

RSA No.619 of 2014

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

RSA No.619 of 2014

Date of Decision: January 25, 2016

Guro Devi

...Appellant

Versus

Sat Pal & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Rai Singh Chauhan, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (Oral):

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Pathankot, dated 14.02.2011, whereby, the suit for declaration to the effect that the plaintiff is owner of 16 kanals of land as detailed in the head note of the suit, situated in village Hurra Tikka, Dharwarra, Hadbast No.394, Tehsil Dharkalan and in village Harial, Tehsil and District Pathankot, on the basis of the registered Will dated 25.01.1974 executed by Mangal Dass in favour of the plaintiff-Rama and that the respondent-defendants have no right and title with respect to it, further, injunction was also prayed for restraining the defendants from ousting the appellant-plaintiff from the suit land and from changing the nature of the suit land in any manner or alienating the same, has

been dismissed, appeal against which preferred by the appellant-plaintiff stands dismissed by the District Judge, Pathankot, dated 07.11.2013.

2. It is the contention of the learned counsel for the appellant that the Will dated 25.01.1974 as executed in favour of the appellant-plaintiff, has been duly proved. He contends that the Will as has been put forth by the respondent-defendants dated 22.05.1990 (Ex.D-1) is shrouded with suspicion as there are certain discrepancies in the statement of the witnesses. He contends that in view of the fact that the executor Mangal Dass was mentally and physically unfit, the said Will could not have been declared an authentic Will by the Courts below, which has resulted in rejection of the claim of the appellant-plaintiff. He, thus, contends that the appeal deserves to be allowed by setting aside the impugned judgments and decreeing the suit.

3. I have considered the submissions made by the learned counsel for the appellant and with his able assistance have gone through the impugned judgments.

4. A perusal of the judgments would show that the Will dated 25.01.1974 in favour of the appellant-plaintiff is a registered Will so is the second Will dated 22.05.1990 (Ex.D-1). The only plea which has been pressed into service with regard to the challenge to the validity of the Will dated 22.05.1990 (Ex.D-1) is that it has not been executed

by Mangal Dass in a sound disposing mind as he was not mentally and physically fit. This plea cannot be accepted in the light of the fact that no evidence has been led by the appellant-plaintiff in support of this contention. It may not be out of way to mention here that all through the trial, the appellant-plaintiff fails to appear before the Court as he did not step into witness-box to prove his assertion as made in the plaint nor in the rebuttal evidence he appeared. Although a plea has been taken that he had died when the rebuttal evidence was to be led, however, his legal representatives have been impleaded as party but none of them appeared to support the assertion. In the absence of the evidence to support the claim with regard to the mental and physical unfitness of Mangal Dass, the same could not have been found to be accepted and the Courts below have, therefore, rightly returned the finding that the plaintiff has not been able to prove his stand.

5. Another aspect which further creates dent with regard to the claim as has been put forth by the appellant, is that the Will dated 22.05.1990 (Ex.D-1) in favour of the respondent-defendants No.1 and 2, has not been challenged as such in the civil suit despite the appellant-plaintiff being aware of said Will having been executed. It has come on record that at the time when the mutation was sanctioned in favour of the respondent-defendants in the year 1992 on the basis of this Will, there was a contest on the part of the

appellant-plaintiff in which he could not succeed. This clearly shows that the Will was to the knowledge of the appellant-plaintiff but he did not choose to challenge the same except by making a vague assertion that if a Will has been executed, the same is not a valid one and would have been executed by Mangal Dass when he was not mentally and physically fit. The expounding of the Will dated 22.05.1990 (Ex.D-1) having been duly proved and the same having not been specifically challenged especially when it was to the knowledge of the appellant-plaintiff, the findings as recorded by the Courts below cannot be said to be not in accordance with law.

6. The Will dated 22.05.1990 (Ex.D-1) clearly mentions the cancellation of the earlier Will executed by Mangal Dass dated 25.01.1974 and the reasons also are assigned as to why the said cancellation is being done by him. The reason are that the appellant-plaintiff has stopped serving him and further that he had purchased some other properties in the name of the appellant-plaintiff to the extent of $\frac{1}{2}$ share alongwith him which were subsequent to the date of the execution of the Will dated 25.01.1974. The evidence has been brought on record showing the said document having been executed the sale deed dated 08.07.1974 (Ex.D-2), jamabandi for the year 1992-93 (Ex.D-3) and jamabandi for the years 1995-96 (Ex.D-4), which clearly shows the incorporation the name of the appellant-plaintiff in equal share with Mangal Dass. In view of the

overwhelming evidence available on record, the findings as recorded by the Courts below cannot be faulted with.

7. A perusal of the impugned judgments would show that the concurrent findings returned by both the Courts below are based on proper appreciation of the pleadings and the evidence brought on record which do not call for any interference by this Court as there is no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

8. No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

January 25, 2016

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**