

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

RSA-2758-2016 (O&M)

Date of decision: 01.06.2016

Virender and others

...Appellant(s)

Versus

Raj Kaur and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Sanjay Vashisth, Advocate,
for the appellant(s).

JITENDRA CHAUHAN, J.

This regular second appeal has been filed by the defendants against the judgment and decree dated 19.02.2016, passed by District Judge, Jhajjar vide which the appeal filed by the plaintiffs was partly allowed and the suit of the plaintiffs was partly decreed.

In brief, the plaintiff/respondents filed suit for declaration and permanent injunction. It was pleaded by the plaintiffs that late Sh. Jai Narain was the husband of plaintiff No.1 and father of plaintiff Nos.2,3 and 4. Defendant No.1 is also son of late Sh. Jai Narain. Defendant Nos.2 and 3 are the grandsons of late Sh. Jai Narain. The deceased was owner in possession of the

suit land fully detailed in the plaint. Said Jai Narain expired on 05.06.2008, leaving behind the plaintiffs and the defendants as his legal heirs. They were to inherit the property left by the deceased but to the utter surprise of the plaintiffs, a Will dated 26.02.2007 registered on 26.09.2008 was executed by late Sh. Jai Narain. The plaintiffs termed the Will as forged and fabricated and sought declaration that they be declared owners of the property on the basis of inheritance.

On notice, defendant Nos.1 to 3 appeared, filed their separate written statements and contested the suit by setting up Will dated 26.02.2007, registered on 26.09.2008 executed by late Sh. Jai Narain in his favour. The nature of the property being ancestral was denied. The Will was genuine and the same was executed by the deceased in sound disposing mind.

After appraisal of the evidence, the learned trial Court dismissed the suit vide judgment and order dated 21.01.2015, and upheld the validity of the Will. It was observed by the trial Court that the plaintiffs failed to prove that the nature of the land was ancestral. The onus to prove that the land was ancestral was upon the plaintiffs as the plea of land being ancestral was taken up by them.

Feeling aggrieved, plaintiff Nos.2 and 3 i.e. the

daughters of Jai Narain filed appeal before the lower Appellate

Court. The lower Appellate Court, vide judgment and decree dated 19.02.2016, partly allowed the appeal observing that the deceased was holding ancestral as well as self-acquired property. Qua ancestral property, the deceased was not competent to execute any Will. Therefore, the Will qua ancestral property was held to be not valid.

Feeling dissatisfied, the present regular second appeal has been filed by the defendants assailing the judgment and decree dated 19.02.2016.

On behalf of the appellants, it is contended that the trial Court was right in dismissing the suit in *toto*. However, the lower Appellate Court committed grave error in partly decreeing the suit. It is further contended that the lower Appellate Court committed error in decreeing the suit by holding that each of the appellants are entitled to 1/6th share in the property left by the deceased. It is contended that the findings of the lower Appellate Court are self-contradictory. On the one hand, the lower Appellate Court has maintained the validity of the Will whereas, on the other hand, it has resettled the shares of the parties. Lastly, it is contended that the onus to prove that the land was ancestral in nature was upon the plaintiffs. It is the plaintiffs who have taken the plea that land was ancestral in nature. The lower Appellate Court committed error in assuming the nature of the property as ancestral without

there being any evidence led by the plaintiffs. Had the plaintiffs led any evidence to this effect, the defendant/appellants would have got right to rebut the same. The lower appellate Court on its own assumed the nature of the property as ancestral and partly set aside the Will. The finding is based on no evidence.

I have heard the learned counsel for the appellants and have gone through the case file.

In this case, the plaintiffs are seeking declaration of ownership on the basis of inheritance whereas, the defendant No.1 lays his claim over the property on the basis of Will (Ex D1). The validity of the Will (Ex.D1) has been upheld by both the Courts below. The grouse raised by the appellants in the instant appeal relates to the resettlement of the shares by the lower Appellate Court and that the plaintiffs have been granted relief partly without there being any evidence led by the plaintiffs to the effect that the land bequeathed is ancestral in nature. The testator in Will (Ex.D1) himself mentioned that some parcels of the land are ancestral and some parcels are his self-acquired property. The lower Appellate Court held the validity of the Will qua self-acquired property whereas, with regard to the ancestral property, the Will was held to be not valid. The testator has mentioned at page No.4 of the Will that he owns the house bearing No.D-119, Mohalla Shanti Nagar, Patwara Road, Jaipur which is his self-acquired property. In para

No.6 of the Will, he has mentioned that apart from the other properties, he has ancestral property which he has got from his ancestors which is situated at Jhajjar District, Haryana. At page No.4 and 5 of the Will, he has mentioned that three killas of land situated at Village Machhroli and a plot adjoining the road are his self-acquired properties. Apart from this, 6-1/4 acres of agricultural land and an old house situated at Pana Sudan of the Village had been inherited by him from his ancestors, which he had got in partition. Again, at Page No.7 of the Will, he has mentioned that 6-1/4 acres of the agricultural land and the house situated at Pana Sudan are his ancestral properties and on his death, it would be inherited by his son Virender and grand-sons, namely, Priyanshu Choudhary @ Pintu and Deepak Choudhary @ Leelu (defendants No.1 to 3). The Will was set up by the defendants, therefore, onus to prove its recitals was also upon the defendants. In the absence of any evidence led by any of the parties, the lower Appellate Court placed reliance on the recitals of the Will, therefore, agricultural land of 6-1/4 acres and the house situated at Pana Sudan were held to be ancestral properties. Consequently, the testator was not competent to execute Will in respect of these properties. The testator died after 2005. Therefore, his widow, two daughters and two sons would be entitled to one share each in the same along with the testator. In this notional partition, the testator would have

got 1/6th share in the aforesaid two properties i.e. the agricultural land and the house and he could execute the Will in respect of his 1/6th share. The remaining 5/6th share would be the joint property of the parties.

This Court does not find any reason to interfere in the well reasoned judgment passed by the lower Appellate Court. There is no misreading or misinterpretation of the evidence. There is no question of law involved in the present regular second appeal. Consequently, the appeal is dismissed.

01.06.2016
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(JITENDRA CHAUHAN)
JUDGE