

Sr.No.114+239

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

**CM No. 13110-C of 2017 in/and
RSA No. 2049 of 2016(O&M)
Decided on: 21.11.2017**

Gurjinder Singh and another

.....Appellants

versus

Gurbachan Singh and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

**Present: Mr. Raj Kumar Kakkar, Advocate
for the appellants.**

Rajbir Sehrawat, J.(Oral)

This is the second appeal filed by the defendants, challenging the concurrent judgment and decree passed by the Courts below, in a suit for declaration of the properties mentioned in the head note as joint hindu family properties and, further, for partition of the said properties.

For convenience, the parties would be referred herein as the plaintiffs and the defendants as they were described in the plaint.

The brief facts of the case are that the plaintiff had filed a suit for declaration and partition, as mentioned above, claiming that the grand father of the plaintiff, namely, Shri Sabu Ram migrated from Pakistan and settled at village Hathoori, Tehsil Jagraon, where the family lived for three years after partition. In the year 1950; some land was allotted in village Nurpur Dakhli, Jhotianwali, Tehsil Fazilka. The predecessor-in-interest of the plaintiff expired leaving behind the plaintiff and the defendants as surviving legal heirs. The pedigree table was also detailed in the plaint. It was claimed that the suit land was allotted to Shri Sabu Ram, the father of

Ram Singh, who was the father of the plaintiff and the defendants. Therefore, it was claimed that the suit property is joint hindu family property. It was further averred in the plaint that the father of the plaintiff got executed and registered a Will dated 09.12.1994. Hence the land measuring 82 Kanals 6 Marlas and residential house measuring 14 marlas, as detailed in the plaint, is a joint hindu family and ancestral property. The plaintiff being one of the co-sharer; is the owner to the extent of 1/12th share in the joint hindu family property. Therefore, he is entitled to his share to the extent of 1/12th share in the suit property. However, few days ago defendants No. 6 to 10 and defendants No. 15 to 18 started denying the title of the plaintiff on the basis of some other Will, allegedly executed and got registered by the father of the plaintiff, namely, Ram Singh. On the basis of this Will the defendants tried to oust the plaintiff from his joint possession in the suit property. It was further claimed that at the time when Ram Singh is alleged to have executed the second Will, he had a low eye sight and was very old and weak person; and could not have executed the Will, claimed by the defendants. Therefore, the earlier Will dated 09.12.1994 was claimed to be the only valid Will. Hence it was claimed that notwithstanding anything contained to the contrary; in the revenue record; the property happens to be a joint hindu family property and the plaintiff is entitled to declaration and partition.

On notice of the suit being given to the defendants, defendants No. 1, 3, 5, 9, 11, 14, 6 to 8, 15 to 18 appeared whereas the remaining defendants did not appear despite service and were proceeded ex parte. Defendants No. 3, 5, 9, 11 to 14 filed their joint written statement and besides taking the routine preliminary objections it was admitted that the

property was allotted to Shri Sabu Ram. The status of the family was also admitted. Pedigree table given in the plaint was also admitted to be correct. The contents of para No. 2 of the plaint was specifically admitted, however, contents of para No. 3 was denied for want of knowledge and the content of para No. 4 of the plaint was admitted as correct. It was further claimed that these defendants never threatened the possession of the plaintiff in any manner nor did these defendants ever denied the title of the plaintiff.

Defendants No. 6 to 8 and 15 to 17 filed their separate written statement jointly. They also took routine preliminary objections and on merits it was admitted that the property was allotted to Sabu Ram and it came to their father, namely, Ram Singh. The earlier Will dated 09.12.1994 was also admitted by these defendants. However, it was claimed that after getting to know of this Will, the plaintiff stopped serving his father and therefore, through the subsequent Will dated 30.03.2000 his father Ram Singh disinherited the plaintiff. It was further claimed that at the time of execution of the subsequent Will, Ram Singh was in fit state of mind and he voluntarily executed the said Will without any pressure. Still further it was claimed that suit for permanent injunction; seeking to restrain the defendants from dispossessing the plaintiff, as consequential relief is not maintainable; as the plaintiff is not in possession on any part of the suit property. The character of the suit property was, however, denied by these defendants. It was claimed that it was the self-acquired property in the hands of Ram Singh and he executed the Will dated 30.03.2000, therefore, the property is to go as per this subsequent Will; which is registered one.

Parties led their evidence.

After hearing the parties, the Trial Court decreed the suit.

Aggrieved against the judgment and decree passed by the Trial Court the defendants filed appeal before the lower Appellate Court. However, the lower Appellate Court also dismissed the appeal filed the defendants/appellants herein.

While dismissing the appeal, the lower Appellate Court held that although the plaintiff had claimed the property to be ancestral property, however, he failed to prove this character of the suit property. Therefore, the property in question has to be taken as self-acquired property in the hands of Ram Singh. Still further, the lower Appellate Court held that although the claim of the plaintiff is not on the basis of the Will dated 09.12.1994, however, since both the parties have admitted the Will, therefore, the Will has to be given effect. Accordingly, the lower Appellate Court upheld the findings recorded by the Trial Court. Still further, the lower Appellate Court also affirmed the finding of Trial Court to the effect that the contesting defendants have failed to prove the contents and the execution of the subsequent Will dated 30.03.2000. It was held by the Courts below that none of the attesting witnesses have been examined by the defendants to prove subsequent Will. Still further, it was brought on record by the defendants that the attesting witnesses were present in the Court premises at the time of evidence, however, still those witnesses were not examined by the defendants to substantiate the claim regarding the subsequent Will. Therefore, subsequent Will dated 30.03.2000 was held to be not proved in accordance with law.

Aggrieved against the judgment and decree passed by the lower Appellate Court, the present appeal has been filed.

While arguing the case, learned counsel for the

defendants/appellants herein has submitted that the Will, in fact, was executed by Ram Singh and the Registration of the same has been duly proved by the appellants by examining the Sub-Registrar as well as the deed writer. To prove the attestation of the same, as required by the law, learned counsel submits that, he has moved an application for additional evidence along with the present appeal, and prayed for a chance to prove the attestation of the same also.

However, this Court does not find substance in the argument of learned counsel for the appellant. The instrument of Will has to be proved as per the requirement of the law; by producing atleast one of the attesting witnesses. In the present case, it has come on record that the appellants herein had even brought the attesting witnesses in the Court complex, however, they could not produce these witnesses to substantiate their claim regarding the Will. Therefore, the Will has rightly been held by the Courts below as not proved. So far as the examination of the Sub-Registrar is concerned, the same can be said to be proof only of the registration of the document and not the content or the execution of the same; as per the requirement of the law. Therefore, the examination of the Sub-Registrar is irrelevant for the purpose of proof of execution of the Will. Hence, the contents of the Will has not been proved by the appellants as required under law.

For the same reason, their application for the additional evidence is also liable to be rejected; As mentioned above, it has come on record that the attesting witnesses were available in the Court premises, when the evidence was led by the appellants before the Court. However, the appellant failed to bring those witnesses inside the Court to face cross-

examination. Faced with this situation the appellant could have also taken the recourse under Section 47 of the Evidence Act, 1872. However, even the same was not resorted to by the appellants. Therefore, the appellants have failed to prove any justifiable reason for not leading the evidence, sought to be produced now, at the time when the evidence was being recorded by the Trial Court. Hence, the application for leading additional evidence is rejected.

No other argument was raised by learned counsel for the appellants.

In view of the above, the judgments and decrees passed by the Courts below are upheld.

The present appeal is dismissed being devoid of any merits.

21st November, 2017

Shivani Kaushik

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned *Yes*

Whether Reportable *Yes*