

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

Date of decision : 23.09.2016

1.

RSA-1914-2016 (O&M)

Parminder Singh

... Appellant

Versus

Jetinder Singh and others

... Respondents

2.

RSA-2953-2016 (O&M)

Narinderjit Singh @ Lt. Col. K.N. Singh

... Appellant

Versus

Jetinder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. P.L. Singla, Advocate
for the appellant in both the appeals.

AMIT RAWAL, J. (ORAL)

CM-5083-C-2016 IN RSA-1914-2016

For the reasons stated in the application which is duly supported by an affidavit, the delay of 8 days in filing the appeal is condoned.

CM stands disposed of.

CM-7921-C-2016 IN RSA-2953-2016

Prayer in this application filed under Order 41 Rule 33 read with Section 151 CPC is for granting leave to file appeal on behalf of the applicant, namely, Narinderjit Singh.

For the reasons stated in the application which is duly supported by an affidavit, the application is allowed and the applicant is permitted to file an appeal.

CM stands disposed of.

CM-7922-C-2016 IN RSA-2953-2016

For the reasons stated in the application which is duly supported by an affidavit, the delay of 13 days in filing the appeal is condoned.

CM stands disposed of.

MAIN CASES

This order of mine shall dispose of two appeals bearing **RSA No.1914 of 2016** titled as **“Parminder Singh V/s Jetinder Singh and others”** and **RSA No.2953 of 2016** titled as **“Narinderjit Singh @ Lt. Col. K.N. Singh V/s Jetinder Singh and others”**.

The appellant-plaintiff is aggrieved of the dismissal of the suit seeking the following relief:-

“Suit for possession as owner declaring that the plaintiff No.1 is co-owner to the extent of 1/5 share, where as the plaintiff No.2 and defendants No.9 and 10 are co-owners to the extent of 1/5 share in equal shares and the defendant Nos.7 & 8 are co-owners are co-owners to the extent of 1/5 share in equal share and defendant No.11 Swaran Singh is co-owner to the extent of 1/5 share with regard to the land (estate of Sh. Warayam Singh son of Amar Singh deceased) bearing Khewat No.2183, Khatoni No.2518, Rect. No.136//17 (7-11), 18(6-4) and Khewatr No.1199, Khatoni No.1339, rect No.160//16 (7-12), 17/1 (1-16), 25(7-12), with all rights in the well tube well, paths, trees and all other rights appurtenant thereto situated in

village Bilga, Tehsil Phillaur, as pre Jamabandi of the year 1996-97, after declaring that the revenue entries in the name of defendants No.1 and 2 with regard to the above mentioned land as owner, is illegal, null and void and the alleged sale deed along with mutation thereof, to have been executed by defendant Nos.1 and 2 in favour of defendant No.3/Resham Singh, if any, along with mutation in favour of Harbans Singh, deceased and subsequently in favour of defendants No.1 and 2 on the basis of the alleged collusive decree in the revenue record is illegal, null and void along with mutation No.6700 of tabdeel Malkeet dt. 20-3-1984 in favour of Harbans Singh deceased son of Warayma Singh and subsequent mutation of tabdeel Malkeet in favour of defendants No.1 and 2 No.8814 dt. 12-9-96 are illegal, null and void and the same are liable to be set aside and the plaintiffs are not bound by it all

WITH CONSEQUENTIAL RELIEF OF

Permanent injunction to the effect that the defendants No.1, 2 and 3 may be restrained from alienating by way of sale, gift, mortgage release or otherwise in any manner forever of the land bearing Khewat no.2183, Khatoni No.2518, Rect. No.136//17 (7-11), 18 (6-4) and Khewat No.1199, Khatoni No.1339, Ret. No.16// (7-12), 17/1 (1-16), 25(7-12), situated in the area of village Bilga, Tehsil Phillaur, as per copy of jamabandi for the year 1996-97.”

on the premise that Waryam Singh had executed a registered Will dated 21.02.1972 and it consisted of all his property situated in three villages, thus, he could not have executed a collusive decree dated 16.02.1983 and on the basis of that, mutation bearing No.6700 effected on 20.03.1984 was illegal, null and void in law.

Mr. P.L. Singla, learned counsel appearing on behalf of the appellant-plaintiff submits that the Will dated 21.02.1972 of Waryam Singh

propounded by the respondents-defendants has been proved and the fallout of the same is that the property has been mutated on the basis of the Will of 1972. It is in this background of the matter, the suit has been filed. Harbans Singh was competent person to challenge the Will of 1972 of Waryam Singh not his heirs. He submits that the original Will dated 21.02.1972 was in custody of Harbans Singh, but the secondary evidence was allowed and PW-1, a person from the office of the Registrar had produced the Will. The witnesses of the Will died and therefore, there was no occasion of proving the Will. He has relied upon the Division Bench judgment of this Court rendered in **“Mehtab Singh Gurbachan Singh V/s Amrik Singh and others” 1957 AIR (Punjab) 146** to contend that the certified copy of the Will having been obtained from the office of the Registrar being 30 years' old carries a presumption. All these facts have been escaped to the notice of both the Courts below, thus, urges this Court for formulation of the substantial question of law as drawn in the memorandum of appeal and for setting aside the judgment and decree under challenge.

I have heard the learned counsel appearing on behalf of the appellant-plaintiff and appraised the paper book and of the view that the onus to discharge the burden and to prove the averments in the plaint was upon the plaintiff, but he miserably failed to discharge the same inasmuch as no efforts have been made in complying the provisions of Section 69 of the Indian Evidence Act. Mere exhibition of the document does not dispense with proof of the same. The collusive decree dated 16.02.1983 is during the lifetime of Waryam Singh, who died on 04.03.1984. All this period, he remained alive, but did not challenge the same. Even if he

bequeathed the property which has been transferred by way of Will during his lifetime, he can always change the line of succession, which has actually been done, therefore, the appellant-plaintiff cannot take the benefit of the Will in respect of acts done by the testator during his lifetime. As regards the *ratio decidendi* culled out by the Division Bench judgment rendered in “Mehtab Singh's case (supra), I am afraid that the provisions of Section 90 of the Indian Evidence Act would not apply to the Wills, even if it is a registered document, therefore, I do not scribe down the reasoning given by the Courts below as it is now a settled proposition of law that the benefit of Section 90 of the Indian Evidence Act cannot be made applicable to the Will. All these facts have been taken into consideration by both the Courts below.

For the foregoing reasons, I do not find any stark reason or any strength in the submissions of Mr. P.L. Singla, to disagree with the concurrent findings rendered by both the Courts below and formed a different opinion which is based upon the appreciation of oral and documentary evidence. No ground is made out for interference and accordingly, the same is dismissed.

23.09.2016
yogesh

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned Yes/ No

✓

Whether Reportable Yes/ No