

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

RSA No. 4944 of 2016 (O&M)

Date of decision : August 16, 2018

Hardev Singh

.....Appellant

Versus

Prabhdev Singh and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. R.D. Bawa, Advocate with
Mr. Samuel Gill, Advocate
for the appellant.

LISA GILL, J.

Appellant-plaintiff is aggrieved of judgment and decree dated 31.01.2013 passed by the learned Civil Judge (Junior Division), Ambala as well as judgment and decree dated 21.09.2014 passed by the learned Additional District Judge, Ambala.

Present suit was filed by the appellant – plaintiff alongwith his brother Manjit Singh (who has not preferred an appeal) for declaration to the effect that they are owners in possession in equal shares of agricultural land measuring 52 kanals 9 marlas situated in village Munda Majra, Tehsil and District Ambala on the basis of will dated 15.12.1997 executed by Harbhajan Singh. They further prayed for permanent injunction restraining the defendants from transferring the property or dispossessing the plaintiffs. Their suit was dismissed by the learned trial Court. Their appeal was also dismissed by the learned Additional District Judge, Ambala.

At the outset, it is necessary to point out that the property in question belonged to Harbhajan Singh. Harbhajan Singh who was working

with Punjab Police, as an Inspector, had solemnised two marriages. First marriage was with Gurbachan Kaur (respondent No. 7), out of which the plaintiffs - Hardev Singh and Manjit Singh besides Sukhdev Singh (since deceased represented by his widow and son i.e. respondents No. 3 and 4) and two daughters namely Sarabjit Kaur and Sukhjeet Kaur (respondents No. 5 and 6) were born. Harbhajan Singh performed another marriage with Smt. Mohinder Kaur. Two sons namely Parabh Dev Singh and Rajinder Singh – respondents No. 1 and 2 were born out of this wedlock. Harbhajan Singh died on 04.10.1999. The present suit was filed by the appellant alongwith his brother Manjit Singh for the relief as mentioned above. It was pleaded that Harbhajan Singh had purchased a house in Chandigarh which was given to his second wife – Mohinder Kaur and the two sons born out of this wedlock. Gurbachan Kaur alongwith her sons and daughter was living at village Khanna Majra. Agricultural land was being looked after by them. It was stated that respondents no. 1 to 4 never visited the suit property and were residing at their respective residence. Harbhajan Singh, it is stated, used to reside at Chandigarh after his retirement alongwith his second wife Mohinder Kaur. However, respondents No. 1 and 2 used to ill-treat Harbhajan Singh and took away all the pecuniary benefits which Harbhajan Singh received after his retirement. Mohinder Kaur had her name entered as a nominee in his pension book. She stopped providing food and clothing to Harbhajan Singh. Due to ill-treatment meted to him, Harbhajan Singh shifted to village Khanna Majra and started living with the plaintiffs and respondent No. 7. Harbhajan Singh executed will dated 15.12.1997 in favour of the plaintiffs in the presence of the attesting witness Umrao son of Dayal Singh and PW2 Joginder Singh son of Dayal Singh. The will was

drafted by PW3 Bhupinder Singh. It was further pleaded that the agricultural land at village Munda Majra was given to the plaintiffs as per the said will dated 15.12.1997. Respondents No. 1 and 2 forged and fabricated another will dated 02.03.1994 drafted by P.S. Uppal. Respondent No. 2 – Rajinder Singh himself signed over the will as a witness which was pleaded to be illegal. After the death of Harbhajan Singh respective wills were presented before the revenue officials for entering the mutations of the agricultural land in their respective names. The matter was forwarded by the Tehsildar, Ambala to the Assistant Collector First Grade, Ambala to decide the same being a contested mutation. Opportunity was afforded to the parties to led evidence. The plaintiffs led evidence and ultimately mutation was entered in favour of the plaintiffs vide order dated 24.08.2000. Khasra girdawari was corrected accordingly.

Respondents No. 1 and 2 filed an appeal before the Collector, Ambala and the matter was remanded back to the Assistant Collector First Grade, Ambala with a direction to afford an opportunity to the parties to led evidence. Respondents No. 1 and 2 still did not produce any evidence. However, Assistant Collector First Grade, Ambala reversed the order of the predecessor Court on 30.01.2006. Appeal against the said order was filed, which was stated to be pending. It was further stated that the plaintiffs were in cultivating possession of the land in dispute but were being unnecessarily harassed by respondents No. 1 and 2 without any right, title or interest. Therefore, the suit was filed.

Upon notice, defendant No. 1 filed a written statement taking various preliminary objections and denying averments on merits in regard to the possession and ownership of the plaintiffs of the suit land on the basis of

will dated 15.12.1997. It was admitted that the plaintiffs and the defendants were the legal heirs of Harbhajan Singh though it was denied that respondents No. 3 and 4 had no concern with the suit property. Harbhajan Singh, it was claimed, retired as a Deputy Superintendent of Police with Chandigarh Police. He was living with respondents no. 1 and 2 as the plaintiffs used to ill-treat him. It was denied that Harbhajan Singh had ever shifted to Khanna Majra or executed will dated 15.12.1997 in favour of the plaintiffs. It was claimed to be a false and fabricated document prepared by the plaintiffs in order to grab the property. Reliance was placed by the said respondents on will dated 02.03.1994. It was further contended that prior thereto the deceased had executed three wills, which were registered with the office of Sub Registrar, Chandigarh. He would get his will changed due to unfortunate events in the family and the same would be registered with the Sub Registrar. Will dated 02.03.1994 was stated to be the final Will of Harbhajan Singh. The matter regarding mutation was stated to be pending before the Financial Commissioner, Haryana. It was denied that the plaintiffs were in cultivating possession of the suit land. It was, thus, prayed that the suit be dismissed.

Respondents No. 2 to 6 were proceeded against exparte. Defendant – respondent No. 7 was given up as dead. Replication was not filed.

Following issues on the basis of the pleadings of the parties were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to a decree for declaration with regard to the land detailed in the headnote of the plaint, on the grounds mentioned in the plaint? OPP
2. Whether the Will dated 15.12.1997 executed by Harbhajan

- Singh in favour of plaintiff is forged and fabricated? OPD
3. Whether the suit of the plaintiffs is not maintainable in the present form? OPD
 4. Whether the plaintiffs have not come to the court with clean hands and have suppressed the true and material facts? OPD
 5. Whether the suit of the plaintiff is bad for non-joinder of necessary parties?OPD
 6. Whether the suit of the plaintiffs is barred by law of limitation?OPD.
 7. Relief.

Evidence was led by both the parties as is detailed in para 9 and 10 of the judgment dated 31.01.2013 passed by the learned Civil Judge (Junior Division), Ambala.

Learned trial Court held that the unregistered will dated 15.12.1997 was shrouded in suspicion circumstances, therefore, was discarded. Will dated 02.03.1994 Ex.D1 set up by defendant No. 1 was also discarded while holding that they had failed to prove the same. Accordingly, the suit filed by the plaintiff was dismissed. Appeals were preferred by the appellant alongwith his brother Manjit Singh as well as by respondent No. 1. Learned Additional District Judge, Ambala dismissed both the appeals. Aggrieved therefrom, present appeal has been filed by plaintiff - Hardev Singh. Appeal has not been preferred by Manjit Singh.

Learned counsel for the appellant vehemently argues that both the learned courts below have erred in holding that will dated 15.12.1997 executed by Harbhajan Singh - father of the appellant is shrouded in suspicious circumstances. The will in question, it is submitted, was duly proved as plaintiff – appellant examined PW2 Joginder Singh one of the attesting witnesses as well as PW3 Bhupinder Singh, scribe of the will. It is further contended that the learned Additional District Judge, Ambala has

grossly erred in holding that the plaintiffs claimed right to the land in Munda Majra on the basis of will dated 15.12.1997 whereas the will in question Ex. D1 talks of the land measuring 51 kanal 9 marlas in village Khanna Majra.

Learned counsel for the appellant refers to will (Ex.PW3/A), a photocopy whereof has been produced in Court today. Learned counsel argues that it is mentioned in will that Harbhajan Singh is the owner of moveable and immovable property and specific mention has been made to land measuring 51 kanal 9 marlas in village Khanna Majra of which he has mentioned himself to be a Gair Marusi cultivator. It is specifically mentioned that the cultivating rights of the said property would also devolve upon his two sons - Hardev Singh and Manjit Singh in equal shares. Learned counsel argues that just because detail of other property which was owned by Harbhajan Singh is not specifically mentioned it does not mean that the entire property held by him would not devolve upon the plaintiffs, because it is specifically mentioned by Harbhajan Singh in the will that after his death his entire property moveable and immovable would devolve upon his two sons - Hardev Singh and Manjit Singh. Learned counsel further refers to the jamabandi for the year 2003-04 (Ex.PC) to state that land of Harbhajan Singh in Munda Majra was available. It is, therefore, prayed that the impugned judgments and decrees 31.01.2013 and dated 21.09.2014 be set aside, consequently, allowing the suit filed by the appellant throughout.

I have heard learned counsel for the appellant and have gone through the photocopy of the relevant record furnished in Court today.

There is no dispute that the appellant's father Harbhajan Singh solemnised two marriages. Details of the children born out of two wedlock

have been given in the foregoing paras and same is not repeated for the sake of brevity. The appellant alongwith his brother Manjit Singh claimed to be owners in possession of land measuring 51 kanal 9 marlas situated in Munda Majra on the basis of unregistered will dated 15.12.1997 purportedly executed by Harbhajan Singh - their father. The plaintiffs examined PW2 Joginder Singh – an attesting witness and PW3 Bhupinder Singh - the scribe to prove the will Ex. PW3/A. A perusal of the will (Ex.PW3/A) furnished in Court today reveals that the executant does not even mention the solemnisation of second marriage with Mohinder Kaur and birth of two sons out of the said wedlock. It is pertinent to note that there is no mention of his third son Sukhdev Singh born out of the wedlock with Gurbachan Kaur i.e. the real brother of the present appellant, who is stated to have predeceased Harbhajan Singh. There is no explanation for the exclusion of Sukhdev Singh/his legal heirs. It is further noticed that the details of the entire property held by Harbhajan Singh have not been clearly described in the said will. Appellant while testifying before the learned trial Court as PW1 specifically admitted that Harbhajan Singh was the owner of the property other than the land situated at Khanna Majra, which is mentioned in the will. The Will mentions only the land measuring 51 kanal 9 marlas at village Khanna Majra of which Harbhajan Singh was the gair marusi cultivator. Will, Ex. PW3/A was stated to be scribed on 15.12.1997 on the premises of District Court, Ambala by the Deed writer - Bhupinder Singh PW3. Harbhajan Singh died on 04.10.1999. Though there is no requirement of the will to be compulsorily registered but it is indeed one of the suspicious circumstances which surrounds the said will. It is not in dispute that Harbhajan Singh was a well educated person serving the police

department and would necessarily be aware of the niceties involved while executing a will. Learned trial Court has correctly observed that by examining the deed writer PW2 and scribe PW3, the plaintiffs were not successful in dispelling the suspicious circumstances which surround the said will. It is further to be noticed that PW1 stated that the deceased Harbhajan Singh had 6½ kanals of land in village Khanna Majra which he had already disposed of. Mention in Will dated 15.12.1997 is of the land held by Harbhajan Singh as gair marusi cultivator in Khanna Majra in violation without reference to any other property. It is rightly observed by the learned Additional District Judge that testimony of PW2 also does not support the case of the plaintiffs. Moreover, the will in question was stated to be entered at serial No. 541 in the register of the Deed writer whereas it is specifically stated by PW3 in examination-in-chief that the Will was entered at serial No. 941 and it is so reflected in his register.

In my considered opinion, both the learned courts below have rightly discarded both the wills dated 15.12.1997 and 02.03.1994.

I do not find any question of law, much less a substantial question of law which is involved in this regular second appeal for the consideration of this Court.

No other point has been raised or argument addressed by learned counsel for the appellant.

Learned counsel for the appellant is unable to point out any illegality and infirmity in judgment and decree dated 31.01.2013 passed by the learned Civil Judge (Junior Division), Ambala as well as judgment and decree dated 21.09.2014 passed by the learned Additional District Judge, Ambala, which calls for interference by this Court.

There is a delay of 228 days in filing of the present appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in filing of this appeal has been rendered academic. Application is, accordingly, disposed of.

Present appeal being devoid of merit is dismissed with no order as to costs.

August 16, 2018
rts

(Lisa Gill)
Judge

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