

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

1. RSA No.908 of 1993 (O&M)
Date of decision : 09.03.2018

Hari Singh

...Appellant

Versus

Kartar Singh and others

...Respondents

2. RSA No.2583 of 1993 (O&M)
Date of decision : 09.03.2018

Sukhdev Singh and others

...Appellants

Versus

Kartar Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: None.

ANIL KSHETARPAL, J.

In both these appeals, which arise out of the same suit, counsel for the appellant has chosen to remain absent.

On 30.08.2017, Mr. Angel Sharma, Advocate had appeared for the appellants in RSA No.2583 of 1993 and on his request, the case was adjourned to 01.09.2017, clearly indicating that no further request for an adjournment shall be entertained. On 01.09.2017, once again the case was

adjourned to 12.09.2017 and counsel for the appellants chose not to appear. Even today, counsel for the appellants, in both the appeals, have not appeared. Both the appeals are pending for the last 24 years. Even steps have not been taken to complete the service. In these circumstances, this Court is left with no choice but to read the judgments and decide.

The defendants-appellants have filed two separate appeals against the concurrent findings of fact arrived at by both the Courts below.

The dispute is with regard to the estate of Sarwan Singh. Sarwan Singh was claimed to have become owner by way of an adverse possession. The plaintiff asserts that Sarwan Singh died issueless and unmarried. It is further the case of the plaintiff that Bhani was sister of Sarwan Singh. It is claimed that Sarwan Singh died on 01.06.1987 whereas Bhani, who was mother of the plaintiff-Kartar Singh and Partap Singh-defendant No.6, died 7-8 years ago. Hence, they claimed that the property of Sarwan Singh is inherited by them through Bhani, the sister of Sarwan Singh.

The defendants contested the suit and pleaded that in fact Sarwan Singh had married to Jasmail Kaur @ Jas Kaur @ Rehmo and two children were born out of the aforesaid wedlock namely Hari Krishan/Hari Khan and Mohan Singh. The defendants denied that Sarwan Singh had sister namely Bhani through whom the plaintiffs are claiming the property. The defendants further put forth a registered Will executed by Sarwan Singh dated 22.05.1984 which was registered on 29.05.1984. It was further pleaded that Jasmail Kaur @ Jas Kaur @ Rehmo had also executed a Will dated 13.08.1987.

Learned trial Court after appreciating the evidence available on the file held that the marriage between Sarwan Singh and Jasmail Kaur @ Jas Kaur @ Rehmo is proved as there was a registered document namely Krewanama dated 23 Harh 2005 BK. The Court further found that Smt. Rehmo first converted into Sikhism after taking *Amrit* and thereafter married Sarwan Singh.

The Court further held that the Will dated 25.05.1984 Ex.D1 is proved on the file. It is proved that Jas Kaur @ Jasmail Kaur @ Rehmo was wife of Sarwan Singh and Hari Khan @ Hari Singh and Mohan Singh are their sons. The Court further found that the Will executed by Jasmail Kaur dated 13.08.1987 is also proved.

However, the learned trial Court while discussing issue No.5 held that the registered sale deed executed by Harbhajan Kaur with respect to the land measuring 120 kanals and 5 marlas vide registered sale deed dated 01.09.1987 through her attorney, Sohna Singh is proved, however, defendant Nos.3 to 5 have failed to prove that they are bona fide purchasers. It was the case of the plaintiff that Sarwan Singh was in cultivating possession of this land for the last so many years and, therefore, he had become owner by way of adverse possession. The trial Court ignored the sale deed on the ground that Harbhajan Kaur who was the owner of the property has never remained in possession of the property. The Court held that since defendant Nos.3 to 5 never came into the possession, therefore, the sale deed in favour of defendant Nos.3 to 5 appears to be only a paper transaction.

Kartar Singh-plaintiff filed the first appeal against the judgment

of the trial Court. The cross-objections were filed by Hari Khan i.e. defendant No.1, Sukhdev Singh, Baldev Singh and Shamsheer Singh i.e. defendant Nos.3 to 5.

Learned First Appellate Court after re-appreciating the evidence available on the file, upheld the finding of the trial Court to the effect that Sarwan Singh is proved to have married with Jasmail Kaur @ Jas Kaur @ Rehmo and had two sons from the marriage i.e. Hari Khan @ Hari Singh and Mohan Singh, however, learned First Appellate Court while considering the cross-objections under issue No.5 held that the registered sale deed executed by the owner, cannot be brushed aside by the Court merely because the vendor or the vendees are not in possession of the property. The First Appellate Court has held that defendant No.1 has not claimed any proprietary interest of this land. Defendant No.1 only claimed himself into the possession as a tenant. The Court has further held that neither the plaintiff nor defendant No.1 has any locus standi to challenge the sale deed executed by the owner i.e. Harbhajan Kaur.

With these findings, learned First Appellate Court accepted the cross-objections filed by Sukhdev Singh, Baldev Singh and Shamsheer Singh to the extent that the registered sale deed in their favour is valid.

This Court has gone through the judgments passed by both the Courts below, as far as the claim of the plaintiff-Kartar Singh through his mother, Bhani has been found to be without any substance. Kartar Singh-plaintiff has not filed any appeal.

One appeal has been filed by Hari Singh son of Sarwan Singh. He is only aggrieved of the finding arrived at by the First Appellate Court

under issue No.5. A reading of the grounds of appeal shows that the judgment of the First Appellate Court has been challenged on the ground that since, Harbhajan Kaur was not in possession and defendant Nos.3 to 5 are also not in possession, therefore, the registered sale deed was only a paper transaction conferring no right.

This Court has considered the aforesaid ground, however, find no substance. A registered sale deed is a document of title. The ownership is transferred through the registered sale deed. Both the Courts have found that Harbhajan Kaur was the owner of the property and Sarwan Singh was not the owner of the land, which was sold by Harbhajan Kaur to defendant Nos.3 to 5. The plaintiff had setup a case that Sarwan Singh had become owner by way of adverse possession. The plaintiff failed to prove this fact. Defendant No.1 has claimed that he is in possession as a tenant. Defendant No.1 has not claimed any proprietary right in the property. Hence, the findings of the First Appellate Court on issue No.5 are correct.

RSA No.2583 of 1993 has been filed by defendant Nos.3 to 5. They are aggrieved of the findings arrived at by the learned trial Court affirmed by the First Appellate Court with regard to the validity of the Will setup by defendant Nos.3 to 6 dated 25.05.1987. It is an unregistered Will allegedly executed by Sarwan Singh. It has been found by the Court that Naib Singh appeared as DW17 and deposed about the execution of the Will by Sarwan Singh, however, when he was shown photograph of Sarwan Singh, he stated that photograph is not of Sarwan Singh. The Court further noticed that in a previous judgment, between defendant No.1 and defendant Nos.3 to 5, the Court had held that Sarwan Singh has not executed any Will

in favour of defendant Nos.3 to 5.

A careful reading of the grounds of appeal filed by defendant Nos.3 to 5 shows that neither any misreading of the evidence nor any illegality or perversity has been pointed out.

In view of the aforesaid discussions, both the appeals are dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the aforesaid judgment.

09.03.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No