

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

RSA No. 4171 of 2012(O&M)

Date of decision: 5.2.2018

Pritam Singh

....Appellant

VERSUS

Jeet Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. K.R. Dhawan, Advocate for the appellant.

Mr. Tribhuwan Singla, Advocate for respondents No.1 to 3.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against consistent findings recorded by the Courts below whereby suit filed by the plaintiffs including Pritam Singh (appellant herein) was dismissed by the trial Court and counter claim filed by the respondents/defendants was partly decreed and the judgment and decree passed by the trial Court has been affirmed in appeal.

The appellant along with his co-plaintiffs claimed inheritance to land left behind by Gujar Singh who has not been seen for the past about 30 years and presumed to be dead.

Counsel for the appellant has submitted that the Courts below failed to appreciate documents Ex.P16 and P17 in right perspective, therefore, committed a serious error rather illegality by rejecting claim of

the plaintiffs that they are entitled to succeed to Sh. Gujar Singh son of Tegu. Another submission made by counsel is that findings recorded by the Courts below partly allowing counter claim of the defendants and holding them entitled to recover Rs.25,000/- towards compensation are liable to be set aside.

Counsel representing the respondents has supported concurrent findings recorded by the Courts below with the submission that the appellant and his co-plaintiffs failed to adduce even an iota of evidence to establish their claim qua inheritance to the estate of deceased Gujar Singh. Further submitted that respondents No.1 to 3 filed a suit in regard to their entitlement to land left behind by deceased Gujar Singh and in that case general public was also given notice of the proceedings but the plaintiffs neither contested the said case nor filed an application for setting aside the judgment and decree dated 05.12.2001, therefore, appellant cannot claim any right, title or interest in land left behind by Gujar Singh. In addition, it is argued that against the judgment and decree passed by the trial Court dismissing suit of the plaintiffs and partly allowing counter claim of the defendants, Pritam Singh – appellant filed one appeal, therefore, he cannot be heard to say that counter claim allowed in favour of the defendants suffers from an error much less perversity to enable him to make submissions in this regard in the second appeal.

I have heard counsel for the parties, perused the paper-book particularly the judgments impugned.

The Court in appeal, on a detailed consideration of documents Ex.P16 and P17, has negated contention of the appellant that he along

with his co-plaintiffs is entitled to inherit to the estate of Sh. Gujar Singh.

A relevant extract from para 13 of the judgment is quoted thus:-

“....Entry in pedigree table Ex.P17 showing Gurdit Singh of having died unmarried and issueless has been rebutted from the entries in the aforesaid jamabandies. Even otherwise such document has been proved from the statement of PW4 Mohan Lal, retired kaunungo, who translated the same from Ex.P16. During his cross examination he deposed that Ex.P16, which is in Urdu language and from which Ex.P17 was translated, was not prepared by him. He also does not know as to who prepared Ex.P16. He also does not know as to when Ex.P16 was prepared. He further admitted that he has not seen the original record of Ex.P16 at the time of translating the same into Ex.P17. So once the original record was not consulted by PW4 Mohan Lal, at the time of translating Ex.P16 into Ex.P17 and further when such original record was not produced in the court to authenticate the entries made in Ex.P16, no credence can be attached to such translated copy Ex.P17. Thus, the learned trial Court rightly discarded the same which even otherwise is rebutted from the aforesaid jamabandies proved by the plaintiffs themselves. From the certified copy of pedigree table Ex.D25 for the year 1966-67, proved by the defendants, it is proved that Gurdit Singh was having three sons namely Jang Singh, Kaku Singh and Gujar Singh and the defendant No.1 to 3 are sons of Jang Singh and Kaku Singh.”

Counsel for the appellant has failed to challenge the factual findings recorded by the Court in appeal with regard to failure of the appellant to prove authenticity of documents Ex.P16 and P17, therefore, documents are not reliable and worthy of credence. In this view of the matter, I find myself unable to accept contention of the appellant that the Courts below have failed to appreciate materials on record in right

perspective or committed any perversity in rejecting claim of the appellant and his co-plaintiffs with regard to their entitlement to inherit to Sh. Gujar Singh.

So far as the plea of the appellant to challenge entitlement of the respondents to recover Rs.25,000/- allowed by way of counter claim, as has been rightly argued by counsel for the respondents, appellant preferred only one appeal against the judgment and decree passed by the trial Court whereas the appellant was required to file a separate appeal against the counter claim as the same is treated as a cross-suit filed by the defendants. This apart, counsel for the appellant has failed to advance any argument much less meaningful to assail findings of the Courts below allowing counter claim in favour of the respondents/defendants. I would hasten to add that in the second appeal, the Court cannot appreciate and re-appreciate the evidence nor the judgments passed by the Courts below can be interfered with merely because another view is possible from the materials on record. Counsel for the appellant has failed to make out a case if the appeal involves a legal question to be answered in exercise of jurisdiction under Section 100 of the CPC.

For the foregoing reasons, the appeal fails and is accordingly dismissed. No order as to costs.

FEBRUARY 5, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no