

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 174 of 2013 (O&M)
Date of Decision : 26.04.2016

Baljinder Kaur and othersAppellants

Versus

Hari Singh and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.S. Grewal, Advocate
for the appellants.

Mr. Parambir Singh, Advocate
for Mr. H.S. Brar, Advocate
for the respondents.

Surinder Gupta, J.

This is second appeal against judgment passed by learned Civil Judge (Junior Division), Ludhiana decreeing the suit of plaintiffs declaring them owners in possession in equal share of suit land i.e. 2122/5092 share out of land measuring 12 *bighas* 14 *biswas* 12 *biswansi*; 986/3941 share out of land measuring 9 *bighas* 17 *biswas* 1 *biswansi*; 165/397 share out of land measuring 0 *bigha* 19 *biawas* 17 *biswansi* and 1/2 share in land measuring 0 *bigha* 14 *biswas* 0 *biswansi*, situated in village Dakha-1, H.B. No. 142, *Tehsil* and District Ludhiana, as described in headnote of the plant. Mutation No. 14788 sanctioned on 22.09.2003 on the basis of natural succession to the estate of Kartar Singh (since deceased) was held as not binding on the rights of plaintiffs and defendants were restrained from alienating the suit land.

2. The dispute relates to estate of Kartar Singh, father of plaintiffs and defendants no. 1 to 4 and maternal grandfather of

defendants no. 5 and 6, who died in the year 1994. His wife Dalip Kaur had already died in the year 1986. Plaintiffs have alleged that Kartar Singh executed a valid Will while in sound disposing mind on 12.03.1984 and got the same registered with Sub-Registrar, Ludhiana on the same day. As per Will, plaintiffs succeeded to his entire estate in equal shares. Plaintiff no. 2 is residing in Canada. In the month of March, 2004 he visited the *Halqa Patwari* and came to know that Baljinder Kaur and Mohinder Kaur, daughters of Kartar Singh (sisters of plaintiffs), got mutation No. 14788 relating to estate of Kartar Singh sanctioned on the basis of natural succession on 22.09.2003, at the back and without notice to plaintiffs. In that mutation even name of defendants no. 5 and 6 find no mention despite the fact that by natural succession they are heirs to the estate of Kartar Singh being sons of Gurdev Kaur, predeceased daughter of Kartar Singh. Application was moved to the revenue authorities to sanction mutation in favour of plaintiffs on the basis of registered Will of Kartar Singh but in vain. Defendants were also requested to admit claim of plaintiffs which they refused, hence this suit.

3. In the written statement filed by defendants no. 1 to 4 and defendants no. 5 and 6 separately, claim of plaintiffs was contested and they denied execution of Will dated 12.03.1984 by Kartar Singh.

4. Learned Civil Judge (Junior Division), Ludhiana on appraisal of evidence recorded finding concerning the Will executed by Kartar Singh in para 12 of the judgment, which

reads as follows:-

“12. So, in view of my above discussion, documents as well as evidence brought on the file this court finds that plaintiffs have duly proved the execution of the Will by leading cogent and convincing evidence on the file. In order to prove the Will he has examined most important witnesses Malkit Singh, the attesting witness of the Will Ex. P1 as PW-2, who tendered his duly sworn affidavit as Ex. PW-2/A in which he deposed regarding the execution of the Will Ex. P1 by deceased Kartar Singh in his presence in the office of Sub Registrar, Ludhiana and duly signed by him. Amar Singh as PW-3 who proved copy of receipt of land revenue Ex. P8 and Ex. P9. PW-7 Harcharan Singh scribe of the Will in question, PW-8 S.R. Kalair, Addl. Chief Administrator, PUDA, Ludhiana, who was posted as Sub Registrar, Ludhiana, Nirmal Singh, Registration Clerk, office of Sub Registrar, Ludhiana and all these witnesses have duly proved the execution of the Will by deceased Kartar Singh, whereas on the other hand the defendants have taken the plea that the Will is forged and fabricated one but they have failed to lead any evidence on the file that how, where,

when and in what manner the Will has been forged by the plaintiffs. So, in view of my above discussion this Court finds that plaintiffs have been able to prove the above issue and accordingly, the above issue stands decided in favour of the plaintiffs and against the defendants.”

5. Ist Appellate Court affirmed findings of learned Civil Judge (Junior Division) and dismissed the appeal.

6. Learned counsel for appellants has raised three contentions while challenging judgment of Court below, which are enumerated as follows:-

- (i) that the Court below has not framed any specific issue regarding Will dated 12.03.1984;
- (ii) that the land in dispute was ancestral property and Kartar Singh was not competent to execute the Will in favour of plaintiffs;
- (iii) that signatures of Kartar Singh on the Will and on the endorsement before Sub-Registrar at the time of registration of the Will do not tally.

7. Issue no. 1 framed by learned Civil Judge (Junior Division) was as follows:-

- “1. Whether the plaintiffs are owners in possession of the suit property? OPP.

8. Plaintiffs were claiming ownership over suit property on the basis of Will dated 12.03.1984. They have pleaded the Will and led evidence. Defendants including appellants refuted

the Will and also produced evidence in this regard. Though, this is not specifically mentioned in issue no. 1 that plaintiffs are owners of suit property by way of the Will but it is clear from pleadings and evidence on record that plaintiffs have based their claim on the Will and both the parties fully knowing the facts led evidence on this aspect, as such, first contention raised by learned counsel for appellants carries no weight and is discarded.

9. The second contention raised by learned counsel for appellants is that suit property was ancestral property. When learned counsel for appellants was asked to refer to pleadings and evidence in this regard he candidly admitted that no such plea was raised by appellants in written statement and no evidence has been produced on record to show that suit property was joint Hindu family coparcenary property or ancestral property. Consequently, this plea raised by learned counsel for appellants is also discarded.

10. The third contention of learned counsel for appellant pertains to signatures of Kartar Singh on the Will and at the time of endorsement before Sub-Registrar. Learned counsel for appellants has tried to make out that size i.e. width of his signatures on the Will and before the Sub-Registrar is different. It is not the size of signatures but the mannerism and type of writing which is material while examining the handwriting. No evidence was produced by defendants-appellants that signatures on the Will and on the endorsement were not appended by same person. Learned counsel for appellants could not point out any

suggestion given to marginal witnesses, scribe or to the witnesses who appeared to prove registration of the Will that signatures of Kartar Singh on the Will and on the endorsement before Sub-Registrar appended at the time of registration of the Will were different or appended by different person. The plea has been raised by counsel for appellants for the first time in this appeal without any basis, evidence or pleadings, as such, has no merit and is discarded.

11. No other point has been raised by learned counsel for appellants during course of arguments.

12. On perusal of judgments of both the Courts below, I find no legal or factual infirmity therein calling for any interference. No substantial question of law, requiring determination, arises in this appeal, which has no merits.

Dismissed.

April 26, 2016

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**(SURINDER GUPTA)
JUDGE**