

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
104**

RSA No. 4693 of 2013

Date of decision: April 11, 2016

Uma and others

...APPELLANTS

Versus

Nirmal Gupta and others

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Harish Bhardwaj, Advocate,
for Mr. Vivek Goyal, Advocate,
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Yamuna Nagar at Jagadhri dated 21.11.2009, whereby the suit for declaration preferred by the respondents-plaintiffs against the appellants-defendants declaring them to be joint owners in possession to the extent of 11/60 share each and defendants 1 (a) to 1 (d) with 11/60 share and defendants 2 to 6 to the extent of 1/60 share each of the suit property and the Will dated 20.01.1996 executed by Sh. Krishan Dass father of the plaintiffs as forged, fabricated, illegal, null and void and ineffective qua the rights of the plaintiffs in favour of the defendants, stands decreed, appeal against which preferred by the appellants-defendants has been dismissed by the District Judge, Yamuna Nagar at Jagadhri on 25.01.2013.

2. It is the contention of the learned counsel for the appellants that the assertion of the respondents-plaintiffs that the suit land was ancestral and, therefore, could not have been bequeathed by Krishan Chand in favour of Pardeep Kumar Mangla, husband of appellant No. 1, cannot be accepted as it has come on record that Krishan Chand had only inherited the property from his father and no further evidence has been brought on record showing it to be further inherited by the grandfather. His further contention is that the due execution of the Will dated 20.01.1996 has been proved in favour of the husband of appellant No. 1 and, therefore, the Court further going into the genuineness of the Will had come to a conclusion, that too, based upon the evidence, which has come in a criminal case, which was registered against the husband of appellant No. 1 where he has been acquitted, which cannot sustain. Prayer has, thus, been made for setting aside the impugned judgments and dismissing the suit of the respondents.

3. I have considered the submissions made by the learned counsel for the appellants and with his assistance, have gone through the impugned judgments.

4. The best case which Shri Pardeep Kumar Mangla, husband of appellant No. 1 could have made out was that the Will dated 20.01.1996 executed by Krishan Chand, the father of respondents No. 5, 6, 7-plaintiffs No. 2, 3, 4 was genuine. The said Will when considered keeping in view the discrepancies, as have been pointed out by the learned District Judge in his impugned judgment dated 25.01.2013, leaves no manner of doubt that the findings recorded therein with regard to the Will being not a genuine one cannot be faulted with. The signatures on the Will, which were sought to be proved of Krishan Chand through the evidence of a handwriting

expert, namely, Devender Parshad-DW6 in his report Ex. DW6/A, were based upon the standard signatures, which were Ex. DW6/C but the said document, which was obtained from the Punjab National Bank, has not been proved to be so taken from the custody of the said bank as no bank official has been examined nor has the handwriting expert said that he had taken the photographs from the original documents after going to the bank rather in his cross-examination, he has stated that the document Ex. DW6/C was produced before him by the husband of appellant No. 1. Further, in the criminal case, which was, admittedly, registered against the husband of appellant No. 1, the Forensic Science Laboratory, Haryana, Madhuban had given its report. The discrepancies and variations, as found therein, have been detailed in para-11 of the Lower Appellate Court judgment. Taking that into consideration and further that in all the documents, which were taken as the standard documents, even on document Ex. DW6/C, Krishan Chand had signed 'Siri Krishan Dass Bakalam' whereas in the disputed Will, he has signed as 'Siri Krishan Chand'. The findings, thus, as recorded by the Courts below cannot be faulted with as the same are based upon proper appreciation of the pleadings and the evidence brought on record.

5. No other point has been raised or argued by the counsel for the appellants.

6. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below.

7. There is no substantial question of law in the present appeal, which requires consideration of this Court.

8. In view of the above, finding no merit in the present appeal, the same stands dismissed.

April 11, 2016
pj

(AUGUSTINE GEORGE MASIH)
JUDGE