

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

**RSA No.2724 of 2013 (O&M)
Date of Order: 17.12.2018**

Col. Manmohan Singh Bains and another **..Appellants**

Versus

Smt. Rachhpal Kaur and another **..Respondents**

RSA No.2827 of 2013 (O&M)

Col. Manmohan Singh Bains and another **..Appellants**

Versus

Ravinder Kaur Bains **..Respondents**

RSA No.2828 of 2013 (O&M)

Col. Manmohan Singh Bains and another **..Appellants**

Versus

Mrs. Rachhpal Kaur **..Respondent**

RSA No.2829 of 2013 (O&M)

Col. Manmohan Singh Bains **..Appellant**

Versus

Mrs. Rachhpal Kaur **..Respondent**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. V.K.Jindal, Sr. Advocate, with
Mr. Gopal Soni, Advocate,
for the appellants.

Mr. R.S.Bains, Advocate, and
Mr. Rajesh Sood, Advocate
for the respondents.

ANIL KSHETARPAL, J(Oral)

By this judgment, Regular Second Appeal Nos.2724, 2827, 2828 and 2829 of 2013 shall stand decided. All the four appeals are interconnected and parties as well as their counsels are common.

Three appeals have been filed by the plaintiffs-appellants against the concurrent findings of fact arrived at by both the courts below, whereas Regular Second Appeal No.2724 of 2013 has been filed by defendants-appellants against judgment of the first appellate court. Detailed facts have already been noticed by the courts below. Hence, only facts which are necessary for the decision of the case are being noticed.

Air Vice Marshal Harjinder Singh had purchased a residential plot through a sale deed. After construction, he bequeathed $\frac{1}{2}$ share of the house in favour of his wife Beant Kaur, whereas remaining $\frac{1}{2}$ share was gifted to his sister-in-law(wife's sister) who used to reside in the same house, vide registered gift deed dated 02.01.1971. Air Vice Marshal Harjinder Singh had died on 06.09.1971. House/plot in dispute was transferred in the name of Smt. Beant Kaur, widow of late Sh. Harjinder Singh to the extent of 50% as also in the name of Smt. Satwant Kaur (sister-in-law) somewhere in the year 1976. Smt. Beant Kaur had sold her 50% share in the house in question on 01.06.2005 in favour of Smt. Rachhpal Kaur, whereas Satwant Kaur had sold her 50% share to Smt. Ravinder Kaur, vide sale deed dated 03.06.2005.

Plaintiffs-appellants filed 3 separate suits. In the first suit i.e. Civil Suit No.265, dated 14.02.2004, a gift deed executed by late Sh. Harjinder Singh was challenged on the ground that the property is Joint Hindu Family Ancestral Coparcenary Property and, therefore, late Sh.

Harjinder Singh was not competent to gift, 50% of the property. Another suit was filed same day i.e. Civil Suit Nos.305 and 336 seeking declaration that parties are co-owners of the properties. 3rd Civil Suit No.305 of 24.12.2004 was filed seeking declaration that late Sh. Harjinder Singh died intestate. Fourth suit i.e. Civil Suit No.718 dated 17.04.2006 has been filed by Rachhpal Kaur and Ravinder Kaur, praying for passing of a decree for mandatory injunction for possession and for grant of damages for use and occupation of the building against the defendants who are claiming to be heirs of late Sh. Harjinder Singh.

Learned senior counsel appearing for the appellants has submitted that the house in question was purchased by late Sh. Harjinder Singh after sale of the ancestral property and therefore, the property was Joint Hindu Family Ancestral Coparcenary Property.

Both the courts have examined this aspect and found that the plaintiffs have miserably failed to prove their case. When the plaintiff appeared in the evidence, he expressed his inability to furnish the details of the properties received by late Sh. Harjinder Singh from his father Ram Singh. He has stated that he is not aware of detail of any property sold by late Sh. Harjinder Singh prior to the year 1960. He could not disclose what was the consideration received from the sale of the property by late Sh. Harjinder Singh from the land owned by him in the village. In the absence of cogent evidence to prove that the property which was purchased by late Sh. Harjinder Singh had been acquired from a Joint Hindu Family nucleus, the courts have rightly concluded that the property in dispute is not proved to be Joint Hindu Family Ancestral Coparcenary property.

It may be noted here that Col. Manmohan Singh Bains,

appellant no.1 herein, is adopted son of late Sh. Harjinder Singh and Beant Kaur. Although, there was dispute with regard to his adoption but both the courts have concurrently held, keeping in view of overwhelming documentary evidence that Col. Manmohan Singh Bains-appellant No.1 herein is proved to be adopted son of late Sh. Harjinder Singh and Beant Kaur and this finding has not been challenged before this court by the respondents.

Next question is with regard to the validity of a testament allegedly executed by late Sh. Harjinder Singh in favour of his wife dated 05.07.1971.

Learned senior counsel appearing for the appellants has submitted that the original Will has not been produced. He further submitted that no doubt application for secondary evidence was allowed, however, in absence of evidence to the effect that the Will originally existed, the courts have erred in upholding the Will.

This court has considered the submission. However, do not find any substance therein.

It may be noted that late Sh. Harjinder Singh died on 06.09.1971. Smt. Beant Kaur filed an application for transferring 50% share of the residential house in her favour on the basis of the Will dated 06.09.1971. Col. Manmohan Singh Bains, appellant no.1 herein filed an affidavit before the Estate Officer dated 24.03.1976, Ex.DW5/11, admitting correctness of execution of the valid Will by his father late Sh. Harjinder Singh in favour of his mother Smt. Beant Kaur. Col. Manmohan Singh Bains in the plaint in Civil Suit No.305 of 2004 has pleaded that immediately after the death of his father Air Vice Marshal Harjinder Singh,

when he was posted as a major (Army) in Amritsar, whatever documents were sent by the defendant, plaintiff signed the same without doubting the bonafides. During cross-examination, when he was confronted with the aforesaid fact, he initially denied but later on admitted that the aforesaid affidavit dated 24.03.1976 was got attested at Amritsar where he was posted as a Major(Army). On the basis of aforesaid affidavit, the Estate officer transferred the property in favour of Smt. Beant Kaur. Col. Manmohan Singh Bains did not raise any dispute for a period of 28 years. Still further, it has come on record that Col. Manmohan Singh Bains had himself produced a photocopy of the Will when application was filed directing Col. Manmohan Singh Bains to produce the Will. It is apparent from the order of the trial Court dated 04.05.2005 that it was Col. Manmohan Singh Bains who had produced photocopy of the original Will.

In this litigation stand taken by Smt. Beant Kaur as well as Smt. Satwant Kaur is to the effect that they were confined and maltreated by Col. Manmohan Singh Bains and he kept the entire records/documents with him. Once Col. Manmohan Singh Bains filed a suit, an application for production of the Will dated 05.07.1971 was filed since plaintiff Col. Manmohan Singh Bains had made a reference to the Will dated 05.07.1971 and it was Col. Manmohan Singh Bains who had produced photocopy thereof.

Still further, one of the attesting witness, namely, Brijbala Singh has been examined, who has deposed that the Will was executed by late Sh. Harjinder Singh in favour of his wife. She was working in the factory owned by late Sh. Harjinder Singh. In cross-examination, the evidence of Brijbala Singh could not be impeached. It is hand written

testament written by the testator himself. In view of the overwhelming evidence, this court does not find any substance in the argument of learned senior counsel for the appellants that existence of the original Will has not been proved. This court has seen the photocopy of the Will which is duly exhibited on the record. On careful perusal of the order passed by the Estate Officer, it is also apparent that the second attesting witness, namely, Niranjana Dass had also appeared before the Estate Officer before 50% of the residential house was transferred in favour of Smt. Beant Kaur. Niranjana Dass is also an attesting witness of the gift deed executed by late Sh. Harjinder Singh in favour of Smt. Satwant Kaur.

It may be significant to note that plaintiff Col. Manmohan Singh Bains when appeared in evidence, admitted that he had received properties from his father situated in village including agricultural as well as non-agricultural property. He further admitted that he had sold some part thereof during the life time of his father.

Learned counsel for the appellant has submitted that the learned first appellate court has not analyzed and discussed the reasons given by the learned trial court while dismissing Civil Suit No.718 of 2006. He submitted that, therefore, the judgment passed by the learned first appellate court is erroneous.

This court with the help of learned counsel for the appellant has gone through the judgment passed by the learned first appellate court. It is apparent that the judgment passed by the trial court in Civil Suit No.718 of 2006 has been discussed by the first appellate court separately and the reasons given by the trial court for dismissing the suit have been critically analyzed and reversed. Paragraphs 118 to 130 of the learned first appellate

court bear testimony to the aforesaid fact.

Learned senior counsel for the appellants has also submitted while referring to various letters sent by late Sh. Harjinder Singh addressed to Col. Manmohan Singh Bains that late Sh. Harjinder Singh had called upon his adopted son Col. Manmohan Singh Bains to get the house constructed, hence, he tried to impress this court that the property must be held to be Joint Hindu Family Ancestral Coparcenary property.

This court does not find any substance therein. The letters which have been produced on record as Exhibits D1 to D9 are only communications by the father to the adopted son that he should get the house constructed. That in the considered view of this court would not itself prove that the property was Joint Hindu Family Ancestral Coparcenary property.

Still further, Smt. Satwant Kaur and Smt. Beant Kaur had filed a suit under Section 6 of the Specific Relief Act seeking restoration of possession on the ground that both have been maltreated by Col. Manmohan Singh Bains and confined in the house illegally. It was in these circumstances that old ladies had to leave the house. It is their pleaded case in the aforesaid plaint, copy whereof is exhibited S12/R that Col. Manmohan Singh Bains after having retired from service requested his mother and Massi (mother's sister) to permit him to reside in the house, which was accepted but thereafter Col. Manmohan Singh Bains and his family members had started maltreating the old ladies.

Learned senior counsel for the appellants has further submitted that the suit for mandatory injunction was not maintainable as only suit for possession could be filed.

This court has examined the submission. It is not in dispute that Col. Manmohan Singh Bains or his son have no right, title or interest in the residential house. They were residing in the residential house with the permission of mother-defendant no.1 and her sister. Hence, the possession of the appellants was only permissive. In such circumstances, the learned first appellate court has rightly held that the suit for mandatory injunction is maintainable.

This court has gone through the judgment passed by the learned first appellate court while disposing of 4 first appeals. Learned Additional District Judge has passed an elaborate judgment discussing the evidence led by the parties. Learned senior counsel appearing for the appellant although made sincere attempt but failed to point out any perversity or substantive error in the judgment of the learned first appellate court.

Hence, all the 4 regular second appeals are dismissed.

December 17, 2018
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No