

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 4173 of 2013(O&M)
Date of decision : February 18, 2016

Kaur Singh

..... Appellant

Versus

Gurdial Singh and others

..... Respondents

RSA No. 3750 of 2013(O&M)

Kaur Singh

..... Appellant

Versus

Santokh Singh

..... Respondents

RSA No. 3751 of 2013(O&M)

Kaur Singh and another

..... Appellant

Versus

Santokh Singh and others

..... Respondents

RSA No. 2679 of 1994 (O&M)

Mohinder Singh (deceased through L.Rs) and others

..... Appellant

Versus

Ram Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vikas Singh, Advocate and
Mr. Gaurav Tangri, Advocate
for the appellant.

Mr. Rakesh Gupta, Advocate
for the respondents.

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?

Amit Rawal, J (oral).

This order of mine shall dispose of four Regular Second Appeals bearing RSA No. 4173, 3750, 3751 of 2013 and 2679 of 1994.

RSA No. 2679 of 1994 has arisen out of filing of the suit by Ram Kaur wd/o Banta Singh, Nasib Kaur d/o Banta Singh (hereinafter called 'suit No.1) wherein they had sought possession to the extent of 3/4th share in the agricultural land described in the aforementioned suit, on the premise that on demise of Banta Singh there was no other legal heir except plaintiffs, therefore, they are entitled to the share. The aforementioned suit was contested by Mohinder Singh on the premise that Banta Singh had left a registered Will dated 14.1.1980 by virtue of which he had bequeathed the entire property in favour of his grand sons i.e. sons of Kaur Singh s/o Banta Singh. The said will could not be proved, though an attempt was made to get the thumb impression on the Will compared with certified copy of the mortgage alleged to have been executed by Banta Singh.

During the pendency of the appeal an application was made by the appellants for additional evidence that comparison of the thumb impressions of Banta Singh on the Will with that of the gift deed dated 4.6.1953. The said application was allowed and Sh.

Dewan K. S. Puri, finger print expert on comparison found the signatures not to be identical, it is in these circumstances the appeal has been filed by the defendants.

RSA Nos. 4173, 3750 and 3751 of 2013 have arisen out of filing of three suits, i.e. one filed by Kaur Singh claiming right in the property on the ground that the property at the hands of Banta Singh was ancestral and the sale deed executed by mother and daughter in favour of defendant No.3-Santokh Singh was not valid in law. The aforementioned suit is bearing Suit No.586 of 1996 (hereinafter called as 'suit No.2). Whereas Santokh Singh had filed separate suit No.60 of 2005 claiming separate possession by way of partition and permanent injunction. Another suit bearing No. 557 T of 23.12.2000 claiming permanent injunction restraining the defendants their servants and agents etc.from removing earth or changing nature of the land measuring 69 Bighas 12 Biswas (hereinafter called suit Nos. 3 and 4). All the suits were consolidated and dismissed by the trial court. However, the lower appellate court dismissed Suit No.2 but decreed suit Nos. 3 and 4.

Mr. Vikas Singh, and Mr. Gaurav Tangri, Advocates appearing on behalf of the appellant submits that there are umpteen number of documentary evidence on record to show that the property at the hands of Banta Singh/Jaimal Singh was ancestral in nature and therefore, sons namely Kaur Singh, Dila Singh born from the alliance of Ram Kaur and her first husband, would have inherited the entire property. The mother and daughter-defendant Nos. 1 and 2 did not have any right, title and interest, therefore, the sale deed

executed in favour of defendant No.3 was not valid in law. The suit was not maintainable as Santokh Singh cannot assume the character of co-sharers.

Viz-a-viz RSA No. 2679 of 1994 it has come on record that though thumb impression of Banta Singh from the Will to be got compared with the gift deed dated 4.6.1953 were permitted by way of additional evidence, found to be correct, therefore, the lower appellate court ought to have been dismissed the first suit, thus, substantial questions of law arise for determination by this Court.

Mr. Rakesh Gupta, learned counsel appearing on behalf of respondent No.6 submits that there is no illegality and perversity in the judgment and decree of the lower appellate court. On going through the statement of K. S. Puri, finger print expert, who in his report stated otherwise, in essence, stated that the thumb impression on the Will and gift deed did not tally. Having failed to prove the Will Kaur Singh, Ram Kaur widow and Nasib Kaur daughter of Banta Singh inherited the same by way of natural succession i.e. succeeded the estate of deceased Banta Singh by way of natural succession.

No evidence has been lead by the plaintiff to show nature and character of the property being ancestral. In the absence of examination of original excerpt or pedigree table, rightly so the appeal has been dismissed and decreed the suit of Santokh Singh., Since he has become a co-sharer after purchase of share of widow and daughter of Banta Singh.

I have heard learned counsel for the parties and appraised the paper book and am of the view that there is no merit in the appeals, for the sake of brevity cross examination of the statement of K. S. Puri, finger print expert is reproduced hereinbelow:-

“ In the Court of A.C.1st grade, Patiala, I had examined the disputed thumb impression on a Will dated 14.1.1980, the copy of which is LX.D1. I have compared the disputed signatures marked as Q1 and Q2 on the Will with gift deed dated 9.6.1953 which I have seen today and copy of the same is Ex. PW2/A (objected to). I was and am of the opinion that the disputed thumb impressions are not identical with the specimen thumb impression and therefore, cannot be of one person. My report is Ex. A1 in the revenue file copy of which is Ex.PW2/B. I also prepared photographic enlargement of the disputed thumb impression Q1 and Q1 and also that of specimen thumb impression S1 and S2 which were produced in the revenue file and the same are exhibited as A2 to A5 in that file. I also produce the negative of the photographs in the revenue file which are A6 to A9 in the revenue file. The revenue file is present in the court today and I have examined my report as well as the documents relied upon. Along with the photographs. These are the one which I have examined and prepared the report on the basis thereon. The reasons are given in the said report and certified copy of which is Ex. PW2/B and the same be read as part of my statement.”

Even this fact is on the same lines. Once Kaur

Singh failed to prove the Will alleged to have been executed by Banta Singh thus he deemed to have died intestate, therefore, all the children would succeed to his estate in equal shares.

Viz-a-viz second suit, the appellant-plaintiff has failed to prove nature and character of the property being ancestral. No evidence has been lead that the parties are fourth in lineage. Once Santokh Singh has stepped into the shoes of widow and wife of Banta Singh his status is of a co-owner with Kaur Singh and rightly so the suit was filed for separate possession.

I do not intend to differ with the finding rendered by the lower appellate court which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgment and decree of the lower appellate court.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeals are devoid of merits, accordingly, the same are dismissed.

(AMIT RAWAL)
JUDGE

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