

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

105

RSA No.854 of 2015 (O&M)

Date of decision: 11.08.2017

Gurminderjit Singh

..... Petitioner

Versus

Balbir Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Anil Chawla, Advocate
for the petitioner.

ANIL KSHETARPAL, J. (ORAL)

Defendant No.7 is in Regular Second Appeal against the concurrent finding of fact arrived at by the Courts below. Balbir Singh/respondent-plaintiff filed a suit for declaration to the effect that the plaintiff is owner in possession of half share in the property detailed and described in the head note of the plaint.

It is the admitted position on the record that Kartar Kaur, mother of the plaintiff and defendants No.1 to 3 and grand-mother of defendants No.4 to 7 was owner of the property in dispute. She died on 08.02.1991. Mutation of inheritance was sanctioned only in favour of defendant No.7. Plaintiff had pleaded that their grand-mother had executed a Will dated 27.01.1982 which has been cancelled by registered deed dated 25.01.1988, therefore, the property should have been mutated in the name of all natural heirs.

The trial Court after appreciating the evidence available on the file held that the Will dated 27.01.1982 has not been proved in accordance

with the provisions of the Evidence Act. Learned Court held that the property would go as per the natural succession. The Court further held that the plaintiff is declared to be joint in possession of the property according to the share which he will derive as legal heir of Kartar Kaur.

Defendant No.7 filed an appeal. Learned First Appellate Court also after re-appreciating the evidence available on the file dismissed the appeal. Learned Court held that the Will dated 27.01.1982 has not been proved on the file in accordance with the provisions of Evidence Act. Learned Court held that cancellation deed dated 25.01.1988 stands proved as scribe as well as official from the office of Sub-Registrar has been examined. It has further been recorded that trial Court had recorded the finding that defendant No.7-appellant had admitted the thumb impression of Kartar Kaur on deed of cancellation of Will.

Learned counsel for the appellant has submitted that suit for mere declaration was not maintainable particularly when there is a finding of the Court that it is the appellant who is in exclusive possession of the property. He submits that in view of Section 34 of the Specific Relief Act, 1963, the suit for mere declaration was not maintainable. He has further submitted that the cancellation deed of the Will is not proved on the file because no attesting witness has been examined and the Court has misread the evidence of defendant-appellant that he had admitted the thumb impression of Kartar Kaur.

I have considered the argument of learned counsel for the appellant with his able assistance and gone through the record of the case.

As per the finding of the Court, no doubt the appellant-defendant is in exclusive possession. However, as per the finding of the

Court, all the parties are co-owners. Every co-owner is deemed to be in possession of the property.

Plaintiff could not have prayed for possession because that will be subject matter of partition proceedings. Plaintiff had only filed a suit to the effect that he be declared only in possession of half share. In my opinion, bar of Section 34 of the Specific Relief Act would not apply in a case where parties are co-owners and co-sharers.

There is some substance in the argument of learned counsel for the appellant that there is misreading of evidence with respect to admission of appellant on the cancellation deed dated 25.01.1988. However, that would not take the case of the appellant any further. Irrespective of the fact that the cancellation deed is not proved, the property has to go by natural succession because execution of Will is also not proved.

In view of the discussion made above, I do not find any reason to interfere in the finding of the Courts below.

Appeal is dismissed.

11.08.2017

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No