

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

Date of Decision: March 22nd, 2016

1. **R.S.A.No.4228 of 2012 (O&M)**

Karam Singh

...Appellant

Versus

Charan Singh & others

...Respondents

2. **R.S.A.No.4229 of 2012 (O&M)**

Karam Singh

...Appellant

Versus

Charan Singh & others

...Respondents

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

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?

Present: Mr.M.S.Rakkar, Senior Advocate with
Mr.P.S.Baath, Advocate,
for the appellant (in both the appeals).

Mr.Sudeep Mahajan, Advocate,
for respondent Nos.1 & 2 (in both the appeals).

Mr.B.S.Saini, Advocate,
for respondent Nos.3 to 5 (in RSA No.4229 of 2012).

Mr.K.B.Raheja, Advocate,
for the applicants.

AMIT RAWAL, J. (Oral)

By this order, I intend to dispose of two Regular Second
Appeal Nos.4228 and 4229 of 2012 arising out of the decision rendered by
the trial Court, whereby the trial Court consolidated two Civil Suits bearing

No.RT 481 of 1999 titled as Charan Singh Versus Karam Singh etc. (hereinafter referred as “Suit No.1) and RT 2094 of 2005, titled as Karam Singh Versus Charan Singh etc., (hereinafter called “Suit No.2).

In Suit No.1, separate possession by way of partition of residential house bearing No.1374/11 to the extent of 1/3rd share had been sought, whereas in Suit No.2, declaration was sought that the plaintiff is sole owner in possession of the house constructed on the plot measuring 55'-0”x22'-6”, situated in the municipal limits of Dera Bassi, Tehsil Dera Bassi, District Patiala on the basis of the Will dated 25.10.1986, allegedly executed by Gurnam Singh in favour of the plaintiff and further challenge to the sale deed bearing No.2505 dated 23.6.2005 in favour of defendant No.3- Navdeep Singh, being the result of fraud and misrepresentation and also being illegal, unlawful, null and void with consequential relief of permanent injunction restraining the defendants from interfering in the peaceful possession of plaintiff or dispossessing him.

Suit No.1 was based on pleading that Gurnam Singh son of Tara Singh, on 5.1.1989, died issueless and widowless on 5.1.1989. Since he used to reside at Village Ghanaur, Tehsil Rajpura with his brother Sant Singh-defendant No.2, executed a Will dated 7.4.1984 in favour of Charan Singh bequeathing his property in favour of the plaintiff and the defendants in equal shares. In view of such fact, plaintiff having 1/3rd share, sought separate possession by metes and bounds through partition, whereas on the contrary, defendants set up another Will dated 25.10.1986 in favour of Karam Singh. The trial Court disbelieved the Will dated 7.4.1984 and decreed Suit No.1 and dismissed Suit No.2. Defendants in Suit No.1 and plaintiff in Suit No.2 filed appeals. Both the appeals have been dismissed. It

is in these circumstances, the present Regular Second Appeals have been filed in this Court.

Mr.M.S.Rakkar, learned Senior Counsel assisted by Mr.P.S.Baath, Advocate, appearing on behalf of the appellant in both the appeals submits that both the Courts below have committed illegality and perversity, inasmuch as that the Will dated 7.4.1984 allegedly relied upon by Charan Singh in Suit No.1 has not been proved. Even the sale deed executed by the other two brothers, namely, Charan Singh and Sant Singh dated 23.6.2005 is in respect of area measuring 95'x46'-6", whereas Gurnam Singh was the owner of 1/2 share in plot measuring 55'x27'-1/2". Both the Courts below have committed illegality and perversity in disbelieving the Will dated 25.10.1986 as both the attesting witnesses, i.e., DW-1 Pal Singh and DW-2 Gurnam Singh have been examined, much less Gurnam Kaur, sister of deceased Karam Singh was also examined as DW-1, whereas, on the other hand, the aforesaid witnesses of the Will are not residents of Dera Bassi as all of them are residents of Village Manjoli. The appellant examined DW-3 Scribe of the Will dated 7.4.1984, who unequivocally stated that after the demise of Gurnam Singh, the other two brothers of Gurnam Singh told him to scribe/draft the Will of late Gurnam Singh and on their instructions, drafted the Will. Evidence of DW-3 has not been noticed by the Lower Appellate Court being the last Court of fact and law and, thus, there is illegality and perversity, much less the appellant-defendant has been prevented to agitate his grievance before the first Court . He further submitted that the following substantial questions of law arise for determination by this Court:-

- 1) Whether the Lower Appellate Court misdirected and

misread the oral and documentary evidence, particularly the statement of DW-3 Scribe of Will dated 7.4.1984?

2) Whether the Lower Appellate Court, being the last Court of fact and law, is enjoined upon an obligation to refer both oral and documentary evidence and in case of failure, whether judgment and decree is sustainable in the eyes of law or not?

Mr.Sudeep Mahajan, learned counsel appearing for respondent Nos.1 and 2 in both the appeals submitted that the appellant had submitted applications before the Municipal Committee for supplying sewerage connection and water connection in favour of all the brothers and, thus, never set up the Will dated 25.10.1986, in essence, accepted even copy of the assessment register (Ex.P1) and receipts of water supply that have been proved on record. Gurnam Singh was also owner of a truck and on the basis of the Will (Ex.P2), the truck was transferred in the name of Charan Singh and his two brothers, who are the defendants. Defendant No.1 gave the General Power of Attorney (Ex.P3) in favour of Charan Singh and defendant No.2, namely, Sant Singh, other brother. The original Will dated 7.4.1984 was in the custody of Karam Singh, on the basis of which, he had forged the Will dated 25.10.1986 in his favour alone.

PW-4 Lakhmir Singh Clerk, Municipal Committee, Dera Bassi produced some record regarding supply of water and sewerage connections, which were issued in the name of three brothers. Copies of applications, Ex.PW-4/A and Ex.PW-4/B in respect thereof were taken by the Department. Even the Handwriting Expert tendered his affidavit and proved his report regarding signatures of Gurnam Singh on the Will dated 25.10.1986 and, thus, there is no illegality and perversity in the findings

rendered by both the Courts below, much less no interference is warranted and, thus, no substantial question of law arises for determination by this Court.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the judgment and decree of the Lower Appellate Court suffer from illegality and perversity as being the last Court of fact and law, it has not referred the testimony of DW-3 Scribe, who, at page 102 of the lower Court record, in the examination-in-chief, unequivocally submitted that after the death of Gurnam Singh, in the year 1990-91 Sant Singh had asked him to draft the Will of Gurnam Singh and on his instructions, he drafted the Will (Ex.P2). It also appears that the appellant has been prevented in adjudication of the grievance, much less grounds taken in the memorandum of appeal vis-a-vis authenticity and genuinity of the Will. It would be a farcical exercise in adjudication of the lis between the parties on entire issues in the absence of application of mind by the Lower Appellate Court.

Be that as it may, instead of pondering upon the merits and demerits of the matter, much less contentions and rival contentions, I am of the view that the matter is required to be remitted back to the Lower Appellate Court to decide the appeals afresh by referring all the documentary evidence on record, much less the alleged objections taken on behalf of the appellant vis-a-vis examination of the documents Ex.P3/A to Ex.PW5/A as noticed on 20.5.2005 at back of page 87.

Accordingly, the impugned judgment and decree of the Lower Appellate Court are set-aside and the matter is remitted back to the Lower Appellate Court to decide the appeals afresh.

The parties, through their counsel, are directed to appear before the Lower Appellate Court on 31.3.2016.

It is expected that the Lower Appellate Court shall decide the appeals as expeditiously as possible, preferably within a period six months from the date of receipt of certified copy of this order.

Appeals stand dispose of accordingly.

March 22nd, 2016
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(AMIT RAWAL)
JUDGE