

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 2446 of 1994(O&M)

Date of Decision:8.10.2018

Gurdial Kaur and others

---Appellants

vs.

Baldev Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. J.L.Malhotra, Advocate
for the appellants

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

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for declaration that plaintiffs are owners and entitle to joint possession to the extent of shares, detailed in paras (a), (b) and (c) of head note of the plaint and orders dated 21.12.1988 passed by the Assistant Collector Ist Grade, Phul sanctioning mutation No. 6227 in favour of defendants and dated 25.5.1989 by the Collector, Bathinda are illegal and do not bind the plaintiffs and the defendants may be restrained from alienating the suit land, was dismissed by the trial court vide judgment and decree dated 23.12.1991 that came to be affirmed in appeal by the Additional District Judge, Bathinda.

The appellants-plaintiffs have claimed right in the suit property on the basis of natural succession to Smt. Kartar Kaur widow of Zora Singh, their mother. On the contrary, defendants have propounded registered Will dated 12.8.1988 purported to be executed by Smt. Kartar Kaur on the basis whereof mutation impugned was sanctioned in their favour.

The sole submission made by counsel for the appellants is that the original Will has not been produced by the respondents-defendants and they were permitted to prove the Will by way of secondary evidence subject to proving loss of the original. It is argued that the respondents-defendants failed to lead satisfactory much less cogent evidence to establish that the original Will has lost, therefore, they have wrongly been held entitle to succeed to Smt. Kartar Kaur on the basis of testamentary succession by relying upon certified copy of the Will.

Counsel representing the respondents has supported concurrent findings recorded by the Courts whereby plea of the respondents has been accepted that Smt. Kartar Kaur executed registered Will in favour of her three sons namely Baldev Singh, Teja Singh and Mohinder Singh defendants No. 1 to 3. Pritam Kaur another daughter of Smt. Kartar Kaur has also supported plea of defendants No. 1 to 3 with regard to the deceased having left behind registered Will in favour of defendants No. 1 to 3. It is further argued that Teja Singh defendant No. 2 appeared in the witness box and had categorically deposed that the Will in question and Will executed by their father had lost and in this regard, a report was lodged with Police Station, Rampura and attested copy thereof is Mark 'A'. He made frantic

search to find the original documents but failed and there is no possibility of tracing the original Will.

Counsel for the appellants has failed to point out any tangible materials brought forth in cross examination of Teja Singh to establish that his testimony is not worthy of credence or reliance. He has also not made any submission that there was any reason for the respondents to withhold the original document at the cost of seeking permission from the Court for proving the Will by way of secondary evidence by establishing that the original has lost. In this view of the matter, I find it difficult to accept contention of the appellants that the respondents have failed to discharge the onus that original Will has lost, thus, they are not entitle to prove the Will by producing certified copy thereof, obtained from the office of Sub Registrar concerned.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

8.10.2018
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No