

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

**RSA No.1363 of 1995 (O&M)
Date of Decision.14.09.2018**

Bhajan Singh and others

.....Appellants

Vs

Jagiro alias Jagir Kaur and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. Ashish Soi, Advocate
for the appellants.

Mr. A.K. Singh Goyat, Advocate
for respondent Nos.1 and 2.

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AMIT RAWAL J.

The appellants-plaintiffs have assailed the judgment and decree dated 18.02.1995 passed by the lower Appellate Court whereby the suit for declaration and permanent injunction claiming right and title in the property *vis-a-vis* estate of Dalip Kaur alias Deepo, decreed by the trial Court vide judgment and decree dated 25.04.1992, has been dismissed.

The appellants-plaintiffs i.e. Bhajan Singh, Mohinder Singh, Darshan Singh sons of Pritam Singh son of Hira Singh and Gurdev Singh, Angrej Singh sons of Ajit Singh son of Hira Singh, instituted the suit in the year 1987 claiming that plaintiffs No.1 to 3 are owners in possession to the extent of 2/3rd share and plaintiffs No.4 and 5 are owners in possession to the extent of 1/3rd share in the land measuring 35 kanals 6 marlas being 1/5th share of land measuring 176 kanals 11 marlas (hereinafter called the suit land) on

the basis of Will dated 01.12.1983 executed by Deepo with consequential relief of permanent injunction restraining the defendants No.1 to 3 from alienating the land in dispute and from interfering into peaceful possession on the premise that Deepo was the real sister of their fathers i.e. Pritam Singh and Ajit Singh. Deepo used to live with the plaintiffs, who, in lieu of services rendered to her by the plaintiffs, executed the Will aforementioned. The pedigree table showed that Tek Singh had two wives, Kesar Kaur and Deepo. Out of loins of Tek Singh and Deepo, Dilbag Singh and Lakha Singh were born as sons. Dilbag Singh had three daughters Bholi, Rajo and Guddi i.e. defendants No.5 to 7 whereas Lakha Singh was arrayed as defendant No.3. Defendants were threatening to interfere into peaceful possession and enjoyment over the suit land and therefore, cause of action accrued to file the suit.

The aforementioned suit was contested by defendant No.1, Jagiro @ Jagir Kaur wife of Bira and defendant No.2, Biro @ Dalbir Kaur wife of Jagir Singh and denied that plaintiffs and defendant No.4 to 7 were natural heirs, much less, execution of the Will. Rather they propounded a Will of the Deepo dated 23.05.1985, which asserted that defendant Nos.1 and 2 were legal heirs of Deepo.

In the replication, all averments made in the written statement were denied by reiterating the averments made in the plaint.

On the basis of pleadings, trial Court framed the following issues:-

“1. Whether plaintiffs are owners in possession of suit

land on the basis of Will dt. 1.12.1983 executed by Dipo? OPP

2. Whether the plaintiffs are entitled for injunction as prayed for? OPP

3. Whether the plaintiffs are entitled for the alternative relief of possession? OPP

4. Whether the suit is not maintainable? OPD

5. Whether the defendants No.1 to 3 are the legal heirs of Dipo and Dipo executed Will on 23.5.85 in favour of defendants No.1 to 3? OPD

6. Whether the plaintiffs have no locus standi to file the suit? OPD

7. Whether the plaintiff has no cause of action to file the suit? OPD

8. Relief.”

Plaintiffs in support of their pleaded case examined Bhajan Singh as PW1, Baldev Singh as PW2, Simerjit Kaur as PW3 and tendered documents Ex.P1 to P9 i.e. certified copy of Will, copies of khasra girdawaris and jamabandi for the year 1981-82 etc.

On the other hand, defendants examined Karnail Singh as DW1, Dalbir Singh as DW2 and tendered into evidence documents Ex.D1 Will dated 23.5.1985, Ex.D2 Power of Attorney, Ex.D3 death certificate of Deepo, Ex.D5 and D6 jamabandis, Ex.D2/1 copy of order of the Commissioner Jalandhar, Ex.D3/1 copy of order of Additional Deputy Commissioner Jalandhar in case of Bhajan Singh Vs. Jagiri, Ex.D4/1 copy of mutation and Ex.D5/1 pedigree table.

On the basis of evidence brought on record, it was asserted that Pritam Singh and Ajit Singh were brothers of Dalip Kaur, who scribed the Will Ex.P1 from the scribe, Gural Singh. Bhajan Singh PW1 stated that Dalip Kaur alias Deepo was sister of father of the plaintiffs. Simarjit Kaur, PW3 stated that Tek Singh had married twice, first with Kesar Kaur and then with Dalip Kaur. Beero and Jagiro were daughters from Kesar Kaur. DW1 Karnail Singh stated that Deepo used to reside with Jagiro and Jagiro used to serve Deepo. Dalip Kaur @ Deepo died leaving behind three daughters and one son. By believing the statement of PW3, Simerjit Kaur under Section 50 of the Indian Evidence Act, the Will Ex.P1 was found to be proved by the trial Court and the Will propounded by defendants was discarded, resulting into decretal of the suit. In the appeal, lower Appellate Court discarded both the Wills and held that defendant Nos.1 and 2 along with Lakha Singh were legal heirs of Deepo and dismissed the suit.

Mr. Kanwaljit Singh, learned Senior Counsel assisted by Mr. Ashish Soi, Advocate appearing on behalf of the appellants in support of the memorandum of appeal submitted that there had been misreading of the facts and evidence as defendants miserably failed to prove the Will Ex.P1 as no evidence under Section 50 of the Indian Evidence Act has been led. The pedigree table Ex.PW5/1 was not emphatically denied and therefore, pedigree table brought on record at the instance of the defendants could not be looked into. The Will executed by Deepo had been proved through scribe. There was a compliance of provisions of Section 68 of the Indian Evidence Act,

much less, Section 63-C of the Indian Succession Act. DW2 admitted that he could not explain the fact that how many daughter Deepo had from first marriage. Defendant No.1 and 2 were daughters from Kesar Kaur and therefore, cannot be said to have any relation with Deepo *vis-a-vis* claim of the plaintiffs being Class IV heirs. There is no limitation for claiming title, in view of the judgment rendered by Full Bench of this Court in **Mohinder Singh Vs. Kashmira Singh 1985 PLJ 82**. Plaintiffs discharged the onus by proving the relation of father of the plaintiffs with Deepo and therefore, there was compliance of Section 50 of the Indian Evidence Act, thus, urges this Court for setting aside the judgment and decree under challenge.

Per contra, Mr. A.K.Singh Goyat, learned counsel appearing on behalf of respondent No.1 and 2 submitted that the trial Court erred in decreeing the suit solely on the statement of PW3 Simarjit Kaur when it was established that Dalip Kaur @ Deepo had two daughters and one son. Plaintiffs miserably failed to prove Will Ex.P1 as there was no compliance of Section 68 of the Indian Evidence Act, much less, Section 63-C of the Indian Succession Act. No reasons were assigned in the Will Ex.P1 as to why legal heirs have been excluded. In support of aforementioned contentions, reliance was placed upon judgment rendered by this Court in **Surender Kumar Vs. Subhash Chander and others 2016 (2) RCR (Civil) 381**. The finding rendered by the lower Appellate Court being last court of fact and law cannot be tinkered with unless there is gross illegality and perversity, thus, urges this Court for upholding the

judgment and decree under challenge.

This Court while admitting the appeal on 08.09.1995 passed the following order:-

“Admitted.

Status quo regarding possession.”

I have heard learned counsel for the parties, appraised the paper book, records of the Courts below, judgments cited at bar and of the view that there is no force and merit in the submissions of Mr. Kanwaljit Singh. The finding of fact and law arrived at by the lower Appellate Court by discarding both the Wills is correct. The plaintiffs have failed to prove relationship between Dalip Kaur @ Deepo with their father. Emphatic reliance laid to cross-examination of DW2, who feigned ignorance with regard to names of daughters of Dalip Kaur @ Deepo would not help plaintiffs, for, onus was upon plaintiffs to establish the relationship by direct and cogent evidence in terms of Section 50 of the Indian Evidence Act. For the sake of brevity, Section 50 of the Indian Evidence Act reads as under:-

“50. Opinion on relationship, when relevant.—When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, or any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 (4 of 1869) or in prosecutions under

section 494, 495, 497 or 498 of the Indian Penal Code.”

No relative has been examined to prima facie establish that Dalip Kaur @ Deepo was sister of Pritam Singh and Ajit Singh, father of plaintiffs. Similarly PW2 had also stated with regard to defendant Nos.1 and 2 to be daughters of Dalip Kaur @ Deepo. Daughters and son would be Class I heirs *vis-a-vis* claim of the plaintiffs being Class IV heirs as per Schedule II of Section 8 of the Hindu Succession Act.

The lower Appellate Court, in my view, has correctly held Jagiro @ Jagir Kaur, Biro alias Dalbir Kaur and Lakha Singh to be legal heirs of Delip Kaur @ Deepo *vis-a-vis* plaintiffs as plaintiffs failed to discharge the relationship of Pritam Singh and Ajit Singh with Dalip Kaur @ Deepo.

As an upshot of my finding, there is no illegality and perversity in the judgment and decree passed by the lower Appellate Court, much less, no substantial questions of law arises for determination by this Court. No ground for interference is made out. The second appeal stands dismissed. The interim order passed by this Court on 08.09.1995 also stands vacated.

(AMIT RAWAL)
JUDGE

September 14, 2018
Pankaj*

Whether Speaking/Reasoned Yes

Whether Reportable No