

**C.M.No.4452-C of 2018 in/and
RSA No.3202 of 2016 (O&M)**

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

**C.M.No.4452-C of 2018 in/and
RSA No.3202 of 2016 (O&M)
Date of decision:23.03.2018**

Harpal Singh and another

... Appellants

Vs.

Vijay Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sandeep Bansal, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

C.M.No.4452-C of 2018

For the reasons stated in the application which is duly supported by an affidavit, order dated 12.03.2018 is recalled and the appeal is restored to its original number and the same is taken on board for hearing.

C.M. stands disposed of.

RSA No.3202 of 2016 (O&M)

The appellant-plaintiffs are in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit claiming ownership by challenging the sale deed dated 07.06.2006, was dismissed.

The appellant-plaintiffs being legal representatives of Sampuran Kaur, who died during her life time instituted a suit in the year 2006 by challenging the registered sale deed dated 07.06.2006 on the

premise that the same was outcome of fraud and mis-representation played upon her as she never intended to execute a sale deed in favour of four children, i.e., defendants No.1 to 4. The plaintiff never executed any document of transfer in favour of anybody. During the pendency of the suit, Sampuran Kaur died and appellant no.1 Harpal Singh son of Balwinder Singh, (defendant no.4) and appellant No.2 Baljot Singh son of Naranjan Singh (defendant no.3) were brought on record on the basis of the fact that Sampuran Kaur had executed a registered Will dated 23.09.2009 in their favour.

The suit was contested by the defendants No.2, 4 and 10. However, defendants No.3, 5 and 8 were proceeded against ex parte. It was submitted that plaintiff herself voluntarily executed the registered Will, ibid to all her sons and daughter in equal share and kept one share for herself. Mutation in this regard was also sanctioned. Defendant Piara Singh sold his share of land to defendant no.10 vide sale deed dated 13.09.2006.

Form the pleadings of the parties, following issues were framed:-

“1. Whether the plaintiff is entitled to declaration as prayed for? OPP

1A. Whether Sampuran Kaur executed the registered sale deed dated 07.06.2006 in favour of the defendants? OPD

1B. Whether Sampuran Kaur executed a registered Will deed dated 23.09.2009 in favour of Harpal Singh and Baljot Singh?

OPD

2. *Whether the plaintiffs are entitled to permanent injunction as prayed for? OPP*

3. *Whether the plaintiff has no cause of action to file this suit? OPD*

4. *Whether the plaintiff has concealed the material facts?*

OPD

5. *Relief.”*

Both the parties examined the witnesses.

On the basis of the evidence, the trial Court dismissed the suit and appeal laid before the Lower Appellate Court also met with the same fate.

Mr. Sandeep Bansal, learned counsel for the appellants submitted that issues were framed on 20.05.2010. The examination in chief of Sampuran Kaur was recorded on 09.10.2010. Before she could come for cross-examination on 02.12.2010, she unfortunately died on 25.11.2010. On moving of application for bringing on record the LRs particularly in view of the fact that she had executed a Will, *ibid*, appellants were brought on record as indicated above and at that time, the appellants were minors as date of birth of appellant no.1 was 1.12.1994 and of appellant no.2 was of 22nd December, 2006 and appellant no.1 attained the majority in the year 2012. The suit was decided by the trial Court on 22.05.2013. The trial Court upheld the Will executed by Sampuran Kaur in favour of the appellants but

dismissed the suit but the Lower Appellate Court reversed the findings by discarding the Will. In the present appeal, an application has also been filed for seeking amendment of the plaint challenging the Will and urged this Court for remitting the matter to the Lower Appellate Court by allowing the application.

I have heard the learned counsel for the appellant-plaintiff and appraised the judgments and decrees of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Bansal, for, the purpose of challenging the document on the basis of fraud having been played, the Statute envisaged compliance of provisions Order 6 Rule 4 CPC where a party ascertaining fraud is required to prove the same. No such evidence had been brought on record either by Sampuran Kaur, who unfortunately died at the time when she had to appear in cross-examination. Even the appellants-LRs also failed to bring any circumstance. It is too late in a day to amend the plaint by granting permission to challenge the sale deed in their independent capacity. The Will pales into insignificance as on the date of Will, Sampuran Kaur was not owner of the property. The finding of the Lower Appellate Court in discarding the Will is justified.

In view of what has been observed above, I do not find any illegality and perversity in the findings of both the Courts below which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Resultantly, the appeal stands dismissed.

March 23, 2018
savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No