

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.112 of 2014 (O & M)

Date of Decision:02.11.2018

Smt. Sumitra Devi and others

...Appellant(s)

Versus

Ram Singh and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Som Nath Saini, Advocate for the appellants.
Mr. V.K. Jindal, Sr. Advocate with
Mr. Akshay Jindal, Advocate for respondent No.1.

ANIL KSHETARPAL, J.

Legal heirs of defendant No.5 are in the regular second appeal against the judgment passed by the learned first appellate court, reversing the judgment and decree passed by the learned trial Court.

The plaintiff-respondent No.1 Ram Singh filed a suit for declaration, claiming that mutation No.5571 on 11.3.2005 sanctioned by the revenue authorities on the basis of registered Will dated 22.9.2000 is wrong and not in accordance with the registered Will. He pleaded that the mutation has been got sanctioned by the defendants in collusion with the revenue official at the back of the plaintiff. The plaintiff also prayed for a decree for permanent injunction, restraining the defendants from interfering in his exclusive possession.

There has been long drawn litigation between the parties. With regard to property comprised in Rectangle No.54 Killa No.21, there has been two rounds of litigation previously. One suit was filed by the plaintiff-respondent No.1 herein in which defendants were also party and the suit

was decided vide judgment and decree dated 30.5.2001, while deciding issues No.1 to 3, the learned trial court held that the suit property comprised in Rectangle No.54 Killa No.21 has already been partitioned. No doubt, an appeal was filed but the learned Additional District Judge did not over turn the findings of the learned trial court on issues No.1 to 3. Further, the learned Additional District Judge made a passing observation but never set aside the findings on issues No.1 to 3 arrived at by the learned trial court in that suit.

There was another litigation, i.e. in Civil Suit No.417/94 decided on 20.3.1998 titled as Ram Singh Vs. Man Singh in which it was again held that the property comprised in Killa No.21 of Rectangle No.54 is not joint between the parties and the parties have already partitioned the property.

Even it is undisputed that Man Singh, predecessor-in-interest of defendants No.1 to 4, when executed the registered Will, bequeathed the specific portion of the property and not undivided share vide registered Will dated 22.9.2000. Thus, even Man Singh, the original owner was in the knowledge of the fact that the property has already been divided. Hence, the revenue authorities clearly committed an error in entering the mutation by showing the property to be undivided share with respect to land measuring 1 kanal and 16 marlas being 1/3rd share out of land measuring 5 kanals and 9 marlas.

Learned counsel for the parties have been heard at length.

Learned counsel for the appellant could not dispute the aforesaid factual position.

In the present case, the learned trial court just noticed the

passing observation made by the learned first appellate court in the appeal filed against the learned trial court dated 30.5.2001 and dismissed the suit filed by the plaintiff. The learned trial court did not notice that findings on issues No.1 to 3, which were specifically dealing with the question whether the property in dispute comprised in Killa No.21 is joint was answered against Ram Lal predecessor-in-interest of the appellant and this finding has never been reversed by the learned first appellate court. The learned trial court further over looked that in another suit decided between the parties on 20.3.1998, the property in dispute was held to be already partitioned and no longer joint.

In view of the above, there is no ground to interfere. The regular second appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

02.11.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No

Whether Reportable : Yes/No