

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-2617-2015 (O&M)

Date of decision : 21.01.2016

Ballar Singh and another

... Appellants

Versus

Surinder Kaur and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Ashish Verma, Advocate
for the appellants.

Mr.Baldev Raj Mahajan, Senior Advocate
with Mr. Akhilesh Vyas, Advocate
for the caveator.

REKHA MITTAL. J.

The present regular second appeal has been directed against the concurrent finding recorded by the courts below whereby the suit filed by Surinder Kaur Mann-respondent No.1 was decreed by the learned trial Court and the judgment and decree passed by the learned trial Court was affirmed in appeal.

The present litigation relates to inheritance to the estate left behind by Sh. Gian Singh Samra, father of the appellants and respondent No.1 and husband of Smt.Parkash Kaur, proforma respondent No.2. Smt.Surinder Kaur Mann, the daughter of Sh. Gian Singh Samra filed the suit for joint possession as owner of 1/4th share in land measuring 87

kanals 15 marlas situated in village Samrai-II, Tehsil Phillaur, District Jalandhar detailed in the head note of the plaint and for separate possession by way of partition of 1/4th share in house No.190 situated at New Jawahar Nagar and Haveli situated at Patti Thakerwal, Tehsil Phillaur, District Jalandhar on the premise that she has inherited to the estate of her father to the extent of 1/4th share being one of the Class I heirs of Sh.Gian Singh Samra.

The appellants filed the written statement jointly and staked their claim to the suit property on the basis of Will dated 15.04.2002 purported to be executed by the deceased in favour of his sons. Another plea raised by the appellants is that suit property in the hands of Gian Singh was ancestral having devolved from his ancestors. The appellants became co-owners to the extent of 1/4th share in the suit property on the basis of Will dated 15.04.2002 and the remaining 3/4th share also came to their ownership by way of notional partition. However, respondent No.2 (defendant No.3), the mother of the contesting parties did not join the proceedings and was proceeded against ex-parte.

The learned trial Court discarded the Will dated 15.04.2002 propounded by the appellants, negated their plea that the suit property was co-parcenary having been inherited by Gian Singh from his forefathers and therefore, the parties were held entitled to inherit to estate of the deceased on the basis of natural succession in view of the provisions of Section 8 of the Hindu Succession Act 1956. As a result, respondent No.1

was held entitled to 1/4th share in the suit property and her claim for joint possession of the agricultural land to the extent of 1/4th share and separate possession by partition of 1/4th share in the house and Haveli were accepted and a preliminary decree was passed in respect of the properties, she was held entitled to get partitioned by metes and bounds. The findings recorded by the learned trial Court were affirmed in appeal preferred by the appellants.

Counsel for the appellants has submitted that the courts below have committed a serious error rather illegality in discarding the Will propounded by the appellants. In support of his contention, he urged that the appellants examined Jagjit Singh, one of the attesting witnesses of the Will and he has fully supported the cause of the appellants. The Will was got registered after the death of Sh.Gian Singh Samra.

I have heard counsel for the appellants and perused the records.

Counsel for the appellants has fairly conceded that there is no evidence on record to substantiate the plea of the appellants that the property, subject matter of the suit, was either inherited by Sh. Gian Singh Samra from his forefathers much less the same being co-parcenary giving a right in favour of the appellants, by way of birth. In this view of the matter, the courts below have rightly rejected plea of the appellants that they got 3/4th share in the suit property being the members of co-parcenary consisting of Sh. Gian Singh Samra and the appellants.

The appellants have set up a Will claiming that Sh. Gian Singh Samra bequeathed his 1/4th share in the suit property by way of Will dated 15.04.2002. The appellants examined Jagjit Singh, one of the alleged attesting witnesses of the Will Ex.D1. The Will in question is dated 15.04.2002 and Sh. Gain Singh Samra admittedly passed away on 15.05.2002. Jagjit Singh, the attesting witness of the Will is none else than brother-in-law of appellant Ballar Singh, therefore, he is a person highly interested in the claim of the appellants as Ballar Singh (his brother-in-law) is one of the beneficiaries under the Will.

The other attesting witness of the Will namely Ajit Singh Sethi has not been examined. On the contrary, the respondents examined Sh. Arvind Sood, Handwriting and document expert to prove that Will Ex.D1 does not bear the signatures of Gian Singh Samra as the purported signatures of Sh. Gian Singh Samra did not tally with his standard signatures obtained from the bank records. The appellants did not examine any expert to counter the report and statement of Sh. Arvind Sood PW2. This Court is not oblivious of the fact that invariably, the expert engaged by a party deposes in favour of the party who has paid for availing of his services. At the same time, keeping in view the fact that Jagjit Singh, the only witness examined to prove the Will is highly interested in success of claim of the appellants coupled with the time gap between the date of execution of the Will and death of the deceased, in my considered opinion, no fault can be found in the consistent findings

recorded by the Courts below. That being so, neither any substantial question of law arises for adjudication as has been sought to be raised in the grounds of appeal or otherwise nor there is any error much less illegality in the impugned judgments.

No other point has been raised.

For the aforesaid reasons, finding no merit, the appeal is dismissed in limine. No order as to costs.

(REKHA MITTAL)
JUDGE

January 21, 2016.

Davinder Kumar