

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

RSA-3388-2015 (O&M)

Date of decision: 18.01.2016

Ganga Sahay (since deceased) through LRs

...Appellant(s)

Versus

Ram Kishan and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Anish Setia, Advocate for the appellant(s).

JITENDRA CHAUHAN, J.

The instant regular second appeal has been preferred against the judgment and decree dated 20.07.2012, passed by the learned Additional Civil Judge (Senior Division), Palwal (for short, 'the trial Court'), whereby, the suit of the plaintiff-appellant has been dismissed; and judgment and decree dated 22.01.2015, passed by the learned Additional District Judge, Palwal, (for short, the first Appellate Court), whereby, the appeal preferred by the plaintiff-appellant against the impugned judgment and decree dated 20.07.2012, of the trial Court, has also been dismissed.

The plaintiff filed a suit for declaration to the effect that

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the plaintiffs are the owners in possession of the suit property detailed in para No.1 of the plaint qua the share of Smt. Natho, by virtue of Will dated 17.01.1994, and the defendants have got no right, title or interest therein; and permanent injunction has been sought as a consequential relief thereof. The learned trial Court, dismissed the suit vide impugned judgment dated 20.07.2012.

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 decree dated 22.01.2015. It is relevant to mention here that the dated 21.01.2015 is shown in decree of first Appellate Court.

Hence, this appeal at the behest of the plaintiff.

Learned counsel for the appellant has submitted that the plaintiffs are the owner-in-possession of the suit property having a share to the extent of 1/4th share of late Smt. Natho, who was their Aunt (Bua), on the basis of Will dated 17.01.1994, executed by her in favour of their father, Late Shri Ganga Sahay and Chiranji. The executor died on 26.09.1994 at Village Jewar. The said Will was got registered on 12.01.2000. In order to prove the Will in question, the plaintiffs examined Deep Chand, Deed Writer as PW-

1, and Tek Chand, Nambardar as PW3, an attesting witness. However, the learned Courts below erred in relying upon a false and forged mutation of inheritance No.720/C produced by the respondents. The said mutation was registered on the basis of a false and fabricated death certificate, wherein the date of death of Smt. Natho has been reflected as 26.09.1984, instead of 26.09.1994.

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

In the present case, the plaintiff has laid claim over the suit property only on the basis of impugned Will dated 17.01.1994, stated to have been executed by Smt. Natho. She died on 26.09.1994. The said Will was registered in the year 2000, i.e. after the death of its executor. It is worthwhile to mention that the original Will has not seen the light of the day during the lifetime of the testator. On the other hand, during his cross-examination, the plaintiff himself acknowledged that mutation of inheritance of Smt. Natho was recorded as 720/C and he had the knowledge of the mutation and he did not produce the impugned Will at the time of said mutation.

The Will in the present case is surrounded by several

suspicious circumstances. The other legal heirs of the executor have not been disclosed in the Will nor the reasons for depriving them of the benefit of the said property have been mentioned. The plaintiffs' witnesses did not know the approximate age of Smt. Natho at the time of her death. The original Will is alleged to have been lost and no efforts were made to prove the Will by way of secondary evidence. Neither the existence of the original Will, nor the loss thereof, has been proved. Despite having knowledge of the mutation No.720/C, the plaintiff did not produce the Will at the relevant time. The date of death of the executor is also disputed. Even the witnesses examined by the plaintiff have given different versions with regard to the age of Smt. Natho. Only one out of the two attesting witnesses, namely Tek Chand was examined as PW2, however, during his cross-examination, he deposed that Smt. Natho was 60/70 years of age at the time of execution of the Will. PW1, Deep Chand (Deed Writer) stated the age of Smt. Natho at the time of her death as 45 years, whereas, the plaintiff himself appeared as PW3 and stated that she was 60 years of age. On the other hand, the defendants produced on record the death certificate, Mark A, wherein, the date of death of Smt. Natho has been recorded as 26.09.1984. As per the testimony of PW1, Deep

Chand, Deed Writer, the attesting witness, Tek Chand, who was examined as PW2, had neither appeared before him nor signed in his presence, nor the photographs were affixed in his presence. DW3 states that Smt. Natho died on 26.04.1984. The plaintiff did not lead any rebuttal evidence in this regard. No explanation is forthcoming as to why the Will was not got registered during the lifetime of Smt. Natho, the executor of the Will.

Another vital aspect of the matter is that the parties were earlier engaged in civil litigation with regard to the suit property, which was withdrawn by the plaintiff without the leave of the Court. This fact was concealed from the Court. However, the plaintiff, while appearing as PW3, admitted the fact of earlier litigation between the parties. In this way, the present suit in the present form has rightly been held as not maintainable.

In the considered opinion of this Court, there is no perversity in the impugned judgments rendered by the learned Courts below, which call 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....”

The present case relates to the appreciation of evidence. No evidence is shown to have been ignored from consideration, nor there is any misreading of evidence. These are pure findings of fact. No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

Dismissed in limine.

18.01.2016

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(JITENDRA CHAUHAN)

JUDGE