

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

RSA-2695-2015 (O&M)

Date of decision: 21.01.2016

Appar Singh

...Appellant(s)

Versus

Bhagwan Singh and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. V.B. Aggarwal, Advocate for the appellant(s).

JITENDRA CHAUHAN, J.

The instant regular second appeal has been preferred against the judgment and decree dated 26.09.2011, passed by the learned Civil Judge (Junior Division), Karnal (for short, 'the trial Court'), whereby, the suit of the plaintiff-appellant has been dismissed; and judgment and decree dated 04.11.2014, passed by the learned Additional District Judge, Karnal, (for short, the first Appellate Court), whereby, the appeal preferred by the plaintiff-appellant against the impugned judgment and decree dated 26.09.2011, of the trial Court, has been dismissed.

The plaintiff filed suit for declaration to the effect that the plaintiff is the owner-in-possession of the land detailed therein and mutation No.597 is illegal, null and void and not binding upon

the rights of the plaintiff, along with the consequential relief of permanent injunction restraining the defendants from dispossessing the plaintiff from the suit land. The learned trial Court dismissed the suit of the plaintiff.

The learned first Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record and dismissed the appeal vide impugned judgment and order dated 04.11.2014.

Hence, this appeal at the behest of the plaintiff.

Learned counsel for the appellant has submitted that the learned Courts below fell in error in relying upon a copy of Will dated 14.07.2000, which was marked as Mark DA, as the same was neither proved nor exhibited. On the contrary, the registered Will dated 12.06.2013, which was exhibited as Ex.PW3/A, has been ignored. He contends that it is a settled proposition of law that until and unless the document in question is exhibited as duly proved, it cannot be read in evidence.

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

The present case hinges around the alleged Will dated 12.06.2003, certified copy whereof has been tendered in evidence by the plaintiffs as Ex.PW3/A. The case of the plaintiff-appellant is that the defendants, in collusion with revenue officials, got

entered and sanctioned mutation No.597, Ex.P2, on the basis of inheritance, after the death of Dharam Singh. The plaintiffs are owners-in-possession of the suit land. They have proved registered Will dated 12.06.2003, Ex.PW3/A. However, the plaintiffs failed to produce the original Will dated 12.06.2003, before the Court, nor any effort was made to establish that the Will in question was lost. They further did not seek permission from the Court to lead secondary evidence to prove the same. Even otherwise, the Will Ex.PW3/A is surrounded by suspicious circumstances. It is recited in the Will that Dharam Singh had already purchased some land in favour of his son-defendant No.5, Mahender Singh. However, it has not been stated that Dharam Singh had also purchased the land measuring 24K-19M to the extent of $\frac{1}{2}$ share in the name of plaintiff No.1 Appar Singh, vide sale deeds dated 03.06.1976, Ex.DW3/A and Ex.DW3/B, when he was minor. The remaining $\frac{1}{2}$ share was purchased in the name of defendant No.5-Mahender Singh. The fact that plaintiff-Appar Singh is the only beneficiary of the Will in question coupled with the fact that there is no recital of the purchase of land in his favour vide sale deeds, Ex.DW3/A and DW3/B, which makes the Will dated 12.06.2003, full of suspicious circumstances. There are also contradictions in the statement of the plaintiff-Appar Singh with regard to the age of Dharam Singh at the time of execution of the Will in question and

as to when the execution thereof came to his knowledge. The presence of the beneficiaries of Will at the time of execution and registration of Will is also a suspicious circumstance. The scribe of the alleged Will, namely, Dharam Singh Kamboj, has also not been examined by the plaintiffs. It is also evident that he did not mention the serial number of his register in the said Will after writing the same. The mere admission of the Will by defendant Nos.4 and 6 in favour of the plaintiff will not bind the other legal heirs.

Furthermore, mutation No.597, Ex.P2, was entered and sanctioned in favour of all the legal heirs of Dharam Singh, after his death. The same was accorded finality vide the Collector-cum-District Revenue Officer, Karnal, vide order dated 12.10.2006, Mark DB and thereafter by the learned Commissioner, Rohtak Range, Rohtak, vide order dated 04.02.2011, Ex.P-16. The suit land has already been partitioned vide order dated 24.03.2009, Ex.D-15 and SanadTaqseem has been prepared accordingly. The mutation No.2275, Ex.D-18 was also entered and sanctioned in favour of all the legal heirs of Dharam Singh, including the plaintiffs, on the basis of Will dated 14.07.2000, Mark DA with regard to the land situated in village Bibipur Brahman. The said mutation was never challenged by the plaintiffs.

Thus, the learned Courts below have rightly held that

the plaintiffs have failed to prove the Will dated 12.06.2003, alleged to have been executed by Dharam Singh, since deceased, in favour of the plaintiffs, qua the suit land. No illegality or perversity is shown to have been committed by the learned Courts below, while passing the impugned judgments, which calls for interference by this Court.

In ***Kashmir Singh Vs. Harnam Singh, 2008(2) R.C.R. (Civil) 688***, the Hon'ble Apex Court has held as under:-

“17. The general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof....”

No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

Dismissed in limine.

21.01.2016
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(JITENDRA CHAUHAN)
JUDGE