

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

RSA No.4006 of 2016 (O&M)

Date of decision : 18.05.2018

Kishanwati (since deceased) wd/o Shamsheer Singh through his son Bijender
Singh

...Appellant

Versus

Bacchu Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Lokesh Sinhal, Advocate for the appellant.

Mr. Shiv Kumar, Advocate for respondent Nos.1 to 6 and 10.

ANIL KSHETARPAL, J.

Arguments were heard. Judgment was reserved. The judgment
is being released.

The plaintiff through her LRs is in the Regular Second Appeal
against the concurrent findings of fact arrived at by both the Courts below.

The question which needs consideration is as under:-

1) Whether rule of estoppel can be used to deprive an owner of the
immoveable property particularly when other party does not claim and
prove that the owner made them believe in a particular manner by act and
conduct or omission and they acted on aforementioned representation and
changed their position?

Some facts are required to be noticed. Shamsheer Singh was

owner of the property in dispute. He was having two wives namely Kishanwati-plaintiff and Dayawati-defendant No.11. He executed a testamentary document (Will) dated 30.03.1994 bequeathing his entire property in favour of his two wives. Sh. Shamsher Singh died on 29.12.1994. Some of the properties, details whereof, given in the testamentary document dated 30.03.1994, were mutated in favour of two wives named above as per the testamentary document dated 30.03.1994. However, mutation of the land situated in the Village Jharsaintli was not sanctioned. Ultimately, the mutation was sanctioned with respect to land situated in Village Jharsaintli on the basis of the natural succession on 15.06.2006 ignoring the testamentary document. Smt. Kishanwati and her sons from Shamsher Singh executed three separate sale deeds Ex.D1, Ex.D2 and Ex.D3 on 16.10.2006 and 19.10.2006 selling some part of the property situated in Village Jharsaintli.

Smt. Kishanwati-plaintiff filed a suit on 05.04.2007 claiming declaration that she is owner of the property alongwith defendant No.11 and the mutation sanctioned on 15.06.2006 on the basis of the natural succession is erroneous. Most of the defendants did not dispute the validity of the Will. However, defendant Nos.1 to 6 contested the suit and claimed that the suit property has not been bequeathed by the testamentary document i.e. dated 30.03.1994. The suit was also contested on the ground that the plaintiff herself had executed the sale deed and, therefore, has acted upon the aforesaid mutation, hence she is estopped. Defendant Nos.8 and 9 denied the execution of the Will.

Learned Court after appreciating the evidence, returned a

finding that Sh. Shamsher Singh had executed a Will dated 30.03.1994. The Court further found that the execution of the Will is not disputed by either parties. The Court further found that Shamsher Singh had bequeathed all his properties in equal share to both the wives i.e. plaintiff and defendant No.11. The assertions of the defendants that the property in dispute is not covered by the testamentary document were rejected by both the Courts below.

However, learned Courts below have refused to grant the relief to the plaintiff on the ground that the plaintiff is estopped from claiming the property on the basis of the testamentary document dated 30.03.1994, after having got the mutation sanctioned and sold some part of the property which had come to her share pursuant to the aforesaid mutation on the basis of natural succession.

NOW THE STAGE IS SET FOR CONSIDERING THE QUESTION OF LAW FRAMED ABOVE:-

1) Whether rule of estoppel can be used to deprive an owner of the immoveable property particularly when other party does not claim and prove that the owner made them believe in a particular manner by act and conduct or omission and they acted on aforementioned representation and changed their position?

Rule of Estoppel is provided under Section 115 of the Evidence Act, 1872. Section 115 of the same is extracted as under:-

“115. Estoppel – When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or

his representative, to deny the truth of that thing.”

On careful reading of the aforesaid provision, it is apparent that when one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, he or his representative shall not be allowed to deny the truth of that thing. In other words, if a particular person has, by his declaration, act or omission has made another person to believe in a thing to be true then such person or his representative shall not be allowed to resile therefrom.

Before enforcing the Rule of estoppel, it was the bounden duty of the defendants to prove that what were the steps taken by the plaintiff to make the defendants believe that there is no testamentary document. In fact, it is admitted case of the parties that on the death of Shamsher Singh apart from the property in dispute, remaining properties were transferred in favour of two wives immediately thereafter. The copy of the testamentary document was available with the parties as defendant Nos.1 to 6 are sons and daughters of Shamsher Singh through Dayawati i.e. defendant No.11 whereas defendant Nos.7 to 9 are sons and daughter of Shamsher Singh through Kishanwati. The validity of the testamentary document is not in dispute between the parties. In the present case, the defendants have not alleged any such steps having been taken.

Merely because the plaintiff sold some property pursuant to the mutation sanctioned on 15.06.2006 would not operate as estoppel against the plaintiff. The plaintiff has nowhere declared that the testamentary document dated 30.03.1994 is not dealing with or providing for the property

in dispute.

This issue can be examined from another angle. Shamsheer Singh died on 29.12.1994. Succession never remains in abeyance. So immediately on the death of Shamsheer Singh, his two wives i.e. Kishanwati and Dayawati as per the testamentary document became owners of the property. Smt. Kishanwati can be divested of the title in the immoveable property only through a registered document namely sale, gift or relinquishment deed or transfer deed etc. In the present case, the defendants have not setup any such document. The plaintiff is not alleged to have declared or made anyone else or to make believe that defendant Nos.1 to 10 are the owners of the property. No doubt, defendant No.8 has sold certain property vide sale deeds Ex.D1 and Ex.D3, however, Kishanwati is not party to the aforesaid document. Ex.D-2 is a sale deed executed by Smt. Krishanwati selling some property, but that act itself does not amount to ouster of Krishanwati for purpose inherited under the testamentary document. Hence, Smt. Kishanwati has never admitted defendants to be the owners of the property. It may be significant to note here that Smt. Kishanwati has also died. Her property would be succeeded by her legal heirs in accordance with law.

In view of the discussion made above, the question of law which was framed earlier is answered in favour of the appellant.

In view of the aforesaid, the judgments and decrees passed by both the Courts below are set aside and the suit filed by the plaintiff is decreed by granting declaration that the plaintiff and defendant No.11 became owner of the property in dispute after the death of their husband

Shamsher Singh on the basis of Will dated 30.03.1994 and the mutation sanctioned on 15.06.2006 is wrong, illegal and does not affect the rights of the plaintiff and defendant No.11.

Regular Second Appeal is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

18.05.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No