

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

**RSA 4820/2015(O&M)
Date of decision:1.11.2017**

Bhupinder Singh

.....Appellant

vs

Gurnam Kaur

.....Respondent

Coram: Hon'ble Mr.Justice Jaswant Singh

Present:- Mr.SK Bawa,Advocate for
Mr.Mukesh Kumar Bhatnagar,Advocate for the appellant.

Jaswant Singh,J

Plaintiff/appellant has preferred this appeal against the judgments and decrees passed by the Courts below whereby his suit for possession and permanent injunction was dismissed by Civil Judge (Junior Division)Kharar vide judgment and decree dated 21.12.2012 and findings affirmed by learned Addl.Distt.Judge, SAS Nagar vide judgment and decree dated 28.5.2015.

Briefly noticed, the facts of the present case are that plaintiff/appellant filed the suit with the averments that he was son of late Gian Singh who died intestate on 11.9.2005 and that defendant Gurnam Kaur wife of brother of late Gian Singh had set up a forged will allegedly executed by Gian Singh on the basis of which she got mutated share of land of Gian Singh in her favour and that the said

mutation was liable to be cancelled and that he was entitled to inherit the property of deceased, being the only legal heir of deceased Gian Singh.

Upon notice, defendant filed written statement alleging that deceased Gian Singh was not father of plaintiff Bhupinder Singh, rather it was alleged that plaintiff was born from lawful wedlock of defendant Gurnam Kaur and Mewa Singh, brother of deceased Gian Singh. It was further alleged that deceased Gian Singh never resided with the plaintiff but resided with the defendant as he was unmarried and issueless. Forging of will was also denied and it was averred that said Will was rightly executed, as deceased Gian Singh was served by the defendant till his last breath and thus the mutation of inheritance was rightly sanctioned in favour of defendant.

Both the Courts below on the basis of oral and documentary evidence available on record dismissed the suit of the plaintiff. Hence the present appeal.

Learned counsel for the appellant submits that both the Courts below have misread and misinterpreted the evidence on record i.e. Entry in the register of birth and death maintained by the Chowkidar and so is the case with regard to documents Ex.P2 to P8.

After hearing the learned counsel for the appellant, I find no merit in this appeal and the same is liable to be dismissed.

The appellant while appearing in witness box as PW2 in his cross examination has stated that he did not know if Gian Singh

was married or not; deceased Gian Singh was residing with Gurnam Kaur who had been rendering services to Gian Singh. He further, in his cross examination, admitted that he was born from the wedlock of Gian Kaur and Mewa Singh and that throughout his life Gian Singh resided in the house of Gurnam Kaur and Mewa Singh.

As regards entry in the birth and death register maintained by the Chowkidar of Village Majatri, PW1 Jaspal Singh, Chowkidar stated that as per entry at Sr.No.55 dated 26.9.1972 (Ex.P1), plaintiff was shown as son of Gian Singh, however, in his cross examination it was stated by this witness that plaintiff-Bhupinder Singh is son of Mewa Singh; that Gian Singh was unmarried and that name of mother of plaintiff is Gurnam Kaur. He showed ignorance as to who authored this entry at Ex.P1 or whether this entry was correct or not.

On the other hand, defendant Gurnam Kaur in her cross examination has stuck to her stand that deceased Gian Singh was unmarried and issueless. Plaintiff was son of defendant born out of her wedlock with Mewa Singh. The execution of Will in question was also got proved by her by examining DW2 Sewa Singh, Nambardar, an attesting witness of the Will dated 6.8.2003.

On a conjoint reading of aforesaid evidence, in my opinion, both the courts below have rightly declined the claim of the plaintiff who in his cross examination has himself admitted that he was born out of wedlock of defendant Gurnam Kaur and Mewa Singh and that he did not know if Gian Singh was married with Gurnam Kaur.

The claim of the plaintiff that he was son of Gian Singh is falsified by the testimony of PW1 Jaspal Singh, Chowkidar of the village who stated that plaintiff Bhupinder Singh is son of Mewa Singh and defendant Gurnam Kaur and that Gian Singh was unmarried. Statement of this witness has rightly been relied upon by the Courts below to hold that entry Ex.P1 in the register of birth and death maintained by the Chowkidar of the Village is wrong. Rest of the documents Ex.P2 to P8, wherein plaintiff is shown to be son of Gian Singh are based on Ex.P1. It is in this backdrop that the Courts below have held that plaintiff was not able to prove that he was son of Gian Singh and instead was son of defendant Gurnam Kaur and Mewa Singh, as stated by the defendant and corroborated by DW2 Sewa Singh, Nambardar of the Village who stated that Gian Singh was unmarried and issueless.

In view of the above, I find that no question of law much less substantial question of law arises for consideration in this appeal.

Dismissed.

01.11.2017
joshi

(Jaswant Singh)
Judge