

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

RSA No.4040 of 2016

Date of Decision.10.05.2018

Taru and others

...Appellants

Vs

Banti (since deceased) and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Takhi, Advocate
for the appellants.

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AMIT RAWAL J.(ORAL)

The appellants-plaintiffs are in regular second appeal against the concurrent finding of fact whereby the suit seeking permanent injunction against defendant No.1 from alienating the land more than her share and restraining defendant No.2 and 3 from taking forcible possession from the plaintiffs except by getting the land partitioned in accordance with law and declaration that the plaintiffs are owners to the extent of 16 kanals 4 marlas out of 24 kanals 8 marlas, has been dismissed by the trial Court and affirmed by the lower Appellate Court.

Mr. Arun Takhi, learned counsel appearing on behalf of the appellants-plaintiffs submitted that the plaintiffs instituted the suit on the premise that the plaintiff had share in the land aforementioned to the extent of 73 kanals 4 marlas out of 109 kanals 18 marlas as per the pedigree table described therein whereas Kuldip Singh, Deep Singh and Kulbir Singh had inherited the share of of Dhuman son of Govind son of Amian vide registered Will dated 6.7.1987. There was a litigation amongst the parties regarding the abadi property in which

defendant No.1 disputed the Will but the same was upheld by the lower Appellate Court. The defendant No.1 had inherited the property measuring 24 kanals 8 marlas from Phuman, who also inherited the property from his forefather Govind. Therefore, the property had a nature and character of ancestral. Defendant No.1 died issueless and plaintiff being male member of deceased Govind and Amian has right to challenge the alienation which was without any legal necessity. Defendant No.2 and 3 claimed that defendant No.1 sold specific khasra number and attempted to take forcible possession. The aforementioned sale was not admitted by the plaintiff, thus, suit aforementioned was filed.

Defendant No.1 contested the suit and filed written statement by taking preliminary objections regarding locus standi, maintainability, court fee etc. On merits, it was stated that Banti inherited the property from her husband Phuman, who was son-less proprietor and did not constitute any coparcener. The property in the hands of Phuman was self-acquired property. Defendant No.1 had executed the Will dated 7.6.2006 in favour of her nephews Tarsem Singh, Amarjit Singh, Sukhdev Singh sons of Ganda Singh son of Tulsa Singh and Narain Singh son of Lachhman Singh son of Tulsa Singh. After the death of Banti, they were owners of the property of the share of defendant No.1. Defendant No.2 and 3 purchased the property from defendant No.1, thus, prayed for dismissal of the suit.

Defendant No.2 and 3 filed their joint written statement and denied all the claims in the suit and stated that they are owners of the property by virtue of sale deed dated 10.4.2006.

Both the parties led evidence and in support of their claim, plaintiffs examined as many as seven witnesses and defendants examined four witnesses.

On the basis of the oral and documentary evidence, the trial Court dismissed the suit which has been upheld by the lower Appellate Court.

Mr. Arun Takhi, learned counsel appearing on behalf of the appellants-plaintiffs submitted that the findings rendered by the Courts below are not sustainable in the eyes of law, for, there has been misreading and misdirection of statement of PW3 Davinder Kaur regarding devolution of the property upon Banti from her late husband Phuman. Documentary evidence placed on record showed the nature and character of the property being ancestral. The Courts below have abdicated in not appreciating the evidence brought on record that the plaintiffs have produced evidence to the effect Banti (since deceased) became seriously ill and and was brought to Charitable Hospital Manna, Post Office Bassi Kalan, District Hoshiarpur by Davinder Kaur wife of appellant No.1 and mother of appellant No.2 to 4. She had love and affection for the appellants, therefore, bequeathed the property by Will as propounded by them.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Takhi, for, PW3, Davinder Kaur demolished the case of the appellants-plaintiffs. She admitted execution of the sale deed in respect of the property in favour of her nephews. The sale deed was to the extent that there was no sale of specific khasra

numbers and her share, was also admitted to be correct and valid. In view of the aforementioned observations, the Davinder Kaur, the star witness of the plaintiffs did not corroborate the case of the plaintiff.

As regards the Will dated 07.06.2006, the same had been proved through testimony of DW1 Yog Raj, Lambardar attesting witness and Tarsem Singh DW2, deed writer .

All these factors weighed in the mind of the Courts below in rendering the findings rendered by the Courts below. The argument of Mr. Takhi has not been able to bring the case within the purview of illegality and perversity, much less, no substantial question of law arises for determination. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 10, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No