

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1480 of 2016 (O&M)
Date of decision: 20.07.2017

Maha Singh

... Appellant

Vs.

Tarawati and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. D.D. Gupta, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful defendant No.4 is in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for declaration and joint possession filed by the plaintiff-respondent No.1 was decreed.

Brief facts of the case, as noticed by the learned first appellate Court in para 2 of its impugned judgment, are that on 17.01.2017, respondent No.1 filed the suit for declaration and possession against the appellant and respondents No.2 to 7 in the Court of Civil Judge (Sr. Divn.), Jhajjar with the averments that the agricultural land fully detailed in para No.1 of the plaint, measuring 76 kanals 16 marlas, to the extent of 1/3rd share, situated in the revenue estate of Village Gangtan, Tehsil Beri, District Jhajjar (suit property)

was HUF property in the hand of Surat Singh which he had inherited from his father Roop Chand. Surat Singh had five sons, namely Tara Chand, Kartar Singh, Mukhtiar Singh, Ram Chander and Maha Singh. Respondent No.1 was the widow of Ram Chander, who had died on 13.08.1996. Respondent No.1 alleged that though on the death of Ram Chander, his 1/6th share in the HUF property had got ascertained, yet in the revenue record, the suit property was shown to be in the name of Surat Singh as the Karta of HUF. Later on, Surat Singh died on 26.10.2006. However, appellant and respondents No.2 to 7 started claiming that Surat Singh had executed a Will dated 14.09.1998. In fact, neither Surat Singh was competent to execute any Will nor he had executed any such Will. The said Will of Surat Singh was the result of undue influence or fraud. On the death of Surat Singh, she (respondent No.1) came to know about the Will. She requested the legal heirs of Tara Chand and others to admit her claim and to get the Will set aside. However, they did not accede to her request. Hence, the suit for declaration that she (respondent No.1) was the owner in possession of 1/6th share in the suit property and that the Will dated 14.09.1998, allegedly executed by Surat Singh, was illegal, null and void.

Defendants were put to notice. They appeared and filed their contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, the learned trial Court framed the following issues: -

1. Whether plaintiff is owner to the extent of 1/6th share in the suit land? OPP
2. Whether Will dated 14.09.1998 executed by Surat Singh is illegal, void and liable to be set aside? OPP

3. Whether plaintiff has no locus-standi to file the present suit?
OPD
4. Whether present suit is not maintainable in the present form?
OPD.
5. Relief.

In order to prove her pleaded case, plaintiff brought on record voluminous documentary as well as oral evidence. On the other hand, contesting defendants No.2 to 7 did not lead either any oral or documentary evidence, in support of their pleaded case. None of the defendants stepped into the witness box even as their own witnesses. Their evidence was closed by Court order dated 29.08.2013. They did not challenge the said order passed by the learned trial Court. The learned trial Court proceeded further and after considering and appreciating the evidence led by the plaintiff, her suit for declaration and joint possession was decreed, vide its impugned judgment and decree dated 01.02.2014. Feeling aggrieved, defendants filed their first appeal, which also came to be dismissed by the learned first appellate Court, vide its impugned judgment and decree dated 23.09.2015. Hence this regular second appeal at the hands of unsuccessful defendant No.4.

Heard learned counsel for the appellant.

It has gone undisputed before this Court that Ram Chander, husband of plaintiff Smt. Tarawati, was real brother of defendant-appellant Maha Singh. In fact, late Sh. Surat Singh had five sons namely Tara Chand, Kartar Singh, Mukhtiar Singh, Ram Chander and Maha Singh. Ram Chander late husband of Smt. Tarawati, pre-deceased his father Sh. Surat Singh. It is also not in dispute that Ram Chander was member of co-parcenary and would have

right in the ancestral property in the hands of his father Sh. Surat Singh right from his birth. It is also a matter of record that after the death of Ram Chander, his father Sh. Surat Singh completely ignored his widow daughter-in-law Smt. Tarawati wife of late Sh. Ram Chander, at the time of executing the Will in favour of his remaining four sons, including the present appellant. On the basis of said Will, mutation also came to be sanctioned in favour of the defendants. Thus, having been left in the lurch, widow of late Sh. Ram Chander filed the present suit for declaration and joint possession. She brought on record voluminous documentary as well as oral evidence. Documentary evidence was running from Ex.P1 to Ex.P52, which would contain all the relevant revenue record. She duly proved her case to the extent that suit property in the hands of Surat Singh was ancestral in nature qua his late husband Ram Chander. Plaintiff also duly proved that property in the hands of Surat Singh was co-parcenary property in which her late husband Ram Chander would have right by birth. It was also duly proved that Sh. Surat Singh had no legal necessity to dispose of the ancestral property in any manner. On the other hand, defendants did not lead any kind of evidence and that too for no good reasons. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within the jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

It goes without saying that defendants being the propounders and beneficiaries of Will, they were duty bound to prove the Will to be a valid and genuine document. Only averments taken by them in their written statement would not be sufficient to prove their case. What to talk of any other documentary or oral evidence, none of the defendants stepped into witness box

as their own witnesses, for the reasons best known to them. When their evidence was closed by the learned trial Court vide its order dated 29.08.2013 as noticed hereinabove, defendants did not lay any challenge to the said order seeking any other opportunity for leading their evidence. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

It seems that defendants realized their mistake in getting the Will executed in their favour to the complete exclusion of their sister-in-law Smt. Tarawati, widow of their brother late Sh. Ram Chander. After filing of the written statement, it seems that defendants, including the present appellant, tried to reconcile that let the suit of the plaintiff be decreed and she would get her share in the property by way of natural justice. Besides this, the defendants did not care at any point of time to substantiate their pleaded case in any manner either before the learned trial Court or before the learned first appellate Court. Their application for additional evidence moved before the learned first appellate Court, during pendency of their appeal, also came to be dismissed by the learned District Judge vide his order dated 23.09.2015. However, no such application for additional evidence under Order 41 Rule 27 of the Code of Civil Procedure ('CPC' for short) has been moved by the appellant before this Court, either at the time of filing the appeal or at any later point of time. This would show that the appellant and his other co-defendants had been proceeding on a very casual approach right from day one. In such a situation, neither the law nor equity was in favour of the appellant and his other co-defendants. No fault can

be found with either of the impugned judgments, whereby the learned Courts below recorded their concurrent findings of facts and the same deserve to be upheld, for this reason as well.

Before arriving at his just conclusion, learned District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. The relevant and cogent findings recorded by the learned District Judge in paras 11, 12 and 14 of the impugned judgment, which deserve to be noticed here, read as under: -

“Assailing the impugned judgment, Mr. J.P. Sharma, counsel for the appellants has argued that the impugned judgment is not sustainable in the eyes of law. The trial Court has not appraised the evidence on the record in the proper perspective. Mr. Sharma further submitted that respondent No.1, Smt. Tarawati, was not entitled to any share in the suit property on the death of Surat Singh as she had left the house and was no more member of the family of Surat Singh. Unfortunately, the trial Court has overlooked this aspect of the matter. Counsel further submitted that respondent No.1 has no locus-standi to challenge the Will as she would not inherit any property on the death of Surat Singh. Counsel also submitted that appellants were not given proper opportunities to lead their evidence. Appellants could not examine even a single witness and the trial Court closed their evidence on 29.08.2013. Accordingly, the impugned judgment be set aside and the case be remanded to the trial Court with the direction to allow the appellants to lead evidence on the Will dated 14.09.1998

executed by Surat Singh in their favour. Counsel also placed reliance on Rajeshwar Prashar Vs. Urmila Rani, 2014 (Suppl.) C.C.C. 387 (P&H); Bhim Singh and another Vs. Harbans Singh and others 2014 (4) LJR 800; Harbans Singh and others Vs. State of Punjab and others, 2014 (1) LJR 61 and Devaki Vs. Subramanian, 2014 (1) LJR 472.

Per contra, Mr. Vikas Ahlawat, counsel for the respondents argued that the impugned judgment is eminently just. Appellants were granted eight effective opportunities to lead evidence in this case. This case was fixed by the trial Court for evidence of the appellants for 30.04.2012, 06.06.2012, 08.08.2012, 18.09.2012, 27.10.2012, 05.12.2012, 06.08.2013 and 29.08.2013. However, appellants did not lead any evidence. The onus to establish the Will was upon the appellants. Respondent No.1 had claimed the share of Ram Chander, who was a co-parcener. The suit property is HUF property. Ram Chander has right by birth in the suit property. Accordingly, on the death of Ram Chander, it shall be presumed that there had taken place a notional partition. Counsel submitted that in the notional partition, whatever property had fallen to the share of Surat Singh, respondent No.1 would also share in the same. Accordingly, she has the locus-standi to file the suit. The trial Court has appraised the evidence properly. There is no merit in the present appeal and the same be dismissed. Counsel also placed reliance on S.R. Srinivasa and others Vs. S. Padmavathamma, 2010 (3) C.C.C. 359, Ram Chand Gupta Vs.

Amar Singh and others, 2012 (1) CCC 601 and Iswar Bhai C. Patel @ Bachu Bhai Patel Vs. Harihar Behera and another, 1999 (2) CCC 001.

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It is admitted on the record that the suit property is HUF property. It is also admitted on the record that Ram Chander had died in the year 1996. Ram Chander was a co-parcener in the HUF. On the death of Ram Chander, his share has to be calculated on the basis of notional partition. Again, on the death of Surat Singh, his share in HUF has to be calculated. Respondent No.1 would also get share out of the share of Surat Singh. Accordingly, respondent No.1 has the locus-standi to file the suit. I have perused the record of the trial Court. The trial Court had granted eight opportunities to the appellants for leading their evidence. However, appellants did not lead any evidence. I am of the considered view that the trial Court has rightly found these issues against the appellants. Accordingly, I hereby affirm the findings of the trial Court on these issues.”

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments and decrees passed by both the learned Courts below. He also failed to refer to any question of law, much less substantial question of law, which is sine qua non for entertaining the regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 CPC. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme

Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present second appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

[**RAMESHWAR SINGH MALIK**]
JUDGE

20.07.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No