

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

R.S.A. No.2764 of 2015 (O&M)

Date of decision: 18.02.2016

Pran Nath

...Appellant

Versus

Mulakh Raj

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. K. S. Rekhi, Advocate
for the appellant.

Jitendra Chauhan, J.

This regular second appeal is directed against the judgment and decree dated 02.01.2015, passed by the learned Additional District Judge, Pathankot, (for short, the 'first Appellate Court') in civil appeal No.26/59 of 2008/2014 whereby, the appeal filed by the appellant, against the judgment and decree dated 18.03.2008, passed by the learned Civil Judge, (Jr. Divn.), Pathankot, (for short, the 'trial Court') in civil suit No.67 of 1998, has been dismissed.

Brief facts of the case are that the appellant filed a suit for declaration to the effect that the land bearing Khewat No.133 Khatuni No.230 Khasra No.31R ½/1 2/2 3/2 4/1/2 7/21

8, 9, 10/1, 13, 14/1/1 8/1 19/1 20, 25/2 (in red ink khatuni NO.231 Khasra Nos.38 R 4, 16, 17, 19, 2, 22, 23/1, 24, 25 total measuring 106 Kanals 01 Marlas situated in the revenue estate of village Bhoa Had Bast No.195 Tehsil Pathankot nahd Khewat No.98 Khatauni No.162 Khasra No.12R 9/3, 10/1, 11/2 20/1, 21/2 total measuring 21 kanals 08 Marlas bearing Khewat No.99 Khatuni No.163 Khasra No.12 R /12/1 and Khewat No.127 Khatuni No.197 Khasra No. 19 R 21/2 and 22/1 total measuring 10 Kanals 08 Marlas situated in the revenue estate of village Gobindpsar Had Bast Nbo.192 Tehsil Pathankot at residential House in the Abadi of the village Bhoa Tehsil Pathankot is the joint Hindu family co-parcenary property belonging to the plaintiff and defendant who are in joint possession of above land as coparceners and members of the joint Hindu family and the plaintiff is the karta of the joint Hindu family. The said suit was dismissed by the learned Civil Judge, (Jr. Divn.), Pathankot, vide judgment and decree dated 18.03.2008.

Feeling aggrieved, civil appeal No.26/59 of 2008/2014 was preferred against the judgment and decree dated 18.03.2008, but the same was dismissed by the learned Additional District Judge, Pathankot on 02.01.2015.

Hence, the present appeal.

The learned counsel states that being brothers, the appellant and the respondent are joint owners in possession of the suit property. The deceased, the father, Madho Ram had no right to execute the Will dated 31.08.1992 in favour of the respondent as the suit property was ancestral in nature in his hands, being karta of joint Hindu family coparcenary property. The appellant is one of the legal heirs of the deceased Madho Ram and is entitled to $\frac{1}{2}$ share in property left by him as coparcenary. The learned Courts below have not considered the suspicious circumstances regarding the execution of the Will dated 31.08.1992, in favour of the defendant as he took the benefit of undue influence and got executed the said Will from his father Madho Ram, since deceased. Lastly, there is sufficient evidence on record, which shows that the property was ancestral property, therefore, no will can be executed regarding the property. Hence, the judgments and decrees passed by the learned Courts below are liable to be set aside.

I have heard the learned counsel and carefully perused the entire record.

The learned Courts below have passed the judgments

and decrees in favour of the respondent after appreciating the entire oral as well as documentary evidence placed on record by both the parties. Except the bald statement of the appellant, no documentary evidence has been led to prove that the property in question is ancestral coparcenary property. Rather in the suits filed by the appellant against the sale deeds executed in favour of one Yakub and Urmila, by deceased, Madho Ram, the suit property has not been declared a co-parcenary property. Admittedly the litigation regarding the sale deeds in favour of Yakub and Urmila has attained finality. Therefore, in the present case, the nature of the land cannot be said as coparcenary. As far as the validity of the execution of the Will dated 31.08.1992 is concerned, DW1-Subhash Padam, Tehsildar, in his testimony has stated that the alleged will was produced before him by the deceased, Madho Ram on 31.08.1992 and he (Subhash Padam) along with two attesting witnesses, namely, Ishar Dass and Hari Kishan had put their signatures upon the same. Furthermore, DW2-Raj Kumar, registration clerk, categorically stated that the will was registered at Sr. No.186 Bahi No.3 and Jild No.3 Page No.5153 on 31.08.1992 and the DW3-Ved Mittar S/o Ishar Dass has identified the signature of his father upon the will. Moreover,

DW4-Dina Bandhu, verified the signatures of both the attesting witnesses and stated that they have since died. In addition to this, DW5-Gurbax Singh deed writer, also substantiated the case of the defendant and stated that he had scribed the Will at the instance of deceased, Madho Ram and admitted that the same was signed by both the witnesses and he made entry in his register at Serial No.601 dated 31.08.1992. In this considered view, this Court feels that the learned Courts below have rightly held that the suit land is not ancestral one but it is self acquired property of the Madho Ram and he had rightly executed the will dated 31.08.1992 in favour of the defendant. Accordingly, this Court finds no fault in the findings recorded by the learned Courts below. These are pure findings of fact. In **Karnail Singh Vs. Piara Singh**, 2002(3) RCR (civil) 442, it was held that a questions regarding the share of a person in a property on the basis of registered Will cannot be said to be a question of law, much less a substantial questions of law. Hence, no interference is called for.

Dismissed in limine.

18.02.2016

ashok

(JITENDRA CHAUHAN)
JUDGE