

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

**RSA No.372 of 1989 (O&M)**

**Date of decision:05.10.2018**

Sohan Singh and others

... Appellants

Vs.

Mohinder Singh and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. N.S.Rapri, Advocate  
for the appellants.

Mr. O.P.Hoshiarpuri, Advocate  
for the respondents.

**AMIT RAWAL J.**

The appellant-plaintiffs are aggrieved of the concurrent findings of facts and law, whereby, suit claiming ownership of land in respect of suit land has been dismissed by the trial Court and affirmed by the Lower Appellate Court.

The facts which emanate from the pleadings of the parties are that suit aforementioned for separate possession to the extent of 3/5 share by way of partition was instituted in the year 1983 on the premise that Harnam Singh, father of the plaintiffs wanted to alienate the property in dispute without legal necessity and in this process, the plaintiffs instituted

the suit for permanent injunction. A restraint order from alienating the suit land was passed, but during the pendency of that suit, Harnam Singh died on 21.09.1983 leaving behind two sons; two daughters and three grandsons, thus, the suit became infructuous. In fact, the property at the hands of Harnam Singh was co-parcenary and ancestral property, therefore, they had acquired the right and interest by birth and by way of natural succession, the plaintiffs were entitled to 3/5<sup>th</sup> share, whereas, defendants no.1 to 4, 1/5<sup>th</sup> share. The plaintiffs had been in possession of house marked by word F and *taurs*, words B, C and D as co-sharers. However, defendants No.1 to 4 had taken forcible possession of the suit land on the death of Harnam Singh by proclaiming that they had become the owners of the property by virtue of Will dated 23.02.1981. It was averred that even if the Will was proved, it was not binding upon the plaintiffs as testamentary of ancestral property without legal necessity would not have any legal effect.

Defendants no.2 to 4 contested the suit by raising numerous preliminary objections *vis-a-vis* locus standi, mis-joinder and cause of action. On merits, it was denied that plaintiffs were co-parceners and suit property, while admitting the death of Harnam Singh on 21.09.1983, was stated to be self-acquired. Defendant no.5 filed a separate written statement and also prayed for dismissal of the suit.

Since both the parties were at variance, the trial Court framed as many as seven issues including the issue of relief. Both the parties led evidence in support of their respective stand.

The trial Court while dismissing the suit held that as per the revenue excerpt, Ex.P13, suit property was not ancestral at the hands of Harnam Singh and the Will being registered document had been proved on record as plaintiffs did not have cordial relation with Harnam Singh. The appeal taken before the Lower Appellate Court also met with the same fate.

Mr.N.S.Rapri, learned counsel appearing on behalf of the appellant-plaintiffs submitted that the Courts below abdicated in not appreciating the fact that revenue excerpt brought on record proved that Ishar Singh, father of Harnam Singh died on 17.05.1952. He had three sons, Karam Singh, Harnam Singh and Amar Singh. Sohan Singh and Gurmail Singh, plaintiffs are the sons of Harnam Singh, therefore, the suit land at the hands of Harnam Singh was ancestral in nature.

The findings with regard to validity of the Will dated 23.02.1981, Ex.D1 are also erroneous, for, Dharam Singh-DW3, interested witness did not belong to the village of deceased and was related to legatees being the son of his daughter-in-laws's sister. The other attesting witness was not examined for the reasons best known. The Will was surrounded by suspicious circumstances as nothing has come out on the record to show that there was any reason available to the deceased. Harnam Singh to disown his sons and daughters. The Will was bogus and fabricated

document. Even the registration of the Will was not genuine. The Registrar admitted that rubber stamp had been fixed at the back of the Will. The Will was not only un-natural but unconscionable act and thus, urged this Court for setting aside the findings under challenge as there is gross illegality and perversity.

Per contra, Mr. O.P. Hoshiarpuri, learned counsel appearing on behalf of the respondent-defendants submitted that plaintiffs failed to prove to be 4<sup>th</sup> generation in lineage. It has not been proved on record that father of the Ishar i.e., their great grandfather was the owner of the property. The plaintiffs were claiming the property at the hands of Harnam Singh to be ancestral, who had inherited from his father, therefore, being two generations in lineage, they being the third one. The suit property cannot attain the character of ancestral. As regards the factum of the Will, the attesting witness and Registrar had proved the execution and registration. Despite extensive cross-examination, attesting witness, DW3-Dharam Singh struck to the stand taken in the examination-in-chief. The other witness was Puran Singh, Lambardar. Examination of one witness discharged the obligation as per the provisions of Section 68 of Indian Evidence Act and Section 63(c) of Indian Succession Act. The concurrent findings of facts and law cannot be interfered with until and unless there is gross illegality and perversity which has not been pointed out either in the grounds of appeal or in the oral submissions and thus, urged this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the impugned judgments and decrees as well as record of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Rapri.

DW3-Dharam Singh in examination-in-chief stated that Harnam Singh executed a Will in his presence in favour of three grandsons Jagtar Singh etc. which was scribed by Dharam Pal, deed writer. The Will was read over to Harnam Singh which was attested by him and Puran Singh Lambardar of the village. Harnam Singh thumb marked the Will in their presence and when they appeared before the Sub-Registrar at Banga, the Will was also read over to Harnam Singh, who made a statement before the Sub-Registrar that legatee had been serving. He had seen the original Will, Ex.D1 and endorsement of the Registrar as Ex.D1/A. Rather the relationship of witness with Harnam Singh till his life time came out to be a cordial. DW4-Hardial Singh, Naib Tehsildar endorsed that both the attesting witnesses, namely, Puran Singh, Lambardar and Dharam Pal signed the Will in their presence, much less Harnam Singh, who was in sound disposing mind. He was in a position to distinguish between good and bad. It has also been proved on record that plaintiffs were living separately from Harnam Singh for the last 10-15 years as they failed to place on record any material of jointness of mess. On the other hand, legatee had been found to be serving Harnam Singh. Recital in the Will categorically disinherited the plaintiffs owing to the fact that they did not have the cordial relation with

testator Harnam Singh.

All these factors weighed in the mind of the Courts below while dismissing the suit, therefore, the arguments of Mr. Rapri, have not been able to bring the case within the realm of perversity to form the different opinion than the one arrived at by the Courts below, much less no substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed. Consequently, the application bearing No.11261-C of 2018 seeking restraint order against respondents No.1 to 3 from raising construction in the land in dispute during the pendency of the appeal is also dismissed.

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|                            | (AMIT RAWAL)<br>JUDGE |
| October 05, 2018<br>savita |                       |
| Whether Speaking/Reasoned  | Yes/No                |
| Whether Reportable         | Yes/No                |