

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.238 of 2013 (O&M)

Date of Decision: December 09, 2016

Ishwar & others

...Appellants

Versus

Baljit Singh & others

...Respondents

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

Present: Mr.Tara Chand Dhandwal, Advocate,
for the appellants.

None for the respondents.

AMIT RAWAL, J.

Civil Misc.No.651-C of 2013

For the reasons mentioned in the application which is supported
by an affidavit, delay of 128 days in re-filing the appeal is condoned.

CM stands disposed of.

Civil Misc.No.652-C of 2013

Prayer in the application is for bringing on record the legal
representatives of Jeetu, who was plaintiff before the Courts below and died
on 09.3.2012 after passing the judgment and decree by the Lower Appellate
Court. The application is supported by an affidavit.

Allowed subject to all just exceptions for prosecuting the
present appeal only.

R.S.A.No.238 of 2013

The appellants are aggrieved of the dismissal of the suit filed by

their father Jeetu son of Bhagwana seeking relief of declaration that he, being the natural heir and successor of Nanhi widow of Dattu son of Deiya and of Deiya, are the exclusive owner of the land described therein and also challenged the judgments and decrees dated 20.1.1970 passed in Civil Suits No.516 and 518 of 20.1.1970 titled as “Om Parkash etc. Versus Nanhi” and consequent mutation Nos.1246 and 2861 of Village Kheri Naguran and Naguran respectively with further challenge to the Wills dated 4.8.1964 and 26.12.2000 alleged to have been executed by Nanhi and consequent mutation No.4980 entered in favour of defendant set No.1 and adverse to the rights of the plaintiff.

Mr.Tara Chand Dhanwal, learned counsel for the appellants submits that the claim of the plaintiff was based on succession and inheritance of Deiya as a heir of Dattu. The Courts below have failed to appreciate the pedigree table mentioned in Para 2 of the plaint and relationship, detail of which has been proved through (i) Ex.P16 and Tarjama Ex.P16/A for the year 1960-61; (ii) pedigree table of the year 1988-89 Ex.P17; (iii) Bandobast of the year 1856-57 Ex.P18, Tarjama Ex.P18/A, Ex.P19, Tarjama Ex.P19/A; (iv) certified copy of Ex.R12 and Mark PW11/A of the Bahi of Panda. He further submits that as per the statement of Om Parkash (Ex.DX) recorded in the mutation proceedings, he admitted the factum of relationship of the plaintiff with Nanhi. Similar is the statement of PW-8 Ratan Singh. On the contrary, the defendants did not lead any evidence to rebut the evidence of the plaintiff.

He further submits that there is no specific denial of pedigree table. The Courts below have failed to appreciate that Nanhi @ Manbhari had suffered a decree in favour of her brothers along with her sisters for the

land of village Karoda. The standard thumb impressions of Nanhi produced on record, have been proved through the testimony of Finger Print Bureau Expert PW-7. In the previous suit, no summons had been issued, much less Nanhi never appeared or engaged any counsel. No statement was made by Nanhi in the Court. Standard thumb impressions of Nanhi marked A-1 had not been admitted by the defendants. The statement of Deepak Jain DW-7 was not believable as he had given a false report, in essence fraud was played upon defendants set No.1, who are plaintiffs in the suit impugning the judgment and decree. They had allegedly pleaded family settlement and dispossession, but no such ground has been pleaded and proved in the present case.

He further submits that there are suspicious circumstances regarding the Will dated 4.8.1964 as the original Will was not produced. Secondary evidence has been led prior to the permission of the Court. The beneficiaries have taken active part in the execution of the Will, which has been proved through the testimony of DW-6 Fateh Singh, attesting witness. There is no description of the property in the Will. Wrong age of the executants has been given in the Will. Kitab Singh DW-9 admitted that he was called by the sons of Bhagwana etc. to scribe the Will. The witnesses are the interested persons. The Courts below have failed to appreciate that plaintiff and Gulab Singh were not having the knowledge of the impugned judgment and decree and the Will dated 4.8.1964 Ex.D1 and they only came to know about the same when the dispute arose regarding the mutation of the land belonging to Nanhi, thus, the findings are liable to be set-aside.

I have heard the learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the

submissions of Mr.Tara Chand Dhanwal, for, the suit has been filed by the plaintiff in collusion with defendant No.38 Gulab Singh to grab the land of the defendants, which has come to them from deceased Nanhi. No direct or cogent evidence has been led to establish the relationship with Nanhi. Ex.P17 has been tendered into evidence. No witness from the concerned department has been examined, thus, mere exhibition of the document does not dispense with its proof. Nanhi died on 2.2.2001 and the decree is of 1970. During all this time, she did not challenge the same.

As per record, Nanhi had kept 12 acres of land for her maintenance during her life time and had given remaining 60 acres of land to the defendants by way of impugned decrees in the year 1970. The decrees are based upon the admissions. No evidence of fraud and misrepresentation has been proved on record. If at all any fraud had been played, Nanhi had not kept silent. She would have raised hue and cry during her life time. The witness of the plaintiff has deposed that the thumb impressions of Nanhi over the power of attorney given in the suits in the year 1970 were of deceased Nanhi. The complete revenue record connecting the numbers of the land has not been produced.

PW-11 Parveen Kumar tried to prove mark PW11/A. The cross-examination of this witness shows that there was alleged admission of fabrication by mixing two pages in one page. The reports of the Finger Prints Expert examined on behalf of the parties proved the Wills dated 4.8.1964 and 26.12.2000 to be genuine and bore the thumb impressions of deceased Nanhi. The Will dated 26.12.2000 was scribed by an independent person, who was not related to the defendants. The plaintiff has miserably failed to discharge the onus. No evidence as per the provisions of Section 50

of the Indian Evidence Act to prove the relationship with Nanhi had been led. All these factors have been weighed in the mind of the Courts below.

For the foregoing reasons, I do not intend to differ with the concurrent findings. The same cannot be said to be erroneous and perverse. No ground for interference is made out.

Appeal stands dismissed.

December 09, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No