

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

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Regular Second Appeal No.4209 of 2014 (O&M)

Date of Decision: January 15, 2016

Veerpal Kaur

...Appellant

Versus

Sardool Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. K.K. Garg, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 28.05.2012 passed by the Civil Judge (Senior Division), Bathinda, whereby the suit filed by the appellant-plaintiff for declaration to the effect that the appellant-plaintiff along with the respondents-defendants are owners in joint possession in equal share i.e. 1/6th share each of land measuring 12 kanals 5 marlas as detailed in the suit, situated in revenue limits of village Pathrala-II, Tehsil and District Bathinda, on the basis of inheritance on the death of her father-Gurdial Singh son of Amar Singh, stands dismissed primarily on the ground that the suit property is not ancestral property and that the Will dated 29.11.1995 executed by Gurdial Singh is a duly executed valid registered Will on the basis of which the parties would be entitled to their shares as per the beneficiaries therein, appeal against which preferred by the appellant-plaintiff has been dismissed by the Additional District Judge, Bathinda, on 12.04.2014.

2. It is the contention of learned counsel for the appellant that the findings recorded by the Court that the suit property is not an ancestral one, is not correct. He contends that as per the Mulla's law of inheritance

Chapter XII, Joint Hindu family Coparceners etc. Part II Coparcenary Property para 221, specially Illustration (a), where at the very degree, the property becomes ancestral the moment the son is born. He, thus, contends that three degrees, as has been taken by the Courts below to be the requirement for declaring it as an ancestral property, is not sustainable. That apart, he contends that the Will dated 29.11.1995 is shrouded with suspicion as one of the respondents-defendants Ranjit Singh signed the said Will and being a beneficiary there, states that the Will is not a valid one. Not only Ranjit Singh but Sardool Singh has also signed the said Will and they both being the beneficiaries, indicate that the Will was not propounded by Gurdial Singh in his free state of mind and under undue influence and pressure. Counsel has further pointed out that the certified copy which has been produced as an Exhibit contains three thumb impressions, whereas the original Will contains only two thumb impressions which also casts suspicion about there being more than one Will having been executed by Gurdial Singh. He, thus, contends that the judgments and decree passed by the Courts below cannot sustain and deserve to be set aside.

3. I have considered the submissions made by learned counsel for the appellant and with his able assistance, have gone through the impugned judgments as also the Mulla's reference book which has been brought to the notice of the Court but do not find merit in the submissions, as has been raised by the counsel.

4. Admittedly, there is nothing on record which would prove that the property in dispute has been inherited till three degrees not from the holder of the joint property in dispute. By now it is well settled preposition of law that for a property being ancestral, it has to be inherited by male

Hindu by three immediate paternal ancestors i.e. father, father's father and father's father's father. Reliance has rightly been placed on the judgment of this Court passed in case titled as *Chhajju Ram Versus Kapoori Ram, 1983, Current Law Journal (C & R), 388*. Perusal of the Hindu Law by Mulla para 221 on which reliance has been placed would show that it has been mentioned with regard to the inheritance as follows:-

“A person inheriting property from his three immediate paternal ancestors holds it, and must hold it, in coparcenary with his sons, son's sons, and son's son's sons, but as regards other relations, he holds it, and is entitled to hold it as his absolute property. The result is that if a person inheriting property from another one of his three immediate paternal ancestors has no son, son's son, or son's son's son, the property is his absolute property, and no relations of his are entitled to any interest in it in his lifetime”.

5. The illustration which has been referred to by the counsel is of a nature which would not be applicable to the case in hand and in any case, the principle, as has been propounded has been reproduced above. It may, however, be added here that in the light of the authoritative judgment of this Court in *Chhajju Ram's case (supra)*, the same being binding on this Court is to be followed.

6. As regards the contention of learned counsel for the appellant that the Will dated 29.11.1995 is shrouded by suspicion for the reasons (i) whether the same has been executed by Gurdial Singh (ii) whether it was in a free disposing mind especially when two of the beneficiaries of the Will are signatories to the Will and would have influenced him, suffice it to say that Gurdial Singh died on 27.01.2008, had the assertion as made by the counsel being correct, there was nothing which precluded Gurdial Singh to have taken action against the said Will or could have propounded a fresh

Will, had he not executed the Will dated 29.11.1995 with his own wish and desire with a free disposing mind. Merely because two of the beneficiaries of the Will are signatories to the same would not *ipso facto* leave the Will illegal nor can it be said to have been executed without a free and open mind.

7. An argument has been raised by learned counsel for the appellant that in the copy which has been produced in the Court of the Will, there are three thumb impressions, the said position has been correctly explained out by the Courts below by stating that the copy has been additionally thumb marked by Gurdial Singh as it was to be supplied to him and it being a true copy of the original Will as a matter of record, therefore, that would be a circumstance which would not render the Will to be invalid or shrouded with suspicion.

8. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

9. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

10. In the light of the dismissal of the appeal, the application for stay i.e. CM No.9765-C of 2014, stands disposed of as infructuous.

January 15, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE