

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 3479 of 2015(O&M)
Date of decision : May 19, 2016

Kuldip Singh and others

..... Petitioners

Versus

Balkar Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Kanwaljit Singh, Senior Advocate with
Mr. Amandeep Singh Meho, Advocate
for the appellants.

Mr. Amit Dhawan, Advocate
for respondent No.1.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

The appellant-defendant No.2 is aggrieved of the concurrent finding of fact whereby suit filed at the instance of the respondents-plaintiffs challenging the sale deed dated 17.6.2004 in respect of land measuring 14 Kanals 12 Marlas has been decreed.

Mr. Kanwaljit Singh, learned Senior Counsel assisted by Mr. Amandeep Singh Meho, Advocate submits that Teja Singh had two children namely Balkar Singh and Harbhajan Kaur. Teja Singh died on 23.2.2002. He owned property in various villages in District Jalandhar. One of the property in dispute was mutated in favour of both the children i.e. Balkar Singh and Harbhajan Kaur by way of natural succession on 16.6.2004. The appellant being bona fide purchaser, after verifying the record entered into a sale deed

dated 17.6.2004 and thus, they are bona fide purchasers for a valuable consideration. The Will dated 17.7.2000 has not been proved in accordance with law, only scribe and one of the attesting witness-Kulwant Singh has stepped into the witness box who in cross-examination stated that the Will was not read over as Teja Singh, testator at the relevant point of time was unwell. Even on the last page of the Will there is no thumb impression or signatures of the witnesses, thus the Will is surrounded by suspicious circumstances.

He further submits that both the courts below committed illegality and perversity in not examining the aforementioned aspects and yet decreed the suit which was filed on 10.9.2004 and thus urges this Court to formulate substantial questions of law as carved out in the Memorandum of Appeal.

Mr. Amit Dhawan, learned counsel appearing on behalf of respondent No.1 submits that the land situated in various villages in District Jalandhar and mutation of the aforementioned land was effected on 16.6.2004 on the basis of registered Will in favour of respondents-plaintiffs. On realizing the factum of sale deed having been done immediately a day after the mutation, the suit with promptitude was filed on 10.9.2004. The Will dated 17.7.2000 is a registered document and endorsement on the register much less signatures and thumb impression of the other witnesses including that of a testator are there. The appellant is not a bona fide purchaser for a valuable consideration as in the cross-examination of DW-2 namely Gian Kaur, it surfaced that Bikkar Singh was present at

the time of mutation of the land situated in Village Shahkot District Jalandhar and therefore they had the knowledge of the Will and cannot be said to be bona fide purchaser for a valuable consideration as the sale deed has been effected on 17.6.2004 i.e.next day of the mutation. All these facts have been noticed by both the courts below and thereafter non-suited the appellant-defendant No.2, thus urges this Court for affirming the finding rendered by both the courts below.

I have heard learned counsel for the parties, appraised the paper book and of the view that the appeal sans merit, for, DW-2 in the cross examination spilled the beans qua the knowledge of the Will in favour of Bikkar Singh. Son of appellant-defendant No.2 was aware of the factum of mutation of land situated in the aforementioned village in District Jalandhar on the basis of Will. The daughter has managed to get the mutation in her favour on the basis of natural succession and in order to avoid further complications immediately by executing the sale deed dated 17.7.2000 whereas Bikkar Singh was having such knowledge and defendant No.2 being his son cannot be said to have been bona fide purchasers.

As regards the non-existence of signatures and thumb impression of the attesting witnesses on the second page of the Will, I am of the view that the said fact would pale into insignificance as the endorsement of the registered Will bears signatures and thumb impression of the attesting witnesses and the relevant entry in the register is also signed and Registrar disclosed the factum of the Will to the witnesses and testator and therefore, the

cross-examination of the attesting witness if read in conjunction would be meaningless. It is a matter of record that Harbhajan Kaur challenged the mutation in respect of villages situated in Jalandhar but the appeal had been dismissed, thereafter there was no other challenge, in essence, accepted the mutation in favour of his brother on the basis of Will dated 17.7.2000, thus, she was aware of the Will, yet got mutation qua $\frac{1}{2}$ share in respect of land in dispute situated in Moga of Teja Singh which was 28 Kanals 4 Marlas and the sale deed is entered qua land measuring 14 Kanals 12 Marlas.

In view of the aforementioned facts, I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. There is no illegality or perversity in the aforementioned judgments and decrees of the courts below.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

May 19 , 2016
archana