

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

**RSA No. 5667 of 2014 (O&M)
Date of Decision: 23.01.2017**

Kamaljeet Kaur @ Kamalpreet Kaur

... Appellant

vs.

Basant Kaur & Ors.

... Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present:- Mr. I.S. Brar, Advocate
for the appellant.**

ANITA CHAUDHRY, J.

Delay in filing and re-filing stands condoned.

This is plaintiff's regular second appeal against the concurrent findings recorded by the Courts below by virtue of which the suit filed by her against the respondents-defendants for declaration and partition, had been dismissed.

The plaintiff was daughter of Inderjit Singh son of Banta Singh. Banta Singh was having ½ share in land measuring 116 kanals 17 marlas. Inderjit Singh died on 05.10.1987, whereas Banta Singh died on 23.07.1995. The plaintiff, on attaining majority, filed a civil suit questioning the legality of collusive decree dated 02.03.1990 by virtue of which 34 kanal 17 marlas of land was transferred by Banta Singh in favour of his son Randhir Singh(defendant No.3). It was claimed that it was a sham transaction for no consideration and bad for want of registration.

A challenge was also laid to the Will dated 28.02.1994 vide which entire estate of Banta Singh was bequeathed in favour of his wife Basant Kaur and another son Hardhir Singh(defendants No.1 and 2) and the plaintiff was left out therefrom without any valid cause. It was claimed that she was entitled to get her 1/4th share in the land on the basis of natural succession.

The plaintiff also disputed the compromise decree dated 09.11.2004 passed in the civil suit filed by her in the capacity of minor through her maternal grandfather Surjeet Singh(defendant No.5) claiming possession of her share in the suit property, in which Surjeet Singh had been granted permission to compromise and a decree on the basis thereof was passed. It was claimed that the compromise was outcome of collusion between her maternal grandfather and other defendants to defeat her rights.

Defendants No.1 to 4 contested the suit. They took the stand that decree dated 02.03.1990 was passed on the basis of family settlement entered between the parties. Banta Singh bequeathed his property in favour of defendants No.1 and 2 out of love and affection and services rendered to the deceased during his lifetime. Adverting to the conduct of the plaintiff and her mother, it was averred that after the death of father of the plaintiff, her mother and the plaintiff started living with defendant No.5 and later re-married. It was admitted that the plaintiff filed the suit earlier in the capacity of minor through her maternal grandfather and a compromise was effected and pursuant thereto defendants deposited Rs.65000/- in favour of the plaintiff. The

cost of the land had increased, so out of greed the plaintiff had filed the suit whereas she was not entitled to any share in the property of Banta Singh.

The parties led evidence.

On appraisal of the evidence, the trial Court vide judgment and decree dated 23.08.2012 dismissed the suit. The appeal filed by the plaintiff was dismissed by the Appellate Court on 07.04.2014. Dis-satisfied with the same, the plaintiff has filed the instant regular second appeal.

I have heard learned counsel for the appellant and have gone through the record carefully.

It is apparent that though the plaintiff questioned the alienation of land in favour of defendants No.1 to 3 by Banta Singh vide collusive decree and Will, but she had failed to prove that the suit land was ancestral in the hands of Banta Singh and he was not competent to do so. No plea was taken in the suit and only a bald assertion was made in the affidavit. She even failed to lead any evidence on this aspect. No challenge was laid to the factum of family settlement when Randhir Singh(defendant No.3), the beneficiary, stepped in the witness box as DW7. It was held that where a decree recognizes a pre-existing right of the beneficiary in the property, the same does not require registration. Banta Singh remained alive for more than five years after the decree dated 02.03.1990 was passed and no challenge was laid to the decree. Once the property was held to be self-acquired, it was held that Banta Singh was well within his right to

alienate the same in favour of defendant No.3.

The Will was executed by Banta Singh on 28.02.1994. The plaintiff failed to prove that how the same was surrounded with suspicious circumstances. The defendants, on the other hand, proved its execution by examining the attesting witness Jang Singh(DW1), scribe Rajinder Kumar (DW3). As an abundant caution, the defendants No.1 to 4 also examined handwriting expert to prove that signatures on the Will were that of Banta Singh. It was the specific case of the defendants No.1 to 4 that out of love and affection, the suit property was bequeathed by the deceased in favour of defendants No.1 and 2. It was the self acquired property of Banta Singh and it was his wish that could prevail in disposing of the same in the manner he liked.

Coming to the plea of plaintiff regarding declaring the decree dated 09.11.2004 a nullity being outcome of collusion between defendant No.5 and other defendants, the plaintiff failed to prove the plea. It has come on record that after the death of her father, the plaintiff along with her mother started living with defendant No.5. The suit claiming 1/4th share was filed by defendant No.5 on behalf of the minor and it was compromised and pursuant thereto, a sum of Rs.65000/- was deposited by other defendants in the name of the plaintiff in FDR on 08.01.2005. The order passed by the Lok Adalat revealed that before entering into the compromise, the grandfather had obtained the opinion of the counsel and it was stated that the compromise was for the benefit of the minor. Taking into account the pros and cons of the compromise, permission had been granted to

defendant No.5 to compromise the matter on behalf of the plaintiff.

I find no reason to interfere with the concurrent findings recorded by the Courts below which are neither illegal nor suffer from perversity. The findings are affirmed. No substantial question of law arises for consideration in this appeal. Dismissed in limine.

23.01.2017
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(ANITA CHAUDHRY)
JUDGE

Whether speaking/ reasoned Yes/ No

Whether reportable Yes/ No