

RSA No.2389 of 2016 (O&M)

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

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RSA No.2389 of 2016 (O&M)

Date of Decision : 20.09.2018

AMAR SINGH.

....Appellant

V/S

RAGHBIR SINGH AND OTHERS.

....Respondents

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Keshav Pratap Singh, Advocate for the appellant.

B.S. WALIA, J.,

[1] Regular Second Appeal has been filed against judgment and decree dated 07.03.2015, passed by the learned Additional District Judge, Palwal, dismissing appeal against judgment and decree dated 22.11.2011, passed by the learned Additional Civil Judge (Senior Division), Palwal, decreeing the suit of the plaintiff-appellant partly.

[2] Brief facts of the case leading to the filing of the instant appeal are that the appellant had filed a suit for a declaration and permanent injunction against the respondents-defendants that the predecessor-in-interest of the plaintiff and defendants i.e. Shri Bhav Singh s/o Shri Parsad Lal (since deceased) was the owner in possession of the suit properties mentioned in paragraph No.1 (A) to 1 (C) of the plaint and was also recorded to be in possession of the suit property mentioned in paragraph No.2 of the plaint, that the suit properties were ancestral joint Hindu Family co-parcenary properties in the hands of Shri Bhav Singh, who died intestate on 08.10.2002 and after his death, the suit property devolved upon the plaintiff and defendant Nos.1 to 4 in five equal shares being co-parcenary properties of the parties, that Bhav Singh had never

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executed any Will in favour of defendant Nos.1 to 4, that alleged Will dated 13.06.2001 was a result of fabrication, misrepresentation, fraud and undue influence and deceased Bhav Singh never intended to bequeath his property in the manner as scribed in the alleged Will dated 13.06.2001. In the light of the aforementioned background, the appellant-plaintiff sought a declaration that he was co-owner in possession to the extent of 1/5th share in the suit properties detailed in paragraph No.1(A) to (C) of the plaint and also that he was in joint possession to the extent of 1/5th share in the suit property detailed in paragraph No.2 of the plaint. Appellant-plaintiff further sought a decree for permanent injunction for restraining the defendants from dispossessing him from the suit property detailed in paragraph No.1 (A) to (C) and paragraph No.2 of the plaint and from alienating the same. In the alternative the appellant-plaintiff sought relief that he be declared as co-owner in possession to the extent of 1/8th share in the suit properties in case the properties were not held to be co-parcenary properties of the parties.

[3] Respondents-defendants on the other hand denied that suit property detailed in paragraph No.1 (A) to 1 (C) and paragraph No.2 of the plaint was ancestral, joint Hindu Family and co-parcenary properties in the hands of late Shri Bhav Singh and instead claimed that Shri Bhav Singh was the absolute owner in possession of all the suit properties, that plaintiff was separated by late Bhav Singh during his lifetime and was given a residential house depicted by the letters A, B, C, D in the site plan. Defendants further claimed that the suit property detailed in paragraph No.1 (C) of the plaint was purchased by late Shri Bhav Singh in his own name from his own income and they further denied Bhav Singh having

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died intestate. Defendant's on the contrary, contended that Bhav Singh had executed Will dated 13.06.2001 and on the basis of said Will, mutation of inheritance was duly entered and sanctioned in favour of respondent-defendant Nos.1 to 4. The respondents-defendants also claimed that they were in actual physical possession of the suit property detailed in paragraph No.2 of the plaint.

[4] That on the basis of pleadings of the parties, the following issues were framed:-

1. *Whether the plaintiff is co-owner in possession to the extent of 1/5 share in the suit property mentioned in para No.1 (A) to 1 (C) of the plaint and in joint possession to the extent of 1/5 share in the suit property mentioned in para No.2 of the plaint? OPP*
2. *Whether the plaintiff is entitled to the decree for permanent injunction as prayed for on the grounds mentioned in the plaint? OPP*
3. *Whether plaintiff is entitled to the declaration that he is co-owner in possession to the extent of 1/8 share of the suit property as an alternative relief? OPP*
4. *Whether the suit is not maintainable in the present form? OPD*
5. *Whether the plaintiff has got no locus standi to file the present suit? OPD*
6. *Whether the plaintiff is stopped by his own act and conduct to file the present suit? OPD*
7. *Relief.*

[5] The learned trial Court while adjudicating as to whether or not the suit properties in the hands of Shri Bhav Singh were ancestral and joint Hindu co-parcenary properties took into account that none of the parties had produced on record any documentary proof *qua* the suit

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property detailed in paragraph No.1 (A) and 1(B) of the plaint in order to support their respective claims. The learned trial Court held that onus was strictly upon the appellant-plaintiff to prove that the suit properties in the hands of Bhav Singh (since deceased) were ancestral and Joint Hindu co-parcenary properties but the appellant-plaintiff had failed to discharge the said burden, therefore, in the absence of any documentary proof, suit properties detailed in paragraph No.1 (A) and 1(B) of the plaint were the self acquired properties of late Shri Bhav Singh. As regards property mentioned in paragraph No.1(C) of the plaint, the learned trial Court observed that undoubtedly, the said property was purchased by Bhav Singh (since deceased) vide sale deed bearing Vasika No.2417 dated 17.08.1984 from the Consolidation Department in an open auction and the said fact stood proved from copy of mutation No.10668 (Ex. P-5) and that after sanction of aforesaid mutation, name of said Bhav Singh was also incorporated as owner in possession in the subsequent *jamabandi* for the year 1996-97 (Ex. P-6), therefore, it stood proved that the suit property mentioned in paragraph No.1(C) of the plaint was the self acquired property of Bhav Singh (since deceased).

[6] The learned trial Court further held that although it had been alleged by the appellant-plaintiff that the property mentioned in paragraph No.1(C) of the plaint was purchased by Bhav Singh with joint family income from ancestral holdings and other family funds but no evidence whatsoever had been led to prove the same. Rather it had been duly proved on record that the appellant-plaintiff was separated from his father late Shri Bhav Singh during his lifetime about 20-25 years ago and since then was residing separately from Bhav Singh and the respondents-

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defendants. The learned trial Court further held that the appellant-plaintiff while appearing as PW-4 during his cross-examination admitted that he was separated from his father during his lifetime about 20-25 years ago and that he was working in a factory at Ballabgarh for the past 20-25 years.

[7] In the light of the aforementioned position, the learned trial Court held that from the statement of the plaintiff himself, it was established that the parties did not remain joint in their mess and income till death of Bhav Singh as claimed by the appellant-plaintiff. Accordingly, in the light of decision in 'Sant Ram *versus* Parmanand and others', *PLR 1977, 605*, the trial Court held that it was settled law that although there was a presumption in law regarding jointness of a Hindu family between the father and his sons but there was no presumption that property in the hands of the father was joint Hindu Family property.

[8] As regards, the question as to whether or not the predecessor-in-interest of the parties namely Bhav Singh (since deceased) had executed Will dated 13.06.2001 during his lifetime in respect of the suit properties, the learned trial Court on the basis of evidence led before it held that the evidence adduced by the defendants to prove the execution of the impugned Will dated 13.06.2001 remained un rebutted and evidence in respect thereto was cogent and reliable and could not be shattered or impeached in any manner and further that perusal of Will dated 13.06.2001 (Ex. D-1) revealed that it was a registered Will and on overleaf page No.1 of the said Will, there were stamps and signatures of the Joint Sub Registrar, Palwal and it also bore thumb impression of executants Bhav Singh besides signature of two attesting witnesses namely Chander

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Shekhar and Rajender Lamberdar. The learned trial Court held that no doubt attesting witness Rajender Lamberdar had not been examined in the case but non-examination of said witness was of no consequence as the defendants were not required to examine both the witnesses of the Will and one of the attesting witnesses of the Will dated 13.06.2001, namely Chander Shekhar had appeared as DW-2 and admitted his signatures on the same. As regards the version of contesting defendant Nos.1 to 4 and 7 about the due execution of the Will by Bhav Singh, the learned trial Court observed that the appellant-plaintiff could have examined the other attesting witness if he thought that the other attesting witness would not support the execution of the Will. Consequently, no adverse inference could be drawn against the respondents-defendants for not examining the other attesting witness of the Will. Besides the requirement of Section 68 of the Indian Evidence Act, 1872 (for short 'the Act') had been complied with by examining one of the attesting witnesses of the Will.

[9] As regards the challenge to the execution of the impugned Will dated 13.06.2001 on the ground of fraud, misrepresentation and undue influence on the plea that Bhav Singh was not possessing a sound disposing mind on 13.06.2001 and was bed ridden at the relevant time, the learned trial Court observed that no documentary evidence in the shape of medical report had been produced on record by the appellant-plaintiff to establish that Bhav Singh was not in a good state of health or that he was not possessing a sound disposing mind on 13.06.2001. Besides, Will dated 13.06.2001 was a registered document and there was a legal presumption that the testator Bhav Singh was having a sound disposing mind at the time when he appeared before the Sub Registrar for the

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registration of the said Will. The learned trial Court further held that in order to prove the thumb impression of testator Bhav Singh on the impugned Will dated 13.06.2001, respondents-defendants had got compared the disputed thumb impression of Bhav Singh on the impugned will with his admitted thumb impressions from Dr. Satya Dev Aggarwal, Handwriting & Fingerprints Expert and also examined the said Handwriting and Fingerprints Expert in evidence, who appeared as DW5 and proved his report Ex.DW5/B and enlarged photographs Ex.DW5/C to DW5/J. The learned trial Court held that in his report, Ex.DW5/B, DW5, Dr. Satya Dev Aggarwal had clearly mentioned that he was of the definite opinion that questioned thumb impression mark Q1 to Q4 and admitted thumb impression mark A1 to A4 of Bhav Singh tallied with each other. Although said witness was duly cross-examined by counsel for the plaintiff but nothing adverse could be elicited from him. Besides no expert evidence was produced by the appellant-plaintiff to rebut the evidence of DW-5, Handwriting and Fingerprints Expert. The learned trial Court further held that apart from not leading any evidence to depict that the thumb impressions appearing on the impugned Will were not of testator Bhav Singh, the fact remained that the defendants had led expert evidence in support thereof besides the impugned Will was a registered one and the testator had appeared before the Joint Sub Registrar, who had read over and explained the Will to the testator, who after admitting the same as correct had thumb marked the same and the witnesses had also attested the same and further the registration endorsement (Ex.D2) fortified the genuineness of the Will. Therefore, it could not be said that the testator was not in sound disposing mind at the time of execution of

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the Will. The learned trial Court held that in the circumstances, there was practically no evidence to prove that the testator was not in sound disposing mind.

[10] As regards the plea of the appellant-plaintiff that he came to know about the impugned Will dated 13.06.2001 executed by Bhav Singh in the year 2005, the learned trial Court held that on the basis of Will dated 13.06.2001, mutation of inheritance No.668 (Ex.P8) was sanctioned and perusal of said mutation revealed that mutation and inheritance *qua* suit property mentioned in paragraph No.1(C) in the plaint was sanctioned in favour of respondent-defendant Nos.1 to 4, whereas mutation of inheritance *qua* some other agricultural land of *Mustkil No.323 Killa No.9/1(4-13)* was sanctioned in favour of the appellant-plaintiff, respondent-defendant Nos.1 to 4 and 7. Thus, mutation of inheritance No.668 was sanctioned *qua* two different properties of Bhav Singh in view of Will dated 13.06.2001 and out of those properties, one agricultural land was also inherited by the appellant-plaintiff along with respondent-defendant Nos.1 to 4 and 7. Therefore, it did not lie in the mouth of the appellant-plaintiff to contend that he was not having any knowledge and notice of Will dated 13.06.2001 or that he came to know about the said Will in the year 2005. The learned trial Court further held that the appellant-plaintiff while appearing as PW4 during his cross-examination admitted that he along with respondent-defendant Nos.1 to 4 and 7 had sold land measuring 4 Kanals and 13 Marlas for sale consideration of Rs.11,62,500/- and that respondents-defendants had also proved on record copy of sale deed bearing *Vasika No.2080* dated 03.06.2005 as Ex.DW4/1 and perusal of the same revealed that the appellant-plaintiff along with

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respondent-defendant Nos.1 to 4 and 7 had sold land measuring 4 Kanals - 13 Marlas of *Mustkil No.323 Killa No.9/1 (4-13)* in favour of Deep Singh Realators Pvt. Ltd. and the aforesaid land was inherited by the appellant-plaintiff along with respondent-defendant Nos.1 to 4 and 7 from Bhav Singh in view of his Will dated 13.06.2001. Thus, from the oral as well as documentary evidence, it stood proved on record that Bhav Singh had executed the impugned Will dated 13.06.2001 during his lifetime and on the basis of said Will, mutation No.668 (Ex.P8) was also sanctioned. The learned trial Court further held that vide impugned Will (Ex.P4/D1) Bhav Singh bequeathed his land mentioned in paragraph No.1(C) of the plaint in favour of respondent-defendant Nos.1 to 4 and he further bequeathed his remaining entire moveable and immovable properties in favour of his five sons i.e. appellant-plaintiff as well as respondent-defendant Nos.1 to 4 and his wife Smt. Savitri Devi (respondent-defendant No.7). Thus, as per recitals of the impugned Will, appellant-plaintiff, respondent-defendant Nos.1 to 4 and 7 inherited suit property mentioned in paragraph No.1(A), (B) and 2 to the extent of 1/6th share each. The learned trial court held that no doubt, testator Bhav Singh disinherited appellant-plaintiff from the suit property mentioned in paragraph No.1(C) of the plaint but it was settled law that uneven distribution of assets amongst the children by itself could not be taken as a circumstance causing suspicion surrounding the execution of the Will in view of the decision of Hon'ble the Supreme Court in '**S.S. Pal and others versus Mrs. Sumangla T. Pal and another**', 2002(1) Apex Court Judgments. The learned trial Court further held that the testator Bhav Singh had clearly mentioned the reason for disinheritance of the appellant-plaintiff from the property mentioned in

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paragraph No.1(C) of the plaint and in view of the position as noted above, issue Nos.1 to 3 were partly decided in favour of the appellant-plaintiff and against the defendants while Issue Nos.4 to 6 were decided in favour of the plaintiff and against the defendants on account of the same not being pressed. In the aforementioned background, the suit of the appellant-plaintiff was partly decreed by holding him to be owner in possession to the extent of 1/6th share in the suit property stated in paragraph No.1(A) and 1(B) of the plaint as also of being in joint possession to the extent of 1/6th share in the suit property detailed in paragraph No.2 of the plaint. Respondents-defendants were restrained from dispossessing the appellant-plaintiff from the suit properties mentioned in paragraph No.1(A) to 1 (B) and paragraph No.2 of the plaint and also from alienating 1/6th share of the appellant/plaintiff. Appeal filed by the plaintiff-appellant was dismissed by the learned Addl. District Judge, Palwal, vide judgment and decree dated 07.03.2015.

[11] Learned counsel for the appellant contended that the property of the predecessor of the parties Bhav Singh was ancestral property besides the share of the property which was purchased by Bhav Singh from joint Hindu family funds formed part of the ancestral property because Bhav Singh was the karta of the joint family, but the learned Courts below had not considered the aforementioned aspect of the matter in the correct perspective, secondly, that the Will allegedly executed by Bhav Singh was forged and fabricated and shrouded by suspicious circumstances, therefore, the findings of the learned Courts below were legally unsustainable and liable to be reversed and the suit decreed in entirety. No other point was argued.

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[12] I have considered the submissions of learned counsel for the appellant. Although the learned counsel for the appellant-plaintiff has vehemently argued that the suit property was ancestral property but he has not referred to any evidence to show that the property in question was ancestral property. In the absence of there being any documentary evidence to the above effect, the findings of the learned Courts below that the suit property would have to be presumed to be self acquired property of Bhav Singh, does not call for any interference. Moreover, the property which was purchased by Bhav Singh vide sale deed bearing vasika No.2417 dated 17.08.1984 was from the Consolidation Department in an open auction and in respect of which mutation No.10668 was sanctioned in the name of Bhav Singh and subsequently the same was incorporated in *jamabandi* for the year 1996-97, as per document Ex.P-6. Thus, the property acquired by deceased Bhav Singh was rightly held to be self acquired property. Apart from raising the plea that the property was purchased by the appellant-plaintiff out of joint Hindu family funds, no evidence whatsoever has been referred to in respect thereto. Thus, it is apparent that mere oral evidence is not sufficient to prove the aforementioned fact, as it was the duty of the appellant-plaintiff to prove that Bhav Singh was receiving joint family income from ancestral holdings, but no cogent or convincing evidence has been produced on the record, rather it has been established on the file that the appellant-plaintiff was residing separately for the last 20/25 years from Bhav Singh besides the appellant-plaintiff, admitted in his cross-examination that he had been working in a factory at Ballabgarh for the last more than 20/25 years. The same also goes to show that he never joined in the mess and income till

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death of Bhav Singh. No doubt, as per the decision of this Court in **Sant Ram vs Parmanand and others 1977 (1) PLR 605**, it is settled law of there being a presumption with regard to jointness of Hindu family property between fathers and sons but there is no such presumption that property in the hands of the father was joint Hindu family property.

[13] As regards challenge to the validity of the will dated 13.06.2001, it needs mention here that the respondents/defendants examined Rakesh Kumar, deed writer as DW-1, who categorically deposed that as per the instructions of testator Bhav Singh, he typed the Will and the same was read over and explained to Bhav Singh, who after admitting the same to be correct, put his thumb impressions on the same. Besides one of the attesting witness to the Will namely Chander Shekhar appeared as DW-2 and proved the contents of the Will and the manner in which the Will was executed by Bhav Singh. Moreover, he also admitted his signatures on the Will being attesting witness and his version was corroborated by Rameshwar/defendant No.2. Will dated 13.06.2011 is a registered document and on the overleaf page there are stamp and signatures of Joint Sub Registrar, Palwal and the same also bears the thumb impression of the executants and two attesting witnesses namely Chander Shekhar and Rajender Singh, Lambardar. Thus, the requirement of examination of one of the attesting witness to the Will, as per mandate of Section 68 of the Act stands complied with. No evidence to the contrary has been referred to by learned counsel for the appellant-plaintiff.

[14] Learned counsel for the appellant-plaintiff has also not been able to refer to any material to show that Bhav Singh was not having good state of health or was not possessing sound state of mind on 13.06.2001

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i.e. the date on which the Will was executed and registered. In the circumstances, presumption of truth is attached to the registered Will and the same shows that Bhav Singh was having sound disposing mind at the time when he appeared before the Sub Registrar for execution of the Will. Moreover, the thumb impressions of Bhav Singh were duly got compared at the instance of the respondents/defendants through Dr. Satyadev Aggarwal, Handwriting and Finger Prints Expert, who categorically proved his report Ex.DW5/B and enlarged signatures as Ex.DW5/I to Ex.DW5/J, in which it has been specifically mentioned that he was of the definite opinion that questioned thumb impression Mark Q-1 to Q-4 and admitted thumb impression Mark A-1 to A-4 of Bhav Singh tallied with each other. Nothing could be extracted despite lengthy cross-examination of the said witness by the appellant/plaintiff. Besides, the appellant/plaintiff did not examine any other Finger Print Expert to controvert the report of Dr. Satyadev Aggarwal produced by the respondents-defendants. Once the Will contains the signatures of deceased Bhav Singh which stand duly proved by examining the scribe as well as witnesses to the Will besides the testator Bhav Singh had appeared before the Sub Registrar and got executed the Will, in the circumstances, it is apparent that he was hale and hearty and in sound disposing mind at the time of execution of the Will and that the same was executed by him without any undue influence or pressure from any quarter.

[15] Apart from the above, it needs noticing here that on the basis of Will dated 13.06.2001, mutation by inheritance No.668 was sanctioned. Besides, as noticed by the learned First Appellate Court, perusal of mutation revealed that mutation by inheritance qua suit property

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mentioned in paragraph No.1 (C) of the plaint was sanctioned in favour of respondent/defendant Nos.1 to 4, whereas mutation of inheritance qua some other agricultural land of mustkil No.323, Killa No.9/1 (4-13) was sanctioned in favour of the appellant-plaintiff, respondents/defendant Nos.1 to 4 and 7. Thus, mutation by inheritance No.668 was sanctioned qua two different properties of Bhav Singh in view of Will dated 13.06.2001 and out of those properties, one portion of the agricultural land was inherited by the appellant-plaintiff along with respondent/defendant Nos.1 to 4 and 7. Therefore, appellant-plaintiff is estopped from alleging that he had no knowledge and notice of Will dated 13.06.2001 or that he came to know about the same in the year 2005. In fact, PW-4, Amar Singh, appellant-plaintiff admitted that respondent/defendant Nos.1 to 4 and 7 had sold land measuring 4K-13M for sale consideration of Rs.11,62,500/- and that sale deed bearing vasika No.2080 dated 03.06.2005 had been executed and perusal of the same showed that the appellant-plaintiff along with respondent/defendant Nos.1 to 4 and 7 had sold land measuring 4K-13M of mustkil No.323, killa No.9/1 (4-13) in favour of Deep Singh Realtors Pvt. Ltd. In the circumstances the appellant-plaintiff and respondent/defendant Nos.1 to 4 and 7 inherited property from Bhav Singh in view of Will dated 13.06.2001, therefore, the stand taken by the appellant-plaintiff is without any merit and was rightly rejected by the Courts below. Uneven distribution of assets amongst the children also cannot be taken as suspicious circumstances surrounding the execution of the Will in view of the decision of Hon'ble the Supreme Court in S. Sundaresa Pai's case (supra). Learned counsel for the appellant-plaintiff has not been able to refer to any evidence in support of

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the plea that the suit property was ancestral joint Hindu Family property or that the property mentioned in paragraph No.1 (C) of the plaint was purchased out of joint Hindu family funds or that Will dated 13.06.2001 was null and void on account of executant of the will namely Bhav Singh not having a sound disposing mind. In the circumstances, no grounds whatsoever exist warranting interference with the well reasoned judgment and decree passed by the learned first Appellate Court upholding the judgment and decree of the learned trial Court.

[16] No substantial question of law arises for consideration in the appeal. The appeal is bereft of merit. Accordingly, the same is *dismissed in limine*. Since the main case has been dismissed, the application for condonation of 198 days in re-filing of the appeal is also *dismissed*.

(B.S. WALIA)
JUDGE

September 20, 2018

rajneesh/rajesh.

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