

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

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Date of decision: 30.10.2018

1. RSA No.2999 of 2015

Anta Ram and others

..... Appellants

Versus

Surinder Kumar and others

..... Respondents

2. RSA No.5572 of 2014

Anta Ram and others

..... Appellants

Versus

Jagdeep Singh and another

..... Respondents

3. RSA No.5035 of 2017

State of Haryana and others

..... Appellants

Versus

Surinder Singh and others

..... Respondents

4. RSA No.5677 of 2017

State of Haryana

..... Appellant

Versus

Jagdeep Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. R.K. Sharma, Advocate
for the appellants (in RSA-2999 of 2015 and RSA-5572-2014).

Mr. Saurabh Girdhar, AAG, Haryana
for the appellants (in RSA-5035-2017 and RSA-5677-2017).
for respondent No.8 (in RSA-2999-2015).
for respondent No.2 (in RSA-5572-2014).

Mr. Arun Jain, Sr. Advocate with
Mr. S.S. Dinarpur Advocate
for respondents No.1 to 7 (in RSA No.2999 of 2015).
for respondent No.1 (in RSA No.5572 of 2014).
for the respondents (in RSA-5035-2017 and RSA-5677-2017).

ANIL KSHETARPAL, J.

Vide this judgment, I shall be disposing of four regular second appeals bearing RSA No.2999 of 2015, RSA No.5572 of 2014, RSA No.5035 of 2017 and RSA No.5677 of 2017. Learned counsel for the parties are agreed that all the appeals can be conveniently disposed of by a common judgment.

These four appeals have been filed against the concurrent finding of fact arrived at by the Courts below while deciding two suits. One suit was filed by Jagdeep son of Gulabo and second suit filed by purchaser from Jagdeep. Dispute in both the cases is with respect to estate of late Smt. Manbhi, widow of Kundan who was undisputed owner of the property. Jagdeep claims that he is related to Manbhi, as name of father of Manbhi was Kehar who was having a brother Horam and Horam's daughter is Gulabo and Jagdeep is son of Gulabo (in other words, Manbhi's real uncle's daughter's son). Jagdeep claims a Will in his favour dated 16.02.1971. The Will has been proved by examining the attesting witness and scribe. The appellants in RSA No.2999 of 2015 and 5572 of 2014 claimed the property on the ground that Manbhi did not leave behind any heir and the property has escheated in favour of the State whereas other two appeals have been filed by the State of Haryana.

Both the Courts after examining the evidence have found that the Will propounded by Jagdeep is proved and the property cannot be held to have escheated in favour of the State in the presence of relatives merely

because for more than 20 years, succession to the property of Smt. Manbhi was not got updated in the revenue record.

Learned counsel for the appellants namely Anta Ram and others has submitted that the Will was executed at Saharanpur which is 14 Kms from the village. He further submitted that Manbhi was not identified by any one to the attesting witness. He further submitted that Manbhi was not accompanied by any relative although she was 70 years old. He further submitted that there is no explanation as to why the revenue record was not got updated for almost a period of 22 years. He has also submitted that Jagdeep has failed to produce any evidence to prove that Manbhi was residing with Jagdeep.

On the other hand, learned counsel for the private-respondent while drawing attention of the Court to the statement of DW-1 who has stated that he is not related to Manbhi and he has no knowledge what was the relationship of Jagdeep with late Smt. Manbhi. When he was specifically cross-examined, he feigned ignorance by stating that he does not know if the property is in possession of the plaintiffs as owner. He has also drawn attention of the Court to the finding of the trial Court wherein it is noticed that Anta Ram admitted that last rites of Manbhi were performed by Jagdeep.

As regards first argument, it will be noted that Hari Ram, the attesting witness of the Will who has been examined as PW-2 has himself stated that he knew late Smt. Manbhi, the testator. There is no requirement that the executant must be identified to the attesting witness by some one else. As regards argument of learned counsel that she was not accompanied by any relative, it will be noted that there is no evidence that late Smt.

Manbhi was dependent upon anybody or was not physically fit. In such circumstances, correctness of the Will cannot be doubted on the ground that Manbhi was not accompanied by any relative when she went to the place where the Will was executed.

Next argument of learned counsel for the appellants is that the revenue record has not been got updated for a period of 22 years. It is well settled that succession never remains in abeyance and it passes on in favour of successor immediately on the death of the owner. The updation of the revenue record is one of the executive functions of the revenue officials. The updation of the revenue record neither gives cause of action nor creates any right, title or interest in the property. Hence, no doubt the delay in getting the revenue record creates a suspicion, however, that suspicion itself cannot be made basis to decline the claim based upon cogent evidence. The Assistant Collector, 1st Grade sanctioned the mutation in favour of Jagdeep only after carrying out publication and inviting objections. However, no objections were filed.

As regards last argument of learned counsel, no doubt Jagdeep has not produced any documentary evidence, however, he has stated that late Smt. Manbhi was residing with him at village Sandalheri, District Saharanpur. In the present case, the defendants-appellants do not claim any right, title or interest in the property. They are claiming the property on the ground that the property of Manbhi has escheated in favour of the State and they would stake a claim for allotment of the land from the Government. Both the Courts have concurrently found that the procedure laid down in para 838 of the Punjab Land Administration Manual and instructions issued thereunder have not been followed before the official ordered that the land

in dispute was escheated in favour of the Government. The opportunity to lead evidence to the concerned parties to the proceedings were required to be granted before passing an order escheating the property to the State. It will be noted that Smt. Manbhi died in the year 1971. Jagdeep, her nephew, has staked claim on the basis of the Will dated 16.02.1971. The Assistant Collector, 1st Grade sanctioned the mutation. However, the defendants-appellants who have no connection filed an appeal, in which the Deputy Commissioner remanded the case and thereafter the revenue officials ordered that the property would stand escheated in favour of the State without referring a firm finding that late Smt. Manbhi had not left behind any heir. Learned counsel appearing for the State of Haryana could not draw attention of the Court to any error in the findings of the Courts below that procedure as prescribed in para 838 of the Punjab Land Administration Manual and instructions issued thereunder were followed. In the present case, the plaintiffs have examined apart from the attesting witness and scribe, other witnesses who have proved that late Smt. Manbhi was related to Jagdeep. No other legal heir of Manbhi has disputed the Will in favour of Jagdeep although Manbhi was having one sister and two brothers. However, no one has come forward to stake any claim or doubt about the correctness of the Will in favour of Jagdeep.

Anta Ram and others are admittedly not related to Manbhi, therefore, they have no locus standi to challenge the Will executed by Manbhi. They can only move an application which if accepted would confer some right if the property escheat in favour of the State. Once Manbhi has left behind heirs, the order escheating the property in favour of the State has correctly been set aside.

In view thereof, there is no ground to interfere.

All the applications in all the four appeals for condonation of delay in filing/re-filing the appeal as well as for impleading the legal heirs are allowed as these have not been opposed by learned opposite counsels.

All the appeals are dismissed.

30.10.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No