

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA NO. 3840 OF 2015

DATE OF DECISION: OCTOBER 09, 2018

Harjinder Singh son of Lal SinghAppellant

Versus

Jaswant Kaur and othersRespondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Vinod Khunger, Advocate for the appellant.

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TEJINDER SINGH DHINDSA, J.

Plaintiff-appellant Harjinder Singh is in second appeal before this Court having remained unsuccessful in both the Courts below.

2. Brief facts of the case are that plaintiff filed a suit for declaration and permanent injunction on the averments that he along with defendants are the legal heirs of deceased Gurmeet Kaur. Plaintiff himself, defendant No.6 (Surjit Kaur) and Narinder Singh are the sons and daughter of Gurmeet Kaur, whereas defendants No.1 to 5 are the legal heirs of Narinder Singh (since deceased). Husband of Gurmeet Kaur, namely, Lal Singh had gone missing and was not heard of since 22.10.1995. As such, Lal Singh is presumed to have died. Gurmeet Kaur expired on 25.3.2005 and, as such, the property left behind by her has to be

divided into three shares i.e. $1/3^{\text{rd}}$ each in favour of plaintiff, defendant No.6-Surjit Kaur and legal heirs of Narinder Singh. It was asserted that Lal Singh, father of the plaintiff had purchased the suit property during his life time in the name of Gurmeet Kaur who was a household lady. Such property was stated to have been purchased from the income of ancestral and joint property by Lal Singh and as such, it acquired the nature of coparcenary and joint family property in the hands of Gurmeet Kaur. Plaintiff in the plaint averred that he has a right by birth in such property, being coparcener to the extent of $1/3^{\text{rd}}$ share. It was alleged that to grab the property of deceased Gurmeet Kaur, the defendants have set up a will dated 29.7.2003 and which is forged and fabricated. It was stated that Gurmeet Kaur had no right to execute any such will pertaining to joint and coparcenary property and the mutation No.2758 sanctioned on the basis of the said will would not be binding upon the rights of the plaintiff.

3. Suit was contested in terms of filing of written statement on behalf of defendants No.1 to 5. Defence taken was that the suit land had been purchased by Gurmeet Kaur with her own money and she was absolute owner thereof. On account of the services rendered by her grand-son Bhupinder Singh, Gurmeet Kaur executed a will dated 29.7.2003 in the presence of witnesses and being in sound disposing mind. Mutation on the basis of the will already stands sanctioned and Bhupinder Singh is owner in possession of the suit land.

4. Suit filed by the plaintiff was dismissed by the trial Court on 30.1.2014 and even a civil appeal preferred has met the

same fate vide judgment dated 18.4.2015 passed by the learned Additional District Judge, Sri Muktsar Sahib. Against such brief factual backdrop, plaintiff-appellant has filed the instant second appeal.

5. Counsel representing the appellant has argued that the suit property had been purchased by Lal Singh in the name of his wife Gurmeet Kaur from joint family funds and, thus, such property acquired the nature of joint hindu family coparcenary property and the plaintiff-appellant was entitled to 1/3rd share thereof being a coparcener. It is argued that the Courts below have completely overlooked such aspect. Further contended that the Courts below have failed to appreciate the distinction between joint hindu property and ancestral property. In the present case, Lal Singh, husband of Gurmeet Kaur had given the entire sale-consideration out of joint family funds and under such circumstances, the mother i.e. Gurmeet Kaur could not have willed the suit property in favour of her grand-son and to the exclusion of the plaintiff-appellant.

6. Counsel for the appellant has been heard at length and case paper book has been perused.

7. It is a case where the plaintiff-appellant is asserting that the suit property had been purchased by Lal Singh in the name of Gurmeet Kaur (since deceased) from joint family funds. Accordingly, he was asserting his right to 1/3rd share out of suit property being a coparcener. To substantiate such assertion, it was imperative upon the plaintiff-appellant to have led cogent and concrete evidence. Appellant has failed to discharge such

onus. Counsel for the appellant has not been able to advert to any credible evidence that may have been led by the appellant in such regard.

8. The defendant-respondents, in order to prove the will dated 29.7.2003 executed by Gurmeet Kaur in favour of Bhupinder Singh, examined Sachinder Pal, Document Writer as DW2. He clearly deposed that the will was scribed by him at the instance of Gurmeet Kaur and in favour of Bhupinder Singh. After scribing the will, he had read over the contents to Gurmeet Kaur in the presence of Manna Singh, Sarpanch and Iqbal Singh, Member Panchayat and it was after admitting the contents to be correct that Gurmeet Kaur had put her thumb impression and thereafter Manna Singh, Sarpanch also put his thumb impression as the attesting witness. The other witness, namely, Iqbal Singh had also affixed his signatures on the will. The Document Writer DW2 had also proved the entry with regard to the will in the register maintained by him at Serial No.505. In the same lines is the deposition of Iqbal Singh, Member Panchayat who was the attesting witness to the will dated 29.7.2003 and was examined as DW1. Thereafter, the will was even produced before the Sub Registrar concerned for purposes of registration.

9. The concurrent view taken by the Courts below are with regard to the will dated 29.7.2003 executed by Gurmeet Kaur in favour of Bhupinder Singh to have been duly proved in accordance with law.

10. The impugned judgments are based on cogent and valid reasoning and upon due appreciation of evidence adduced

on record. There is no infirmity in the same.

- 11. Appeal does not raise any question of law.
- 12. Dismissed.

OCTOBER 09, 2018
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note:

Whether speaking/reasoned:Yes/No

Whether Reportable:Yes/No