

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

RSA No.1307 of 2016 (O&M)

Date of Decision: July 18, 2018

Dharam Pal Singh and others

...Appellants

Versus

Kuldip Singh and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Mohd.Yousaf, Advocate for
the appellants.

HARINDER SINGH SIDHU, J.

The defendants have filed the Regular Second Appeal impugning the judgements of the courts below, whereby, the suit of the plaintiffs-respondents has been decreed.

For convenience, the parties would be referred to as per the status in the Civil Suit.

The plaintiffs had filed the suit for joint possession of agricultural land measuring 189 kanals 13 marlas situated in the revenue estate of village Mehmoodpur Tehsil and District Patiala to the extent of 3/16 shares and to the extent of 3/ 8 shares of 3010/17960 share of Gurdev Singh deceased in land measuring 44 bighas 18 biswas situated in the revenue estate of village Chamaru, Tehsil Rajpura District Patiala. They also prayed for declaration that they are owners of the agricultural land by way of inheritance to the extent of 3/ 8 shares out of the share of Gurdev Singh son

the defendants in their favour was illegal, null and void.

The case of the plaintiffs was that Gurdev Singh son of Mehar Singh was the owner of the suit land. He was father of plaintiffs no.1 and 2 and defendants No.1, 2, 3 and 5 and husband of plaintiff no.3 and grand father of defendant no.4. Gurdev Singh expired on 15.3.2004. The plaintiffs are his Class 1 heirs. After the death of Gurdev Singh, plaintiff No.1 made a representation for sanction of mutation of inheritance of Gurdev Singh in favour of his Class 1 heirs. However, the mutation of agricultural land of Gurdev Singh had been entered into in favour of the defendants on the basis of a Will . The application of the plaintiff was sent to the Court of Assistant Collector 1st Grade Patiala as a contested mutation. The proceedings continued for more than three years. Finally with the intervention of relatives and friends a compromise dated 25.6.2007 was entered into between the parties as per which it was agreed that mutation as per Will be sanctioned in favour of defendants No.1 to 4. After the sanction of mutation, defendants No.1 to 4 would give 2 acres of land out of the land of Gurdev Singh at village Mehmoodpur to plaintiff No.1. The compromise was submitted before the Assistant Collector, 1st Grade Patiala. Statements of the parties were recorded and order dated 26.9.2007 was passed by the Assistant Collector, 1st Grade Patiala. It was agreed in the compromise, if any party backed out for the compromise it will be liable to a fine of Rs.2 lacs by way of damages. The terms of the compromise were to be complied with within a period of two years. Despite sanction of mutation in their favour the defendants did not implement the compromise. Consequently, the suit was filed challenging the Will dated 10.9.2003 as being the result of

fraud, misrepresentation, coercion and for declaration that the plaintiffs and the defendants are entitled to inherit the estate of deceased Gurdev Singh to the extent of 1/8 share each.

Defendant Nos.1, 3, 4 and 5 did not contest the suit and were proceeded against ex parte. Defendant No.2 pleaded that the plaintiffs were estopped from filing the suit as the mutation of inheritance on the basis of the Will executed by Gurdev Singh in favour of the defendants was sanctioned in the presence and with the consent of the plaintiffs by the A.C. 1st Grade Patiala on 26.9.2007. Though, it was admitted that a compromise had been entered into between the parties its contents were denied and it was pleaded that his signatures had been obtained on blank papers. It was denied that any promise had been made to give 2 acres of land out of the land inherited from Gurdev Singh at village Mehmoodpur to plaintiff No.1.

The Ld. trial court on the basis of the evidence concluded that the plaintiffs had been able to substantiate the fact that a compromise dated 25.6.2007 had been executed between the parties. This fact had been proved by the testimony of PW-1 Hardam Singh who was attesting witness to the compromise. He proved on record the compromise dated 25.6.2007 as Ex. P-1, copy of the order passed by the Asstt. Collector 1st Grade Patiala as Ex.P-3, the consequent mutation as Ex.P-4. PW-3 Darshan Singh, Office Kanungo produced the original file of mutation No.225 of village Mehmoodpur of which the compromise dated 26.9.2007 was a part. In the mutation proceedings the statements of the parties were recorded and it was only the basis thereof that the order sanctioning mutation were passed. The

was agreed between the parties that if the plaintiff Kuldeep Singh takes back his objection in mutation No.225, the defendants would give 2 acres of land to plaintiff Kuldeep Singh. The wording of the compromise clearly indicated that the plaintiff never admitted that Will to be genuine. Rather, he had objected to the same and asserted his right over the property. It was only in view of the compromise wherein it was agreed that he would be given two acres of land that he withdrew his objection. It was noted that the signatures of defendant Dharmpal are present on the compromise which was written on stamp papers of Rs.300/- purchased by Nasib Singh, Dharampal, Jaspal Singh, Jarnail Kaur and Narinderpal Kaur, the plaintiff and the defendants.

The onus to prove that the Will dated 10.9.2003 was a valid Will was on the defendants. To prove the Will the defendants examined DW-1 Shamsher Singh, Registry Clerk from the office of Sub-Registrar, Rajpura who brought on record Bahi No.3, Jild No.16, Vasika 57 dated 10.9.2003 to prove that the Will executed by Gurdev Singh in favour of Nasib Singh, Dharampal, Jaspal, his sons and Jasbir Singh, his grandson had been registered. DW-3 Amarinder Singh, attesting witness of the aforesaid Will testified that Gurdev Singh had executed the Will dated 10.9.2003 in his presence in the office of Sub- Registrar, Ghanour. DW-3 however, in cross examination had admitted that the Will in question was not read over to Gurdev Singh. He also admitted that Gurdev Singh had wanted to Will away his property in favour of his five sons and widow. He only wanted to exclude his two daughters who were already married. He further admitted that Gurdev Singh never dictated the fact that Nasib Singh would hold property after his death for the purpose of his maintenance only and that

after the death of Nasib Singh his share shall go to Manpreet Singh son of Dharampal. He admitted that Gurdev Singh would not have dictated the name of Manpreet Singh in the Will as he was not the son of Nasib Singh. Rather the name of Manpreet Singh was got written by Dharampal, defendant as he was his son. This indicated that the execution of the Will was shrouded in suspicious circumstances. It was further noticed that no reasons had been given in the Will for leaving out his wife who had been serving him well. Dharampal the main beneficiary of the Will was with Gurdev Singh at the time of execution of the Will. Hence element of coercion could not be ruled out. It was noticed that neither in his examination-in-chief nor in his cross examination did DW 3 testify that Gurdev Singh signed the Will in his presence in token of executing the same and that thereafter DW 3 signed the Will in the presence of the testator. He also admitted that the contents of the Will were not read over to Gurdev Singh. It was thereby concluded that the due execution of the Will had not been proved by the defendants. It was held to be result of fraud, misrepresentation and coercion. It was also held that the mutation on the basis of the Will was got sanctioned by the defendants fraudulently and was set aside. The suit of the plaintiffs was thus decreed. It was held that the plaintiffs and defendants being the legal heirs of Gurdev Singh were entitled to the property of Gurdev Singh in equal shares.

The Ld. Lower Appellate Court affirmed the findings of the Trial Court.

Ld. Counsel for the appellant contended that the suit was barred

10.09.2003 of deceased Gurdev Singh was sanctioned in favour of the appellants in the year 2004 after the testator's death on 15.03.2004. The present suit which has been filed on 17.7.2010 is clearly barred by limitation as cause of action to challenge the Will accrued to the respondents at least in 2004 when mutation was sanctioned in favour of the appellants.

There is no merit in this contention. No doubt mutation No.225 on the basis of Will had been sanctioned in favour of the defendants in 2004. But the on the application of the plaintiffs the said mutation was treated as contested and the case was sent to the Court of Assistant Collector 1st Grade Patiala as a contested mutation. The proceedings continued for more than three years. Finally, with the intervention of relatives and friends a compromise dated 25.6.2007 was entered into between the parties as per which it was agreed that mutation as per Will be sanctioned in favour of defendants No.1 to 4. After the sanction of mutation, defendants No.1 to 4 would give 2 acres of land out of the land of Gurdev Singh at village Mehmoodpur to plaintiff No.1. The compromise was submitted before the Assistant Collector, 1st Grade Patiala. Statements of the parties were recorded and order dated 26.9.2007 was passed by the Assistant Collector, 1st Grade Patiala. The compromise was to be complied with within two years and the party backing out was liable for damages. When the defendants did not comply with the compromise, the suit was filed. In this case the cause of action arose to the respondents when despite sanction of mutation in their favour the defendants did not implement the compromise within the stipulated time. Thus the cause of action to sue arose to them on

Moreover, it is well settled that there is no limitation for filing a suit on the basis of inheritance (Mohinder Singh Vs. Kashmira Singh AIR 1985 P& H 215).

As regards the findings of fact recorded by the courts below, Ld. Counsel has not been shown as to that those findings are perverse or against the evidence on record.

No other substantial question of law arises for decision in this case.

Accordingly, there is no merit in the appeal and the same is dismissed.

July 18, 2018
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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No