

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

383

RSA No.999 of 1990 (O&M)

Date of decision: 08.02.2018

Harnek Singh

..... Appellant

Versus

Pritam Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Gourave Bhayyia, Advocate
for the appellant.

Mr. Vikas Singh, Advocate and
Mr. G.S. Bawa, Advocate
for the respondent.

ANIL KSHETARPAL, J. (ORAL)

CM-11361-C-2014

Application is allowed. The proposed substantial questions of law are taken on record.

CM-12641-C-2014

Application is for permission to lead additional evidence so as to produce the revenue record from 1882 to 1956-57. In the considered opinion of this Court, the documents sought to be produced by way of additional evidence cannot be permitted at this stage particularly when all the documents were in the knowledge of the appellant and he did not file these documents before the Courts below.

Hence, the application is dismissed.

Main Case

Plaintiff-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below dismissing the suit

filed by the plaintiff for declaration claiming that the judgment and decree dated 26.03.1981 and the Will dated 22.09.1966 is illegal, null, void and not binding on his rights.

Dispute in the present case is with regard to the estate of late Sh. Kartar Singh, uncle of the plaintiff and defendant No.1. Kartar Singh was issueless. He initially executed a Will in favour of Pritam Singh, defendant-respondent on 22.09.1966 bequeathing his entire property in favour of his nephew, defendant-Pritam Singh. Thereafter, in the year 1981, Pritam Singh filed a suit against Kartar Singh. In that suit, a compromise was arrived at and on the basis of compromise, the entire property was declared to be owned by Pritam Singh. On the basis of compromise between the parties which is Ex.P-X on the previous file, the judgment and decree came to be passed on 26.03.1981.

Both the Courts after appreciation of the evidence available on the file have dismissed the suit filed by the plaintiff.

Learned counsel for the appellant has vehemently argued that the land was ancestral in nature and it was a joint Hindu family co-parcenary property. Hence, Kartar Singh was not entitled to suffer the decree in favour of Pritam Singh. He has further submitted that the plaintiff had also filed another suit challenging the decree suffered by Nahar Singh with respect to the land about 35 kanals and in that suit, the finding was returned that the property is joint Hindu family co-parcenary property. Hence, he submits that once there is a finding inter parties, therefore, the decree is not sustainable.

On the other hand, learned counsels for the respondent has supported the judgments passed by the Courts below. They have submitted that two suits were filed. One by Harnek Singh and second by Pritam Singh.

Both the suits, one was filed against Nahar Singh and other was filed against

Kartar Singh were decreed on the same date.

Learned counsel for the respondent further submits that the predecessor of the parties were occupancy tenants and the ownership for the first time came to be conferred on them on the basis of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952. Hence, he submits that the property cannot be held to be ancestral.

This Court has considered the submissions of learned counsel for the parties and with their able assistance gone through the judgments passed by the Courts below and the records.

It is not in dispute that the predecessor-in-interest of the parties were occupancy tenants and they were conferred proprietary rights only due to statutory intervention. Hence, the property cannot be held to be either co-parcenary or joint Hindu family. Still further, Kartar Singh was issueless and also the last male holder who was the absolute owner of the property. Such being the position, he was entitled to dispose of the property in any manner. In a settlement arrived at before the Court, if he has acknowledged Pritam Singh to be owner of the property who was his nephew, the plaintiff have no right, title or interest is not entitled to challenge the aforesaid decree.

In view the aforesaid discussion, this Court does not find any good ground to interfere with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

08.02.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No