

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 3046 of 1986 (O&M)

Date of decision : February 17, 2017

Harminder and another

..... Appellants

Versus

Mohan Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE H.S.MADAAN

Present:- Mr. G. S. Punia, Senior Advocate with
Mr. P. S. Punia, Advocate
for the appellants.

Mr. N. S. Chahal, Advocate for
Mr. J. S. Brar, Advocate
for L.Rs of respondent No. 3.

H.S.MADAAN J (Oral).

This Regular Second Appeal is directed against judgment and decree dated 7.3.1986 passed by the Court of Additional District Judge, Ludhiana vide which he had dismissed the appeal filed by plaintiff-appellant Harminder Singh and his brother Hardial Singh against defendants-respondents Mohan Singh and others, who were aggrieved by dismissal of their suit by Sub Judge, IInd class, Samrala.

The appellants-plaintiffs pray that the appeal be accepted and the impugned judgments passed by the Additional District Judge, Ludhiana and Sub Judge, IInd Class, Samrala be set aside and the suit filed by them be decreed.

The dispute involved in this case is regarding inheritance of one Nagina Singh with respect to his estate in the form of property No. 1 bounded as on North by the Plot of Sh. Mohinder Singh and Mohan Singh and house of Harduari Lal; on South; by a street on East; by a street; on West; by a street and yard of Gurdit Singh and property No.2 bounded as; on North by the house of Mohan Singh, on South; by a street; on East; by the house of Pritam Singh and on West; by the premises of Patwar khana situated at village Goh, Tehsil Samrala.

Nagina Singh had three sons namely Jang Singh, Naurang Singh and Tirlok Singh. Tirlok Singh had died leaving behind his son Mohan Singh. Nagina Singh had also left this mortal world on 1.10.1975. Plaintiffs- Harminder Singh and Hardial Singh who are sons of Jang Singh-defendant No.2 son of Nagina Singh claimed that Nagina Singh had executed a registered Will dated 17.3.1970 bequeathing his estate to Harminder Singh and Hardial Singh-plaintiffs to the extent of $\frac{1}{3}$ rd share each and defendant No.1-Mohan Singh son of Tirlok Singh to the extent of remaining $\frac{1}{3}$ rd share and mutation No. 3738 was accordingly sanctioned in their favour on 21.7.1976. In that way, they claimed $\frac{2}{3}$ rd share in the suit property and for enforcement of their rights they filed civil suit No. 72/78 on 9.3.1978 seeking decree for possession through partition of $\frac{2}{3}$ rd share in the suit property.

On notice, all the three defendants put in appearance. Defendant No. 2- Jang Singh who happened to be father of the plaintiffs filed written statement admitting claim of the plaintiff whereas defendant Nos. 1 and 3 offered a hot contest denying that Nagina Singh had executed any registered Will dated 17.3.1970 in favour of plaintiffs or that the

plaintiffs have got any right to seek possession by way of partition. Such defendants had taken up many other legal objections besides coming up with factual pleas. On pleadings of the parties, following issues were framed:-

- “1. Whether Nagina Singh deceased executed a valid will dated 17.3.70 in favour of the plaintiffs and defendant No.1?OPP
2. Whether the plaintiffs are entitled to the possession through partition of the property in suit?OPP
3. Whether they took any partition in the year 1956 as alleged in para 2 of the preliminary objections?OPD
4. Whether the defendant No.1 and 3 made construction in the years 1969 amounting to Rs. 10,000/- as alleged in para 3 of the preliminary objection. If so its effect?OPD
5. Whether the suit is barred by order 2 Rule 2 CPC? OPD
6. Whether the suit is collusive as alleged?OPD
7. Whether the suit is bad for non-joinder of Smt. Balbir Kaur daughter of Shri Nagina Singh?OPD
8. Whether the suit is properly valued for purposes of court fees and jurisdiction?OPP
9. Whether the applicant does not disclose the cause of action as alleged. If so its effect?OPD
10. Whether the defendants No.1 and 3 have become owner of adverse possession of the property under their possession as alleged?OPD
11. Whether the boundaries of the property in suit are correctly described as alleged?OPP.
12. Relief.”

Parties were afforded opportunities to lead evidence in support of their respective claims.

After hearing arguments, Sub Judge, IInd Class,

Samrala vide judgment dated 31.10.1980 dismissed the suit. The plaintiffs filed an appeal against the judgment and decree passed by the trial court, in the court of District Judge, Ludhiana. However, they were un-successful there and Additional District Judge, Ludhiana vide judgment dated 7.3.1986 dismissed their appeal. Thereafter, plaintiffs filed Regular Second Appeal in this Court. Notice of which, was given to the respondents. Respondent Nos. 2 and 3 had expired and on an application having been filed, their legal representatives were brought on record.

Now, the parties have entered into a compromise. Written compromise in that regard has been placed on file which is Ex. A-1. The prayer made is that the appeal be decided in terms of the said compromise.

I have heard learned counsel for the appellants and legal representatives of respondent No. 3.

Since the matter has been compromised between the parties, they are no longer at issue. I do not see any reason to dis-allow the prayer made. Accordingly, the appeal is accepted and suit is decreed in terms of written compromise Ex. A-1 which is to be read as part of the decree sheet.

The parties shall remain bound by the said compromise.

The appeal stands disposed of.

(H.S.MADAAN)
JUDGE

February 17, 2017
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