

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

RSA No. 1811 of 2016 (O&M)

Date of decision : August 28, 2018

Sakatar Singh and another

.....Appellants

Versus

Jagir Kaur and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Raj Kumar Kakkar, Advocate
for the appellants.

LISA GILL, J.

Appellant-plaintiff is aggrieved of judgment and decree dated 28.01.2013 passed by the learned Additional Civil Judge (Senior Division), Zira as well as judgment and decree dated 05.08.2015 passed by the learned Additional District Judge, Ferozepur. Suit filed by the appellants was dismissed

Brief facts necessary for adjudication of the case are that the appellants – plaintiffs filed a suit for declaration to the effect that they are owners of the land as detailed in the plaint. - Respondent No. 2 – Baldev Singh, it was stated, had already sold 8 kanal 19 marlas of land and was thus, owner thereof only to the extent of 7 kanals. Challenge was laid to mutation No. 3202. It was pleaded, that Puran Singh son of Santa Singh father of the appellant – plaintiffs and defendant/respondent No. 2 - Baldev Singh was the owner of 3/4th share in land measuring 63 kanal 15 marlas i.e. owner of 47 kanal 16 marlas. Puran Singh died on 09.07.1992. Puran Singh had four sons - Sakatar Singh, Bahal Singh (appellant – plaintiffs), Baldev

Singh alias Bawa – respondent No. 2 and Jagir Singh (since deceased). Puran Singh had no daughter. He executed a registered will dated 06.08.1987 in favour of the appellants and Baldev Singh. It was further pleaded that Puran Singh's wife had abandoned him and started living with someone else at Nangal. Puran Singh left village Bhathal and started living at Fatehgarh Sahib. 8 kanals 19 marlas of land was sold by respondent No. 2 during the life time of Puran Singh and through Puran Singh himself. Sale proceeds thereof were given to respondent No. 2, who further purchased 3 kanals of land at village Chak Sabhra. Affidavit dated 23.11.2005 admitting the said fact was suffered by respondent No. 2, who was confined in Central Jail, Amritsar. Jagir Singh brother of the appellants was murdered and his share fell to his wife, two sons and a daughter. Respondent No. 1 – Jagir Kaur, it was pleaded, was not the daughter of Puran Singh. She had got the mutation of inheritance wrongly and illegally sanctioned in her name, therefore, the suit was filed.

Respondent No. 1 contested the suit. Written statement was filed taking various preliminary objections and controverting the averments on merits. It was admitted that the land in question belonged to Puran Singh. However, it was pleaded that Puran Singh had four sons and a daughter Jagir Kaur – respondent No. 1. It was denied that will dated 06.08.1987 was executed in favour of all the three sons. Averments in the plaint regarding the appellants serving Puran Singh or the wife of Puran Singh leaving him and living with somebody else were denied. Mutation No. 3202, it was stated, was illegally sanctioned.

Separate written statement was filed by respondent No. 4.

Respondent No. 4 is the son of Jagir Singh and grandson of Puran Singh. It

was pleaded that the alleged will, if any, is a forged and fabricated document. Respondent No. 1 is the daughter of Puran Singh, who had cordial relations with all his sons and daughter. Mutation of inheritance has been rightly sanctioned on the basis of succession in the presence of the plaintiffs and defendant No. 2 – Baldev Singh. It was further averred that Puran Singh had cordial relations with his sons and daughter. Puran Singh used to generally stay with Jagir Singh and after his death, with defendant No. 4. It was, thus, prayed that the suit be dismissed. Other defendants did not appear and were proceeded ex parte.

Following issues on the basis of the pleadings of the parties were framed by the learned trial Court:-

1. Whether the plaintiffs are entitled for declaration as prayed for? OPP
2. Whether the suit is not maintainable? OPD
3. Whether the plaintiffs have no cause of action to file the present suit? OPD

Evidence was led by both the parties.

Learned trial Court dismissed the suit filed by the appellants. Appeal filed by the appellants was also dismissed by the learned Additional District Judge, Ferozepur vide judgment and decree dated 05.08.2015.

Learned counsel for the appellant vehemently argues that judgment and decree 28.01.2013 passed by the learned Additional Civil Judge (Senior Division), Zira as well as judgment and decree dated 05.08.2015 passed by the learned Additional District Judge, Ferozepur are liable to be set aside as both the learned courts below have erred in holding that will dated 06.08.1987 was not duly proved. It is submitted that in fact the attesting witness Milkha Singh could not come present before the

learned trial Court for his cross examination as he was pressurised by the other party. Application for additional evidence was moved by the present appellants before the learned first appellate Court but their application was wrongly dismissed vide order dated 05.08.2015. Moreover, it was incumbent upon respondent No. 1 – Jagir Kaur to have led evidence to prove that she was the daughter of Puran Singh. It is further contended that no reliance should have been placed on the plaint (Ex.D1) filed by one Kikar Singh claiming to be the legal heir of Kesar Kaur widow of Didar Singh on the basis of will dated 15.06.1998 wherein respondent No. 1 – Jagir Kaur has been mentioned as the daughter of Puran Singh. It is, therefore, prayed that the impugned 28.01.2013 passed by the learned Additional Civil Judge (Senior Division), Zira as well as judgment and decree dated 05.08.2015 passed by the learned Additional District Judge, Ferozepur be set aside, consequently, allowing the suit filed by the appellants throughout.

I have heard learned counsel for the appellants and have gone through the photocopy of the relevant record furnished in Court today.

There is no dispute that the property in question belonged to Puran Singh. It is the specific case of the appellant-plaintiffs that Puran Singh had no daughter and Jagir Kaur is not the daughter of Puran Singh, therefore, mutation in respect to the property of Puran Singh was wrongly entered on the basis of succession. Will dated 21.09.2010 in their favour was also pleaded. It was incumbent upon the appellants to have proved that Jagir Kaur was not the daughter of Puran Singh as it was their assertion. Tara Singh, Numberdar of the village had attested the pedigree table at the time of sanction of mutation on the basis of natural succession. Appellants

have failed to prove will dated 06.08.1987. PW2 Milkha Singh one of the attesting witnesses of the will was examined-in-chief but he failed to appear for cross examination. Thus, it was rightly held that the will in question was not proved in accordance with law. Application under Order 41 Rule 27 CPC filed by the appellants was rightly dismissed by the learned first appellate Court vide detailed order dated 05.08.2015. There is nothing on record to reflect that the said application was anything but an attempt to fill up the lacunae. I have perused the will dated 15.06.1998. It is mentioned in the said will that wife of Puran Singh had died. He had only four sons and no daughter. It is a matter of record that Kesar Kaur wife of Puran Singh died much later than 06.08.1987 i.e. in the year 1999. Moreover, mutation (Ex.P5/B) was duly sanctioned on the basis of natural succession but no steps were ever taken by the appellants for sanction of the mutation of inheritance on the basis of will dated 06.08.1987 after the death of Puran Singh in the year 1992.

Learned courts below have rightly held that merely because the document (Will) in question is a registered instrument, the same does not necessarily point to the genuineness of the same, neither are the suspicious circumstances surrounding the will dispelled due to mere registration of the said will. Respondent No. 1 deposed as DW1. She has specifically claimed herself to be the daughter of Puran Singh. Mutation (Ex.P5/B) was clearly sanctioned on the basis of natural succession. DW2 Harbans Singh son of Jagir Singh specifically deposed in favour of respondent No. 1. DW3 Pargat Singh, Numberdar of the village also categorically stated that Puran Singh had four sons and a daughter Jagir Kaur i.e. respondent No. 1.

Respondent – defendants have placed on record copy of the

plaint (Ex.D1) filed by Kikar Singh claiming ownership on the basis of will

dated 15.06.1998 and for setting aside sale deed dated 25.05.2010 allegedly executed by the present appellants in favour of one Kuldeep Singh. Jagir Kaur is duly mentioned to be the daughter of Purn Singh in the said plaint, therefore, it cannot be said that Jagir Kaur is not the daughter of Purn Singh.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

No other argument was addressed.

Learned counsel for the appellant is unable to point out any illegality and infirmity in impugned judgment and decree 28.01.2013 passed by the learned Additional Civil Judge (Senior Division), Zira as well as judgment and decree dated 05.08.2015 passed by the learned Additional District Judge, Ferozepur which calls for interference by this Court.

Accordingly, this appeal is dismissed with no order as to costs.

August 28, 2018
rts

(Lisa Gill)
Judge

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