

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

RSA No.3319 of 2015 (O&M)

Date of decision:4.8.2017

Dharam Pal and others

...Appellants

Versus

Jaipal Singh (since deceased) through LR's and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.A.K.Goyal, Advocate for the appellants.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant regular second appeal, at the hands of unsuccessful plaintiffs, is directed against the concurrent findings of facts recorded by both the learned Courts below, whereby their suit for declaration with consequential relief of permanent injunction was dismissed by the learned trial court, vide its impugned judgment and decree dated 3.11.2012 and their first appeal was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 28.1.2015.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that grandfather of plaintiff No.1 and defendants namely Sher Singh was owners of the land measuring 45 kanal 19 marlas situated within the revenue estate of village Purkhas Dhiran, Tehsil Ganaur District Sonapat to the extent of 1/3rd share. He suffered a consent decree in favour of Chander Singh, predecessor-in-interest of plaintiffs on 4.8.1980 in Civil Suit No.369 of 1980. It was

averred that in the consent decree Sher Singh relinquished his $\frac{1}{3}$ rd share in the suit land viz. 7 Kanals 12 marla in favour of Chander Singh. The decree was duly incorporated in mutation no.2878. The revenue authorities committed mistake, while preparing the jamabandi and the share of Chander Singh as well as Sher Singh was wrongly recorded in the jamabandi. On 27.9.1995 the partition of land took place but the revenue authorities wrongly entered the name of Sher Singh in the column of ownership instead of Chander Singh. Sher Singh during his life time executed a Will dated 11.9.1980 bequeathing $\frac{1}{4}$ th share of his property in favour of plaintiffs and $\frac{1}{4}$ th share of property in favour of defendants but the said Will was wrongly incorporated by the revenue authorities in record. $\frac{1}{3}$ rd share relinquished by deceased Sher Singh in favour of predecessor-in-interest of the plaintiffs was not shown in the record. The plaintiffs came to know regarding the mistake in the month of August 2007 and requested the defendants to admit their claim but they were bent upon to dispossess the plaintiffs from the suit

Having been served in the suit, defendant No.1 appeared and admitted the case of the plaintiffs. However, defendant No.2 filed his contesting written statement, raising more than one preliminary objections. Plaintiff did not file any replication. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether the plaintiff no.1 is owner in possession of $\frac{1}{2}$ share and plaintiff no.2 to 4 are owner in possession of $\frac{1}{2}$ share of the suit land measuring 7 kanals 12 marla as of the share of deceased Sher Singh? OPP.
2. Whether the plaintiffs are owners in possession of $\frac{1}{4}$ share of the remainder land of the deceased Sher Singh by will dated 11.9.1980, if issue no.1 and 2 are proved? OPP.
3. Whether the petition no.2920 is liable to be declared as null

- and void and set aside?OPP.
4. Whether the suit of the plaintiff is bad for mis joinder and non joinder of the necessary parties? OPD.
 5. Whether the plaintiffs are entitled for the relief of permanent injunction against the defendants?OPD
 6. Whether the suit of the plaintiffs is not maintainable in the present form? OPD.
 7. Whether the plaintiffs have neither locus standi nor cause of action to file the present suit? OPD.
 8. Whether the plaintiffs are estopped by their own act and conduct to file the present suit? OPD.
 9. Whether the suit of the plaintiff is barred by Principle of Resjudicata? OPD.
 - 10.Relief.

In order to substantiate their respective stands taken in their pleadings, both the parties produced on record their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that the plaintiffs have failed to prove their pleaded case for want of cogent and sufficient evidence. Accordingly, their suit for declaration with consequential relief of permanent injunction was dismissed by the learned trial court, vide its impugned judgment and decree dated 3.11.2012. Feeling aggrieved, plaintiffs filed their first appeal, which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 28.1.2015. Hence, this regular second appeal, at the hands of unsuccessful plaintiffs.

Heard learned counsel for the appellants.

It is a matter of record that the case of the plaintiffs-appellants was based on an alleged family settlement and Will dated 11.9.1980. It is

also a matter of record that plaintiffs failed to prove alleged family settlement as well as the Will Ex.P17. Further the entire revenue record was also against the pleaded case of the plaintiffs-appellants. As per Section 44 of the Punjab Land Revenue Act, 1887, presumption of truth would be attached to the revenue entries. Though such presumption would be rebuttable, but the plaintiffs failed to rebut the said statutory presumption.

Similarly, appellants-plaintiffs failed to prove the Will, as they did not produce any attesting witness in whose presence the alleged Will was executed. So far as mutation No.2878 was concerned, that would not be of any help to the plaintiffs, because mutation does not confer any title. Having said that, this Court feels no hesitation to conclude that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

It goes without saying that the appellants, being the plaintiffs, onus was on them to prove their pleaded case by leading cogent and convincing evidence. However, they failed to do so for the reasons best known to them. Neither they could prove the Will, in accordance with Section 68 of the Indian Evidence Act nor they could prove the alleged family settlement, in accordance with law. In fact, there was no cogent and sufficient evidence available on record so as to prove the pleaded case of the plaintiffs. In such a situation, they were bound to fail. Under these undisputed facts and circumstances of the case, no fault can be found with the concurrent findings of facts recorded by both the learned Courts below and the impugned judgments and decrees deserve to be upheld, for this

reason as well.

Learned Additional District Judge, before arriving at his judicious conclusion, re-considered the facts of the case as well as evidence available on record, in the correct perspective. Relevant observations made by the learned first appellate court in paras 17 to 19 of its impugned judgment, which deserve to be noticed here, read as under:-

“To prove their case the plaintiffs led oral as well as documentary evidence. PW1, Dharampal (appellant no.1) in his cross-examination admitted that about 3-3½ years back he procured Fard jamabandi from Patwari then came to know that the decree was suffered in favour of their predecessor in interest Chander Singh but it was not incorporated in the revenue record. He also admitted that no family settlement took place in the family but according to the decree land measuring 7 kanal 12 marlas came to his father. However he was party during the course of proceedings initiated by Savitri who challenged the will which too was in favour of his father. He admitted that he had not made any reference to the said decree. He also admitted that the partition of the land has been effected in the life time of Chander Singh and during the course of partition the parties to the present litigation participated the proceedings. So this state of affairs shows that neither the person in whose favour decree was suffered nor the person by whom the decree was suffered made any effort to get it incorporated in the revenue record which leads to the only conclusion that the decree was not in pursuant to family settlement required to be arrived at to maintain peace in the family in view of law laid down in 2013(1) RCR (civil) 821 (SC), (supra) .

As regards will dated 11.9.1980 the appellants have not produced any attesting witness in whose presence the will was executed and on the basis of which mutation no.2920 was sanctioned. It has rightly been observed by ld. lower court that

the execution of will is to be proved as per section 68 of the Indian Evidence Act. It has also been rightly observed by the ld. lower court that the parties can avail remedy as per natural succession and they are entitled to inherit the estate of Sher Singh as per their share through natural succession.

As per aforementioned discussion the appellants have failed to prove that how they are entitled to be declared as owner of the land measuring 7 K 12 marla on the basis of decree dated 4.8.1980 where Bhim Singh, the other son of Sher Singh the Predecessor in interest of respondents, has not been impleaded as party in civil suit no.369 nor he was present at the time of family settlement. Further the will dated 11.9.1980 as well as mutation no.2920 is illegal null and void . I find no illegality or infirmity in the impugned judgment of ld.Trial court and same is not warranted any interference....”

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He was also unable to refer to any question of law much less substantial question of law, which is sine qua non for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. Both the impugned judgments and decrees have been found based on cogent findings recorded by the learned Courts below and the same deserve to be upheld, for this reason also. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286** and **Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179.**

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 appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs. Pending application, if any, also stands disposed of.

4.8.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No