

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.1705 of 2013 (O&M)

Date of decision:18.03.2016

Mohinder Singh and others

... Appellants

Vs.

Paramjit Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. M.L.Sarin, Senior Advocate with
Mr. Nitin Sarin, Advocate
for the appellants.

Mr. Puneet Jindal, Senior Advocate with
Mr. Parambir Singh, Advocate
for the respondents.

AMIT RAWAL J.

The appellant-defendants are aggrieved of the concurrent findings of facts and law, whereby, suit of the respondent-plaintiff, Nahar Singh for declaration and permanent injunction was decreed on 22.08.2008 and findings thereof are affirmed by the Lower Appellate Court, vide judgment and decree dated 27.11.2012.

It would be apt to give preface of the matter before advertng to the rival contention of learned counsel for the parties.

Boota Singh had three sons, namely, Gopal Singh, Sadhu Singh and Nahar Singh. Gopal Singh died in the year 1972. His sons are the defendants, whereas, Nahar Singh died on 27.04.2001. The

controversy revolves upon the estate of Sahdu Singh, who, on 14.12.1996, died unmarried and issueless. It is a matter of record that suit was filed on 15.03.2000, whereas, Nahar Singh died on 27.04.2001 and respondent-plaintiffs concluded their evidence on 06.08.2007. Plaintiff - Nahar Singh instituted the suit claiming declaration to the effect that plaintiff is joint owner in possession of the land to the extent of 2/3 share out of total land described in the head note of the plaint and also challenged the mutation bearing Nos.5905 dated 18.6.1999 and 5782 dated 24.06.1997 being illegal, arbitrary, null and void and for a consequential relief of permanent injunction restraining the defendants from alienating any specific portion of any specific killa number more than 1/3rd share by way of any means and methods on the premise that on demise of Sadhu Singh, succession with regard to his estate opened and since there was no Class I heir, plaintiff succeeded to the estate left by Sadhu Singh being his only Class-II heir, in accordance with the provisions of Section 8 of Hindu Succession Act, 1956. In paragraph 7 of the plaint, it has been stated that defendants do not have any right, title or interest in the estate left behind by Sadhu Singh but in connivance with the revenue authorities, mutations, aforementioned were sanctioned in most arbitrary manner and on the basis of the forged and fabricated Will and sought the prayer, aforementioned.

The aforementioned suit, was contested by the appellant-defendants by taking as many as 04 preliminary objections vis-a-vis

the concealment of suppression and material facts, as well as, the orders of revenue Courts of Shri Gurmeet Singh, P.C.S. Assistant Collector Ist Grade and Sh. Manjit Singh Brar, P.C.S.S.D.M Ludhiana West by which the objections of the respondent-plaintiff have been dismissed and the Will has been held to be legal and valid. It was stated that according to the registered Will, bearing Wasika number 837 dated 02.12.1983, Sadhu Singh had bequeathed his estate in favour of his nephews, sons of Gopal Singh. Mutation was sanctioned in favour of the defendants in the presence of Nahar Singh, who, had suffered a statement and thereafter, the order was passed by the Assistant Collector, Ist Grade, Ludhiana. Photocopies of the orders were also attached. In para No.4 of the replication, the respondent-plaintiff, while replying preliminary objection No.4, stated that the decision of the revenue Court was summary in nature and no decision was required under the law. The Will was simply acted by the revenue officer since it was registered document. Whereas, Will was propounded by the defendants was false, frivolous and fictitious and has no value in the eyes of law. The respondent-plaintiff, in support of his case, examined the following witnesses:-

- i) PW1 - Surinder Singh son of Nahar Singh and brought on record the following documents:-
 - a. Ex.P1 - death certificate;
 - b. Ex. P2 - jamabandi for the year 1996-97;
 - c. Ex.P3 - girdawari and closed the evidence in

affirmative.

Whereas, on the contrary, the appellant-defendants examined the following witnesses:-

- a DW1 - Teja Singh
- b DW2 - Mohinder Singh and tendered the documents Ex.D1 to Ex.D7 in evidence and the same were objected in the cross-examination. The detail of the documents are given herein below:-
 - i) Ex.D1 - photocopy of compromise-cum-partition deed dated 25.06.1992.
 - ii) Ex.D2 – photocopy of the registered Will dated 02.12.1983.
 - iii) Ex.D3 – copy of the order dated 24.06.1997 passed by Shri Gurmeet Singh, P.C.S. Assistant Collector Ist Grade.
 - iv) Ex.D4 – statement dated 30.4.1997 of Nahar Singh.
 - v) Ex.D5 – copy of mutation.
 - vi) Ex.D6 – copy of the order dated 18.6.1999 passed by Sh. Manjit Singh Brar, P.C.S.S.D.M Ludhiana West.
 - vi) Ex.D7 – copy of order dated 4.6.2002 passed by Deputy Commissioner, Ludhiana.

The trial Court on the basis of the oral and documentary evidence decreed the suit. Aggrieved against the aforementioned judgment and decree, the appellant-defendants filed an appeal and

also moved three applications.

1. The application dated 25.10.2008 was filed under provisions of Order 41 Rule 27 of the Code of Civil Procedure, to place on record the following documents by way of additional evidence which read thus:-

- “i) Certified copies of the statements of Teja Singh dated 30.4.1997 and 30.4.1999, recorded in the mutations proceedings No.5782 and 5905 respectively.*
- ii) Certified copy of the statement of Balvir Singh Duggal son of Bhupinder Singh dated 4.5.1999.*
- iii) Certified copy of the statement of Nahar Singh dated 30.4.1997 recorded in mutation No.5782.*
- iv) Certified copies of death certificates of Karora Singh, Teja Singh and Bhupinder Singh.*
- v) Original Will dated 2.12.1983 executed by Sadhu Singh.*
- vi) Partition deed dated 25.6.1982.*
- vii) Register of the Scribe, Bhupinder Singh Duggal is also to be summoned from his son namely Balvir Singh Duggal in order to prove the entry of the said Will.*
- viii) Kulwant Singh son of Teja Singh, since deceased, in order to prove the signatures of Teja Singh on the said Will as well as on the partition deed dated 25.6.1982.*
- ix) Gian Singh s/o Bachan Singh, in order to prove the*

signatures of Karora Singh on the said Will.

x) Concerned Clerk from the office of Sub Registrar, Ludhiana along with register containing entry of Wasika No.837 dated 2.12.1983 in respect to the said Will dated 2.12.1983, which carries the original thumb impressions of Sadhu Singh the executant as well as the signatures of Teja Singh and Karora Singh, which will is scribed by Bhupinder Singh Duggal, Deed Writer.”

2. The application under Order 6 Rule 17 of the Code of Civil Procedure seeking amendment of the written statement to incorporate the following preliminary objections which read thus:-

“The plaintiff is estopped by his act and conduct to file the present suit. After the death of Sadhu Singh, two mutation proceedings No.5782 and 5905 were commenced and in the said mutation proceedings, the defendants produced the Will executed by Sadhu Singh in their favour, which is his last, valid and registered Will. Nahar Singh himself appeared in the said mutation proceedings No.5782, on 30.4.1997 and made a statement that he is admitting the Will dated 2.12.1983 executed by Sadhu Singh in favour of the defendants No.1 to 4. Teja Singh, one of the attesting witnesses of the Will appeared as a witness in the said mutation proceedings, but no cross examination was conducted

against him as Nahar Singh was conceding that Sadhu Singh had executed a valid Will in favour of the defendants No.1 to 4. In the said mutation proceedings No.5782, Teja Singh defendant had also appeared as his own witness, but he was also not cross examined, thereby admitting the execution of the said Will. Under these circumstances, Nahar Singh since deceased now represented by his legal heirs was estopped by his act and conduct to challenge the said Will and to file the present suit. In fact, the present suit does not lie in view of the clear admission of Nahar Singh. Nahar Singh was also guilty of concealment of facts that he had admitted the due execution of the said Will. A person who comes to the Court by concealment of material facts, is not entitled to any relief whatsoever, as concealment of material facts amounts to playing fraud with the Court as well as with the other party. Taking from any angle whatsoever, Nahar Singh had no locus standi or cause of action to file the present suit and to challenge the Will dated 2.12.1983 executed by Sadhu Singh.”

3. The application for directing the plaintiff- Nahar Singh to produce on record the original partition deed dated 25.06.1982 was filed.

The Lower Appellate Court dismissed two applications

filed under Order 41 Rule 27 of the Code of Civil Procedure and under Order 6 Rule 17 of the Code of Civil Procedure but there is no adjudication of the application seeking production of original partition deed, aforementioned and dismissed the appeal. It is in these circumstances, the present appeal has been filed.

Mr.M.L.Sarin, learned Senior Counsel assisted by Mr.Nitin Sarin, Advocate appearing on behalf of the appellant-defendants has raised multi-fold arguments which are enumerated herein-below:-

- i) The respondent-plaintiff instituted the suit on 15.03.2000, whereas, admittedly, Nahar Singh died on 27.04.2001. However, affidavit of his son, PW1 was filed in 2005 and evidence was closed on 06.08.2007, in essence, the respondent-plaintiff intentionally delayed the suit, for the reason that one of the witnesses of the Will, namely, Teja Singh, died on 13.07.2002, whereas, other witness, Karora Singh died on 18.08.1984 and Scribe, Bhupinder Singh Duggal, died on 21.12.1999.
- ii) The Lower Appellate Court omitted to decide the application seeking production of the original partition deed and in view of the settled law, once an application filed along with first appeal, remains undecided, the matter is required to be remitted back.
- iii) Nahar Singh appeared before the revenue Courts

and suffered a statement admitting the contents of the Will and therefore, the admission need not to be proved as it is admissible in view of the provisions of Section 33 of the Indian Evidence Act.

iv) The respondent-plaintiff did not disclose the decision of the proceedings held by the revenue authorities as per the provisions of Order 7 Rule 11(J) of the Code of Civil Procedure, as applicable to the Punjab and Haryana.

v) The respondent-plaintiff had concealed the factum of the mutation proceedings in the plaint and thus, submits that person who has not come to the Court with clean hands, can be thrown out at any stage.

vi) The Lower Appellate Court has assigned no reasons in declining the application but dismissed the same by simply observing that additional evidence tantamount to filling up of the lacunae, much less, no explanation has come forth in not explaining the “due diligence”.

vii) The additional evidence sought to be placed on record goes to the root of the matter as it would have enabled the Lower Appellate Court in adjudicating the lis between the parties.

viii) PW1-Surinder Singh was confronted the statement

suffered by Nahar Singh, Ex.D4, who, admitted that there was a litigation in the revenue Court with regard to the Will but feigned ignorance qua the admission of his father in the said proceedings and as well as, the Will to be correct and orders passed sanctioning the mutation as per the Will.

In support of his contentions, relies upon para 19 of the judgment of the Hon'ble Supreme Court in **Bharat Singh and others vs. Mst. Bhagirathi AIR 1966 Supreme Court 405** to contend that there is stark difference between the admission recorded in the previous statement, rather than admissible evidence, therefore, provisions of Section 145 of the Indian Evidence Act, would not come in the way. The respondent-plaintiff has failed to discharge the onus, in essence, the trial Court has heavily relied upon the appellant-defendants treating them to be plaintiff, whereas, onus was upon the respondent-plaintiff to prove the mutation proceedings which were sanctioned on the basis of the Will were illegal, without jurisdiction etc. and in this regard, he relies upon the judgment of the Hon'ble Supreme Court in **Balathandayutham and another vs. Ezhilarasan 2010(5) Supreme Court Cases 770**. He further relies upon the judgment of this Court in **Surinder Singh (dead) through LRs vs. Anup Singh Vol.CXXXI (2002-2) Punjab Law Reporters 5**, to contend that where the witnesses of the Will have resiled and Court cannot be a mute spectator, the Court can look into whole

circumstances of the case in order to arrive at some conclusion. The Will can be proved by other cogent evidence by relying upon the provisions of Section 69 of the Indian Evidence Act, when the attesting witness is/are not available. The respondent-plaintiff intentionally prevented the evidence of Teja Singh to come on record as they prolonged the conclusion of the evidence as late as in 2007. However, Teja Singh died on 13.07.2002, whereas, the suit was filed in the year March, 2000.

He further relies upon the judgment of the Hon'ble Supreme Court in **Jatinder Singh and another (minor through mother) vs. Mehar Singh and others AIR 2009 SC 354** to contend that where the application filed along with appeal remains undecided, the matter is required to be remitted back. With regard to additional evidence, he relies upon the various judgments in **Malyalam Plantations Ltd. vs. State of Kerala and another AIR 2011 S.C.559; Sangamesh Printing Press vs. Chief Executive Officer, Taluk Development Board JT 1999(9) SC 554; Billa Jagan Mohan Reddy and another vs. Billa Sanjeeva Reddy and others 1994(4) Supreme Court Cases 659; Pribhu Dayal and others vs. Prem Dass Chela Kishan Lal 1994 PLJ 713 and Shyam Gopal Bindal and others vs. Land Acquisition Officer and another 2010(1) Supreme 110** to contend that it is incumbent upon the Appellate Court to consider the application for additional evidence on merits and should not dismiss the same in a most fallacious and arbitrary

manner, in essence, the Lower Appellate Court is enjoined upon an obligation to decide the application by referring to the documents whether the documents sought to be placed on record by way of additional evidence are actually essential and necessary for adjudication of the dispute between the parties or not. As regards, amendment of the written statement, he relies upon the judgments in **B.K.Narayana Pillai vs. Parameswaran Pillai and another 2000(1) SCC 712; Baldev Singh and others etc. vs. Manohar Singh and another etc. J.T.2006(7) SC 139 ; Usha Balashaheb Swami and others vs. Kiran Appaso Swami and others AIR 2007 SC 1663 and Smt. Harjit Grewal and others vs. Dr. Vinod Kumar Batra 1991(2) PLR 326**. He, thus, urges this Court to formulate the following substantial questions of law as culled out in memorandum of appeal:-

- “i) Whether the judgment of the Lower Appellate Court is vitiated in law as it has approved the judgment of the trial Court without giving any issue-wise findings?*
- ii) Whether the judgments of the Courts below are vitiated as they are based on the misreading of evidence on the record especially the statement of Nahar Singh (plaintiff, since deceased) in the revenue proceedings (Ex.D4)?*
- iii) Whether the Courts below could have concluded that the defendant-appellants never proved the Will dated*

01.12.1983 (Ex.D2) and partition deed (Ex.D1) by primary or secondary evidence, despite the said documents being produced on record and supported by statements of witnesses which remained unrebutted by the plaintiff-respondents?

iv) Whether the Lower Appellate Court could have dismissed the applications filed by the defendant-appellants under Order 6 Rule 17 and Order 41 Rule 27 without recording any cogent reasons for the same?

v) Whether the judgments and decrees of the Courts below are perverse?”

On the other hand, Mr. Puneet Jindal, learned Senior Counsel assisted by Mr.Parambir Singh, Advocate appearing on behalf of the respondent-plaintiffs with much eloquence and vehemence buttressed his arguments which are referred to in point-wise manner:-

i) The defendants have miserably failed to prove and bring the original Will on record, much less, other documents as photocopies of the documents were tendered and the same were seriously objected to.

ii) Filing of the application for additional evidence is nothing but an attempt to fill up the lacunae in the allegedly lead evidence as the contents of the application reveal that due to inadvertence, the original documents

have not been placed on record. There is no case law on the point that additional evidence on account of inadvertence, can be taken into consideration by the Lower Appellate Court while deciding the appeal.

iii) The prayer in the suit is for respective shares on account of demise of Sadhu Singh being Class-II heirs, whereas, appellant-defendants are none else but nephews of deceased Sadhu Singh. Will has not been proved, in accordance with the provisions of Section 68 of the Evidence Act, much less, Section 63(c) of the Indian Succession Act and in this regard relied upon the judgment of the Hon'ble Supreme Court in **Janki Narayan Bhoir vs. Narayan Namdeo Kadam 2003(1) R.C.R. (Civil) 409.**

iv) The statements made before the revenue Court are not oath, therefore, are not admissible in evidence.

v) Statement of Nahar Singh was not confronted to his sons PW1 and PW2, therefore, the appellant-defendants had not complied with the provisions of Section 145 of the Indian Evidence Act.

vi) The mutation proceedings are not binding upon the Civil Court.

vii) He also relies upon the findings rendered by the Lower Appellate Court to contend that in the written

statement, defendants have failed to mention that Nahar Singh had admitted the due execution of the Will before the revenue Courts, therefore, cannot be permitted to seek the amendment of the written statement as it tantamounts to withdrawal of the admission, much less, altering and changing the nature of the defence which cannot be permitted at the appellate stage. The partition cum-compromise deed was emphatically denied. On account of death of Sadhu Singh, his succession opened when the defendants started ascertaining their rights, necessity arose to file the suit.

In support of his aforementioned contentions, relies upon the judgment of this Court passed in **RSA No.1875 of 2013 titled as Surender Kumar vs. Subhash Chander and others, decided on 04.12.2015** to contend that statements made before the revenue Courts are not admissible in evidence; **Dev Raj Singh and another vs. State of Punjab and others 2010(2) R.C.R(Civil) 357** to contend that mutation sanctioned in favour of one of the party does not by itself determine any question of right and title. The mutation proceedings have no judicial character the rights question of title and validity of Will are to be determined by the regular Civil Courts and not by the revenue Courts. The certified copy of the written statement in earlier suit is not per se admissible in evidence in subsequent suits cannot be said to be public documents as per the provisions of

Section 74 of the Indian Evidence Act, the findings of the revenue Court are not binding upon the Civil Court. As regards the additional evidence, relies upon the judgment of the Hon'ble Supreme Court in **Haryana State Industrial Corporation vs. M/s Cork Manufacturing Co. 2008(1) R.C.R.(Civil) 78** and prays for dismissal of the appeal.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below, as well as, case laws cited at bar and on critical analysis of the per pleadings, much less, the evidence on record, I am of the view that additional evidence, sought to be placed on record, is essential and necessary for adjudication of suit and thus, by exercising the powers under Order 41 Rule 25 of the Code of Civil Procedure, I hereby call upon report of trial Court, which shall call the parties to lead evidence in support of the additional evidence by giving them effective opportunities.

In order to lend support to the aforementioned observations, I rely upon the findings rendered by the Hon'ble Supreme Court in **A.P.State Wakf Board Hyderabad vs. All India Shia Conference (Branch) A.P. and others 2000(2) RCR (Civil) 487** because this Court would not be in a position to decide issue vis-a-vis veracity of the Will, much less, its genuineness, statement of Nahar Singh suffered before the revenue Court and the orders passed by the revenue Courts, whereby, the mutations have been

referred to, as the aforementioned documents go to the root of the matter in adjudication of the lis.

I am not in agreement with the findings rendered by the Lower Appellate Court while declining the application for additional evidence as no reasoning, much less, cogent reasoning has been assigned as how these documents are not essential and necessary and would not enable it to decide the controversy. Accordingly, the findings of the Lower Appellate Court to this extent are set aside and the matter is remitted back to the concerned trial Court which shall give 3-3 effective opportunities to each of the party to prove the aforementioned documents sought to be placed on record by way of additional evidence and rebut the same and thereafter, submit report to this Court within a period of six months.

Adjourned to 9.9.2016.

(AMIT RAWAL)
JUDGE

March 18, 2016
savita