

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

RSA-3935-2013 (O&M)

Date of decision: 04.03.2016

Manjit Kaur

...Appellant(s)

Versus

Sarabjit Kaur and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Ms. Satpreet Grewal Kapila, Advocate,
for the appellant(s).

JITENDRA CHAUHAN, J.

The instant regular second appeal has been preferred against the judgment and decree dated 15.03.2010, passed by the learned Civil Judge (Junior Division), Dasuya (for short, 'the trial Court'), whereby, the suit of the plaintiff-appellant has been dismissed; and judgment and decree dated 20.04.2013, passed by the learned District Judge, Hoshiarpur (for short, the first Appellate Court), whereby, the appeal preferred by the appellant against the impugned judgment and decree dated 15.03.2010, of the trial Court, has been dismissed.

The plaintiff/appellant along with defendant-respondent No.2 had filed a suit for declaration to the effect that they being the legal heirs of Bhan Singh, are joint owners in possession of 12 Kanals 1 Marla of land left by the said Bhan Singh. It was averred that Bhan Singh died intestate on 26.08.2002, leaving behind the parties as his legal heirs and after his death, the parties became owners-in-possession of the suit property to the extent of their shares. The deceased never executed any Will, as he had no right to bequeath the property, being ancestral, had been inherited by him from his forefathers. The alleged Will in possession of defendant-respondent No.1 was a sham and bogus document.

In rebuttal, defendant-respondent No.1 filed written statement claiming therein that the appellant and defendant-respondent No.2 never took care of their father, the deceased-Bhan Singh. Rather, it was the respondent No.1, who used to serve her father, Bhan Singh, during his lifetime. Due to the services rendered by her, the deceased executed a legal and valid Will dated 09.06.2000, in favour of respondent No.1 and on the basis thereof, she alone was entitled to inherit the suit property of Bhan Singh. It was further stated that the suit land was self acquired property of Bhan Singh and thus, he was entitled to execute the Will in question, which was also held to be legal, valid and genuine in the

proceedings before the Court of learned Assistant Collector, 1st Class.

The learned trial Court, after appreciating the evidence led by the parties, dismissed the suit of the appellant.

The learned first Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record and dismissed the appeal of the plaintiff vide impugned judgment and order dated 20.04.2013.

Hence, this appeal at the behest of the appellant-plaintiff No.1.

The learned counsel contends that the suit land was ancestral property, therefore, the Will executed in favour of respondent No.1 is not a valid Will in the eye of law. She further submits that the land in question was owned by Dayal Singh. From Dayal Singh, the land came to the ownership of Labh Singh and subsequently, the testator, Bhan Singh.

I have heard learned counsel for the appellant and carefully perused the record.

In this case, the learned Courts below have observed that beyond the jamabandi, the supporting revenue record has not been placed on record. Therefore, the learned Courts have rejected

this argument of the plaintiff-appellant. The suit of the plaintiff was dismissed on the ground that he failed to prove on record any revenue evidence regarding the ancestral nature of the suit property in the hands of Bhan Singh. Once this issue is settled that the property in the hands of Bhan Singh was not ancestral, he was fully competent to make a Will. There is nothing on record which suggests that the Will executed by deceased Bhan Singh is not a genuine document. The learned first Appellate Court has rightly come to the conclusion that in view of due proof of execution of Will, Ex.D1, Sarabjit Kaur is alone entitled to succeed to the estate of deceased Bhan Singh. The learned first Appellate Court concurred with the findings recorded by trial Court on Issue Nos.1 and 2, holding that these are perfectly legal and valid.

In the above background, this Court does not find any perversity with the concurrent findings returned by the learned Courts below, which call for any interference by this Court. No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

Dismissed in limine.

04.03.2016

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(JITENDRA CHAUHAN)

JUDGE