed by Ram Singh, brother of the appellants and predecessor-in-interest of the respondents-defendants No. 1 to 4 and thereafter, he had sold the said house to one Sh. Gurbhej Singh-respondent-defendant No. 19, who has also raised construction thereon and

all the respondents-defendants have been staying in the respective houses. Appellants-plaintiffs preferred an appeal against this judgment and decree which stands dismissed by the Additional District Judge, Tarn Taran on 19.07.2012.

2. It is the contention of the learned counsel for the appellants that the appellants have been able to prove the due execution of the registered Will dated 04.04.1978, vide which the entire estate of Narain Singh was bequeathed including the suit property in favour of the plaintiffs in equal shares. He contends that Ram Singh had been deprived of the property as nothing has been given to him in the said Will. He contends that the partition, as has been asserted in favour of Ram Singh by Narain Singh during his life time, is merely an excuse, which has been projected. In fact, it was out of love and affection that he was permitted to use the said area during his life time and not beyond thereto. The contention has, thus, been raised that the appellants-plaintiffs being rightful owners of the property, on the basis of the registered Will, which factum having been established and admitted in cross-examination by the respondents-defendants, the findings, as recorded by the Courts below depriving the appellants-plaintiffs their claim in the suit, cannot sustain and deserve to be set aside.

3. I have considered the submissions made by the learned counsel for the appellants and with his able assistance, have gone through the impugned judgments but do not find any illegality in the said judgments which would call for interference by this Court.

4. It is correct that the registered Will dated 04.04.1978 has been duly proved and has also been admitted by the respondents-defendants in their cross-examination. As a matter of fact, as the sequence of events goes

that prior to the Will having been executed, a family partition has taken place. It was actually given effect to in the year 1979 when the possession of two houses, which were in the form of a plot at that relevant time, was handed over to Ram Singh by Narain Singh, the original owner of the property. The possession having been taken by Ram Singh in the year 1979 is not in dispute. It cannot be overlooked that Narain Singh actually died in the year 1985. It is also not in dispute that after the possession of the suit property was handed over, Ram Singh had constructed his own house at 'A', where he has been residing along with his wife and children. It is also not in dispute that the birth of sons and daughters of Ram Singh took place in the said house and they were also married off in that very house. Admission is also there on record of Tarlochan Singh-appellant-plaintiff No. 2 that Ram Singh had sold the vacant plot under property, which is now a residential house marked as 'B' to Gurbhej Singh. Gurbhej Singh has constructed the house over the said plot and since then, he is residing in the said house along with his family. At no stage, any objection has been raised with regard to the taking over the the possession, construction of the house marked as 'A' and thereafter, sale of the said plot by Ram Singh to Gurbhej Singh and subsequently, his construction of the house over the suit property mark 'B'. All this clearly establishes that there was indeed a family partition, which has taken place.

This explains as to why by Will dated 04.04.1978, no share was given to Ram Singh as he had been provided for by Narain Singh, the original owner of the property and father of Ram Singh and the appellants-defendants No 1 to 4. The findings, as recorded by the Courts below, thus, cannot be faulted with as the same are based on proper appreciation of the

pleadings and evidence brought on record.

5. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below. Further, there is no substantial question of law in the appeal, which requires consideration of this Court.

6. In view of the above, finding no merit in the appeal, the same stands dismissed.

February 08, 2016
pj

(AUGUSTINE GEORGE MASIH)
JUDGE