

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

(1) RSA-2155 of 2015 (O&M)
Date of decision: 19.05.2016

Harmeet Kaur and others

...Appellants

Versus

Harnek Singh and others

...Respondents

(2) RSA-3437 of 2015 (O&M)
Date of decision: 19.05.2016

Harnek Singh

...Appellant

Versus

Jora Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Rakesh Bhatia, Advocate for the appellants
(in RSA-2155-2015).

Mr. A.K. Garg, Advocate for the appellant
(in RSA-3437-2015).

Jitendra Chauhan, J. (Oral)

The above noted two appeals are being disposed of by
this single judgment, having arisen out of common judgment.

However, the facts are being derived from RSA No. 2155 of 2015.

2. The facts giving rise to these appeals, briefly stated are

that Harnek Singh along with his brothers Mukhtiar Singh and Dara Singh and sisters Daro and Melo (hereinafter to be referred as 'the plaintiffs') brought a suit seeking declaration to the effect that they are owners in possession in equal shares of the land measuring 7 bighas 14-3/4 biswas i.e. 1/12th share left behind by Smt. Surjo widow of Tara Singh, another brother of Harnek Singh, out of the total land measuring 92 bighas 17 biswas, fully detailed and described in the plaint and that the Will dated 05.05.1993 allegedly executed in favour of Jora Singh (hereinafter to be referred as 'defendant No.1') is illegal and forged document and has no effect on their rights; mutation No.4168 dated 20.10.2003 of village Baran sanctioned on the basis of said Will is also illegal and further the sale deed dated 29.12.2004 executed by defendant No.1 in favour of defendant Nos.2 & 3, namely, Sukhwinder Singh and Harbans Singh is illegal, null and void. The plaintiffs have also sought to injunct the defendants from interfering in their possession over half share of the suit land left behind by Smt. Surjo.

3. To understand the controversy between the parties, it would be relevant to scan the genealogical tree of the parties. Bakshi son of Rodu, predecessor-in-interest of the parties had six sons, namely, Mukhtiara, Dara, Harnek Singh, Tara Singh, Kartara, Narata and two daughters, namely Daro and Melo. Mukhtiara and Dara died during the pendency of the suit, whereas, Kartara and Narata had

expired a long time back. Tara Singh died issueless and his wife Smt. Surjo was co-owner to the extent of $1/12^{\text{th}}$ share of the suit property. Narata is survived by his wife and a daughter. Smt. Surjo had died about 10 years prior to the filing of the suit. She had inherited the land in question by intestate succession from the side of her husband Tara Singh/ father-in-law, namely Bakshi. Since the plaintiffs were brothers and sisters of her husband Tara Singh, therefore, the share of Smt. Surjo in the land in question devolved upon them under Section 15 and 16 of the Hindu Succession Act, 1956. Smt. Surjo had not executed any Will. Defendant No.1 had got the mutation sanctioned in his favour on the basis of a forged and false Will dated 05.05.1993, without any right, title or interest therein. He had also sold land measuring 7 bighas $14-3/4$ biswas i.e. $1/12^{\text{th}}$ share left behind by Smt. Surjo to defendant Nos. 2 & 3, vide sale deed dated 29.12.2004, for sale consideration of Rs.8,08,000/-. Mutation regarding inheritance of Smt. Surjo was got sanctioned by defendant No.1 at their back. The plaintiffs are rightful owners of the suit property and the defendants have been threatening to interfere in their peaceful possession. Hence the suit.

4. The defendants contested the suit and filed joint written statement. It is averred that plaintiffs are neither children of Bakshi son of Rodu nor have any concern with Tara Singh. Smt. Surjo was absolute owner of the suit land and was having $1/12^{\text{th}}$ share therein.

Defendant No.1 is her cousin being the son of her uncle Gurdial Singh. Last rites of Smt. Surjo were performed by defendant No.1 and his father Gurdial Singh. Out of love and affection, Smt. Surjo executed a legal and valid Will dated 05.05.1993 in his favour. Mutation of inheritance was rightly sanctioned in his favour against which no appeal/revision was filed. Defendant Nos. 2 & 3 are bonafide purchasers for consideration and are protected under Section 41 of the Transfer of Property Act, 1882. Mutation No.4491 dated 04.02.2005 was rightly sanctioned in favour of defendant Nos. 2 & 3 on the basis of sale deed. Defendant Nos. 2 & 3 are owners of the suit land.

5. After hearing learned counsel for the parties and evaluating the material on record, the learned trial Court concluded that the defendants have failed to prove execution of any Will by Smt. Surjo in favour of defendant No.1 and as such, he had no right, title or interest in the land in question. The trial Court further observed that after the death of Mukhtiara and Dara Singh, plaintiff Harnek Singh has become co-owner to the extent of 1/4th share of the land left behind by Smt. Surjo and 1/4th share of the land goes to the legal heirs of Narata Singh and remaining share devolved upon Daro and Melo, but they have relinquished their shares. Consequently, the learned trial Court has decided issue No.2A and 3 against the defendants and decreed the suit of the plaintiffs, vide impugned

judgment and decree dated 12.05.2012, declaring the sale deed dated 29.12.2004 as invalid and not binding on plaintiff Harnek Singh to the extent of his share.

6. Feeling aggrieved, plaintiff Harnek Singh and defendant Nos. 1 & 2 along with one Harmeet Kaur, (appellant No.1 herein in RSA No.2155 of 2015), who had purchased the suit land from defendant Nos. 2 & 3 during the pendency of the suit, preferred separate appeals before the learned 1st Appellate Court. The appeal filed by plaintiff Harnek Singh was allowed, whereas, the appeal filed by defendant No.1 and others was partly allowed. The judgment and decree of learned trial Court was modified by the learned 1st Appellate Court to the effect that plaintiff Harnek Singh in his own right and being one of the legal heirs of Mukhtiar Singh and Dara Singh is owner to the extent of 1/3rd share of land left behind by Smt. Surjo out of the total land and the Will dated 05.05.1993 and the mutation bearing No.4168 dated 20.10.2003, sanctioned on the basis of said Will is illegal, null and void. However, the claim of the plaintiffs for grant of injunction was declined. The remaining 2/3rd share of Smt. Surjo was held to be that of defendant Nos.2 & 3 as they had purchased the land in question from defendant No.1. Harmeet Kaur was held to have stepped into the shoes of vendors having purchased the suit land during the pendency of the suit.

7. Still not satisfied both the parties have filed second appeals.

8. RSA No.2155 of 2015 has been filed by subsequent purchaser Harmeet Kaur and defendant Nos. 1 & 2, Jora Singh and Sukhwinder Singh, whereas RSA No.3437 of 2015 has been filed by plaintiff Harnek Singh.

9. This Court shall at the very onset deal with RSA No.2155 of 2015, filed by subsequent purchaser Harmeet Kaur and defendant Nos. 1 & 2, Jora Singh and Sukhwinder Singh. Learned counsel contends that order passed by the learned trial Court holding plaintiff No.1 as owner in possession of 1/4th share left by Smt. Surjo and the order passed by learned 1st Appellate Court holding him owner in possession of 1/3rd share is factually incorrect. Both the Courts below have discarded Will dated 05.05.1993 in favour of defendant No.1 and have not taken into consideration that plaintiff Nos. 4 & 5, namely, Smt. Daro and Smt. Melo, the other daughters of Bakshi admitted the Will executed by Smt. Surjo in favour of defendant No.1. Admission is the best evidence that an opposing party can rely upon, and though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous. Defendant Nos. 2 & 3 are bonafide purchasers for consideration as they purchased the suit land after verifying the revenue records.

10. Per contra, the learned counsel for plaintiff Harnek Singh

assails the findings of learned 1st Appellate Court, whereby the findings returned by learned trial Court regarding the sale deeds were reversed and also regarding the injunction qua the possession of plaintiff Harnek Singh. The learned 1st Appellate Court fell into error by returning the findings regarding the entitlement of defendant Nos. 2 & 3 and further of subsequent purchaser Harmeet Kaur to the extent of 2/3rd share of the property of deceased Smt. Surjo. The succession qua the 2/3rd share should not have been kept open as the Will has been rightly discarded by both the Courts below.

11. The following substantial questions of law arise for consideration of this Court:-

- (i) Whether it was incumbent upon the learned lower Appellate Court to keep the succession open qua the 2/3rd share of the property of deceased Smt. Surjo as it is without assigning it further to subsequent vendee especially when the Will has been discarded?
- (ii) Whether the findings contained in the impugned judgment are perverse, contrary to record and to law and the same are not legally sustainable in the eyes of law as the same have been returned without any reasoning?
- (iii) Whether the learned lower Appellate Court has misread, misconstrued and misinterpreted the documentary evidence and as such gravely erred by returning the perverse findings?
- (iv) Whether the learned lower Appellate Court should have decided the matter on proved facts rather to give

judgments only on presumption and ignoring the legally proved documents on record?

(v) Whether the subsequent sale deeds executed on the basis of title allegedly gained by virtue of Will dated 05.05.1993 can be held to be valid especially when the Will dated 05.05.1993 has been held to be null and void?

(vi) Whether the findings returned by the learned lower Appellate Court holding that the claim of plaintiffs regarding grant of injunction is declined are perverse especially when their possession is proved and admitted?

12. After giving anxious consideration in the matter, this Court is of the definite opinion that the plea of defendant Nos. 2 & 3 being bonafide purchasers of the suit land is undeserving of acceptance. The original Will has not seen the light of the day. No attesting witness of the Will in question has been examined. Mere admission by plaintiff Nos. 4 & 5, namely Smt. Daro and Smt. Melo would not fulfill the requirement of proving the due execution of Will. In S.R. Srinivasa Vs. S. Padmavathamma, 2010(5) SCC 274, Hon'ble the Supreme Court has held as under :-

“Examined on the basis of the law stated above we are unable to agree with the High Court that there was no need for independent proof of the Will, in view of the admissions made in OS No.233 of 1998 and the evidence of PW1. In fact there is no admission except that Puttathayamma had executed a Will bequeathing only the immovable properties belonging to her in

favour of Indiramma. The First Appellate Court, in our opinion, correctly observed that the aforesaid admission is only about the making of the Will and not the genuineness of the Will. Similarly, PW1 only stated that he had come to know about the registration of the Will of his grandmother favouring Indiramma through the written statement of the first defendant. The aforesaid statement is followed by the following statements "Other than that I did not know about the Will. She was not signing in English. I have not seen her signing in Kannada. There was no reason for my grand mother to write a Will favouring Indiramma." Even in the cross- examination he reiterated that "I know about the will written by Puttathayamma on 18.6.1974 bequeathing the properties to Indiramma only through the written statement of the first defendant." In view of the above we are of the opinion that the High Court committed an error in setting aside the well-considered finding of the First Appellate Court. The statements contained in the plaint as well as in the evidence of PW1 would not amount to admissions with regard to the due execution and genuineness of the Will dated 18.6.1974."

13. In the instant case, learned Courts below have rightly discarded the Will. Defendant No.2, Sukhwinder Singh stepped into the witness box as DW1 and admitted in most unambiguous terms during course of his cross examination that defendant No.3 Harbans Singh had retired from Govt. service and his son was a revenue patwari. Smt. Surjo had died in the year 1994, whereas mutation

regarding inheritance of Smt. Surjo was sanctioned in the year 2003. Within the short time of sanction of the said mutation, defendant Nos. 2 & 3 purchased the suit land from defendant No.1. Learned 1st Appellate Court has rightly observed that there is nothing to show that the plaintiffs were aware of the sanction of mutation regarding inheritance of Smt. Surjo in favour of defendant No.1. In fact, said mutation was sanctioned at the back of plaintiff and it cannot be said that defendant No.1 was ostensible owner of the land in question with consent, express or implied of the plaintiffs. It has further been rightly observed by the learned 1st Appellate Court that neither Jora Singh was in possession of any portion of the land in question nor defendant Nos. 2 & 3 made any enquiries from the plaintiff and as such they cannot be said to be bonafide purchasers.

14. It is established on record that the land in question was inherited by Smt. Surjo or her husband and mother in-law. Since she had died issueless and intestate, therefore, her share would devolve upon the heirs of her husband. Her husband had not left behind any Class-1 legal heir. Therefore, as per Section 15 and 16 of Hindu Succession Act, 1956, in the absence of children and husband of the deceased, the property inherited by Smt. Surjo shall devolve upon the heirs of her husband and not the heirs of her father or mother. In the instant case, the plaintiffs being brothers and sisters would be preferred to defendant No.1, Jora Singh, being the son of her uncle

Gurdial Singh. The Will dated 05.05.1993 and mutation No.4168 dated 20.10.2003 sanctioned on the basis of said Will have been rightly held to be null and void by the learned 1st Appellate Court. However, the learned 1st Appellate Court erred in holding that the remaining 2/3rd share of Smt. Surjo goes to defendant Nos. 2 & 3, namely, Sukhwinder Singh and Harbans Singh, as they had purchased the land in question. Further, the observations of learned 1st Appellate Court that since Harmeet Kaur had purchased the land in question from Sukhwinder Singh and Harbans Singh during the pendency of the suit, therefore, she would step into the shoes of the vendors, are also liable to be reversed. The learned 1st Appellate Court has rightly held that the sale deed dated 29.12.2004, executed by defendant, Jora Singh in favour of defendant Nos. 2 & 3, has no effect on the rights of plaintiff, Harnek Singh. The claim of plaintiffs for grant of injunction has also rightly been declined by the learned 1st Appellate Court.

15. In view of the above discussion, all the substantial questions of law, reproduced above, except question No.(vi), are answered in favour of plaintiff Harnek Singh. The succession qua 2/3rd share of the property of deceased Smt. Surjo cannot be left open.

16. In the final analysis, this Court finds no merit in the appeal preferred by Harmeet Kaur, Jora Singh and Sukhwinder

Singh. Accordingly, RSA No.2155 of 2015 is hereby dismissed and RSA No.3437 of 2015, filed by plaintiff Harnek Singh is partly allowed in the terms stated above.

19.05.2016

sumit.k

(JITENDRA CHAUHAN)
JUDGE