

RSA No. 6051 of 2015 (O&M)

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

RSA No. 6051 of 2015 (O&M)

Date of Decision: 17.8.2017

Darshan Singh

.....Appellant

Vs.

Darshan Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Kushagra Mahajan, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Present regular second appeal, at the hands of defendant No.1, is directed against the concurrent findings of facts recorded by both the learned courts below, whereby suit for declaration filed by the plaintiff was decreed by the learned trial court vide its impugned judgment and decree dated 26.11.2014 and first appeal filed by the defendants was also dismissed by the learned first appellate court vide its impugned judgment and decree dated 16.5.2015, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of its impugned judgment, are that originally Ram Singh was owner of land measuring 23 kanals 11 marla, as detailed in the head note of the plaint. That estate of Ram Singh was inherited by Boor Singh. Suit filed by Boor Singh was decreed vide judgment dated 28.2.1974 passed by the

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court of Sh. R.C. Paul, Sub Judge 1st Class, Amritsar. Subsequently, possession of the suit land was obtained vide rapat No. 286. Boor Singh sold the land in favour of Swaran Kaur, vide registered sale deed dated 9.4.1974. Swaran Kaur executed a valid registered Will on 2.2.1989 in favour of plaintiff No.1. In this way, plaintiff No.1 became exclusive owner of the suit property. He was in physical possession of khasra No. 53/8 (7-11) and was in possession of khasra No. 53/4 through plaintiff No.3 and khasra No. 53/7 through plaintiff No.2.

Darshan Singh son of Udham Singh and Banta Singh were left with no right, title or interest in the suit property. However, their names came wrongly in Jamabandi. Defendants were asked to admit the claim of the plaintiffs as owners in possession of the suit land and not to interfere in possession of the plaintiffs over the suit land, but to no effect and rather defendants threatened to dispossess the plaintiffs forcibly and to alienate the suit land. In case defendants No.1 to 4 would succeed in their designs, plaintiffs would suffer irreparable loss. Defendant No.5 was impleaded as proforma defendant, being sister of plaintiffs and to avoid any technical defect. It was finally prayed that a decree for declaration to the effect that plaintiff No.1 was owner of land measuring 23 kanals 11 marlas and was in possession of khasra No. 53/8 and was further in possession of khasra No. 53/4 through plaintiff No.3 and khasra No. 53/7 through plaintiff No.2 be passed. A decree for injunction be also passed restraining defendants No.1 to 4 from alienating the suit property and from interfering in possession of plaintiffs over the suit property.

Upon notice, defendants put appearance and filed their contesting written statement, raising more than one preliminary objections.

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Plaintiffs filed their replication. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether the plaintiff is owner in possession of suit property and defendant is threatening to interfere and alienate the same?OPP
2. Whether defendant is owner in possession of the suit property on the basis of sale deed dated 12.12.1968? OPD.
3. Whether the suit has been filed within limitation?OPP.
4. Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiffs have duly proved their case, by leading cogent and convincing evidence. Accordingly, their suit for declaration and consequential relief of permanent injunction was decreed by the learned trial court, vide its impugned judgment and decree dated 26.11.2014. Feeling aggrieved, defendants filed their first appeal, which also came to be dismissed by the learned Additional District Judge, vide impugned judgment and decree dated 16.5.2015. Hence this regular second appeal at the hands of defendants.

Heard learned counsel for the appellants.

Facts of the case are hardly in dispute. Admittedly, late Sh. Ram Singh-predecessor-in-interest of the plaintiffs was owner in possession of the suit land. After the death of Sh. Ram Singh, his son-Boor Singh inherited the suit property. Later on, Sh. Boor Singh sold the suit property to Smt. Swaran Kaur, vide registered sale deed dated 9.4.1974. It is also not in

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dispute that all the three plaintiffs were son of Smt. Swaran Kaur. On the basis of abovesaid sale deed dated 9.4.1974 and being absolute owner, Smt. Swaran Kaur executed registered Will dated 2.2.1989 in favour of her son Darshan Singh-plaintiff No.1. On the basis of this registered Will, i.e. 2.2.1989, plaintiff-respondent Darshan Singh became absolute owner in possession of the suit property and his peaceful physical possession over the suit property was also not in dispute. In such a situation, suit of the plaintiffs was bound to be decreed and the same has been rightly decreed by both the learned courts below. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Before arriving at a judicious conclusion, learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 14 and 15, which deserve to be noticed here, read as under:-

“Perusal of the aforesaid cross examination of defendant No.1 shows that defendant No.1 admitted that Boor Singh was held to be owner of the suit land, which was included in that case. He does not know whether possession was also taken by the plaintiffs. Taking of possession is proved from rapat No. 286 (Ex.P4). So it is proved that Boor Singh was held to be owner of the suit land vide judgment dated 28.2.1974, in which defendant No.1 and predecessor of defendants No. 2 to 4 as well as Baldev Singh son of Dara Singh, vendor of defendant No.1, were party. Appeal preferred against the said judgment was dismissed by the court of Sh. Amarbir

Singh Gill, Additional District Judge, Amritsar on 24.10.1980 vide judgment Ex.P13. It is further proved that Boor Singh sold the suit land vide sale deed Ex.P5 to Swaran Kaur wife of Hazara Singh on 9.4.1974. Plaintiffs are sons of Swaran Kaur. Defendant admitted in his cross examination and Swaran Kaur has expired. Plaintiff claimed that Swaran Kaur executed registered Will dated 2.2.1989 in favour of plaintiff No.1. As noted, plaintiff No.1 himself appeared and tendered his affidavit Ex.PW/1A wherein he stated as per his case. He also examined Mohinder Pal Gupta, deed writer, who scribed will dated 2.2.1989. None of these witnesses were cross examined on behalf of defendants. Legally, it amounts to admission of the statements of these witnesses. So, un-cross examined statements of plaintiff No.1 and his witnesses prove the case of the plaintiffs. Khasra Girdawari Ex.P1 supports the case of the plaintiffs regarding possession as claimed by them. Though Will dated 2.2.1989 was not proved by examining any attesting witness, yet it is to be noted that plaintiffs are sons of Swaran Kaur. In the natural course of succession also, plaintiffs inherited her estate. In the natural course of succession also, plaintiffs inherited her estate. It is however their case that plaintiff No.1 alone has inherited the estate of Swaran Kaur on the basis of Will dated 2.2.1989. So, witnesses of plaintiffs having not been cross examined at all, death of Swaran Kaur being admitted, plaintiffs No.2 and 3 admitted the factum of will dated 2.2.1989, versions of the plaintiffs, regarding execution of Will, deserves to be accepted. As such, plaintiff No.1 is held to be owner of the suit land measuring 23 kanals 11 marlas. Defendant No.1 did not get title of the suit property on the basis of sale deed dated 12.12.1968.

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As a result of foregoing discussions, it is held that plaintiffs have succeeded in proving their case. Ld trial court has properly appreciated that entire evidence and has rightly decreed the suit. Impugned judgment of ld. trial court is legal and valid, based on proper appreciation of evidence and law. Same is hereby affirmed and present appeal being beyond merit is dismissed with costs.... .”

The only argument raised by the learned counsel for the appellants that plaintiff No.1-Darshan Singh did not prove the Will strictly in accordance with law, has been duly considered but found without any force. It is so said because it is an admitted position on record that appellants were not putting their claim either regarding ownership or possession over the suit property. Once it is an undisputed fact situation obtaining on record of the case in hand, no fault can be found with the impugned concurrent findings of facts recorded by both the learned courts below even regarding validity of the Will in favour of plaintiff-respondent No.1. In this view of the matter, it can be safely concluded 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.

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

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laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. 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 misconceived, bereft of merit and without any substance. Thus, it must fail. No case 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.

17.8.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No