

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

**R.S.A No.5867 of 2016(O&M)
Date of decision :11.10.2018**

Harpal Singh

..... Appellant.

Versus

Iqbal Singh and another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.R.S.Chauhan, Advocate
for the appellant.

LISA GILL,J

Appellant-plaintiff is aggrieved of judgement and decree dated 20.11.2014, passed by the learned Civil Judge (Jr. Division), Ferozepur, as well as judgement and decree dated 17.05.2016, passed by the learned Additional District Judge, Ferozepur, whereby the suit filed by the appellant-plaintiff has been dismissed.

Brief facts necessary for the adjudication of the case are that plaintiff-appellant filed a suit for declaration to the effect that he is a co-sharer to the extent of 1/ 3rd share in the land as detailed in the plaint and that will dated 17.09.1999 executed by Assa Singh in favour of Iqbal Singh, is illegal, null and void. It was pleaded that the plaintiff and defendant no.1 Iqbal Singh were real brothers and defendant no.2-Sukhwinder Kaur was the widow of their pre-deceased brother-Rachhpal

Singh son of Assa Singh. Further prayer for injunction for restraining defendants from alienating the land in dispute was sought. It was pleaded that the land in dispute was coparcenary property in the hands of Assa Singh son of Sohan Singh (since deceased) as he had inherited the same from his father (plaintiff's grandfather-Sohan Singh and great grandfather-Sadda Singh). It was pleaded that plaintiff filed a suit for declaration regarding land measuring 62 Kanals out of the land in question regarding the alleged transfer deed dated 27.10.2004 executed by Assa Singh son of Sohan Singh. The alleged transfer deed is a bogus, fabricated document and confers no right upon defendant no.1-Iqbal Singh. It was pleaded that during the pendency of the said suit (which is the subject matter of R.S.A No. 6404 of 2017) defendant-Iqbal Singh had filed an application therein that a registered will dated 17.09.1999 was also executed in his favour by Assa Singh. The said will was contested by the plaintiff in the previous proceedings while stating that Assa Singh was not in his senses and he never executed the alleged will. Assa Singh was cremated by the plaintiff and was looked after by the plaintiff. Assa Singh, it was claimed had strained relations with Iqbal Singh during his lifetime. Therefore, there is no question of execution of a will in his favour by Assa Singh. The said will was claimed to be a result of fraud, misrepresentation and is in-fact a bogus, fabricated will procured in connivance with the marginal witnesses as well as the scribe. Plaintiff claimed that he was also entitled to succession to the extent of his share according to the provisions of the Succession Act. Hence the suit was filed.

Defendant no.1-Iqbal Singh resisted the suit. Various preliminary objections were raised in the written statement and contentions on merits were controverted. It was denied that the land in question was coparcenary property in the hands of Assa Singh (since deceased). It was pleaded that Assa Singh separately purchased 7 Kanals 7 Marlas of land from one Pala Singh about 40 years ago. 4 Kanals out of the said land was sold about 12 years ago. Assa Singh was left with 3 Kanal 3 Marlas of land, which was his self acquired property. 7 Kanals of land was also purchased by Assa Singh through an auction conducted by the State Government about 40 years ago. The said land was with him as his self acquired property. It was further pleaded that the plaintiff had filed a separate suit seeking a declaration to the effect that he is owner to the extent of 1/ 4th share in 72 Kanal 14 Marlas of land, wherein he has challenged the transfer deed in favour of Iqbal Singh regarding 62 Kanals of land. Assa Singh, it is claimed, possessed 242 Kanals of land situated in village Tibbi Khurd, which was acquired by Assa Singh from his father Sohan Singh. The same was divided by way of a family settlement amongst Assa Singh and his three sons somewhere in the year 1960-61 in equal shares i.e. 1 /4th share each fell to Assa Singh and his three sons. Each of them occupied the specific and exclusive portion falling to their share. Thereafter, the plaintiff was residing separately from Assa Singh and other family members. He had a separate residence, mess and cultivation.

Civil Suit No. 176 of 1972 was filed by the plaintiff-Harpal Singh, Iqbal Singh and Rachhpal Singh, wherein they claim a decree for

possession of land measuring 181 Kanals 10 Marlas being 3 /4th share of land measuring 242 Kanals owned by Assa Singh. This suit was decreed on 09.05.1972. Assa Singh executed a transfer deed dated 27.10.2004 in favour of Iqbal Singh transferring 62 Kanals of his land i.e. 1/ 4th share in the total land. Actual possession thereof was delivered to Iqbal Singh, who was in possession thereof. Assa Singh was stated to be 76 years old, living with Iqbal Singh and being looked after by Iqbal Singh, as well. Will dated 17.09.1999 was registered in the office of the Sub-Registrar, Ferozepur in favour of Iqbal Singh, who had intimated the Court about the Will by submitting an application dated 16.04.2010. It was pleaded that the defendant is the owner of the land in question on the basis of transfer deed and entitled to entire estate of Assa Singh on the basis of testamentary disposition. Dismissal of the suit was prayed for.

Replication was filed. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to the decree of declaration as prayed for?OPP
2. Whether the plaintiff is entitled to the consequential relief of joint possession as prayed for?OPP
3. Whether the suit is false, frivolous and vexatious to the knowledge of the plaintiff?OPD
4. Whether the plaintiff has not come to the Court with clean hands?OPD
5. Whether the suit is not properly valued for the purpose of court fee?OPD
6. Relief.

Both the parties led evidence in support of their respective claims.

Learned trial Court on considering the facts and

circumstances of the case concluded that property in question is not the coparcenary ancestral property of the plaintiff and held that the will in question was proved to be a valid will. Therefore, suit filed by the plaintiff was dismissed.

Appeal filed by the appellant was also dismissed by the learned Additional District Judge, Ferozepur, vide judgement and decree dated 17.05.2016.

Aggrieved therefore, the present appeal has been filed.

Learned counsel for the appellant argues that the property in question was ancestral property, therefore the plaintiff's father could not have executed the transfer deed dated 27.10.2004. It is submitted that will dated 17.09.1999 is duly proved on record, therefore, both the learned Courts below have grossly erred in dismissing the suit filed by the appellant. It is thus prayed that the present appeal be allowed and suit filed by the appellant-plaintiff be decreed throughout.

I have heard learned counsel for the appellant and have gone through the file with her able assistance.

Learned counsel for the appellant is unable to dispute that the Civil Suit No. 176 of 1972 was filed, which was decreed on 07.05.1972. PW-1-Harpal Singh i.e. the plaintiff, specifically admitted that the said decree was passed by the Court of competent jurisdiction in the year 1972, wherein land measuring 181 Kanals 10 Marlas was given to him along with Rachhpal Singh and Iqbal Singh in equal shares, whereas, the remaining part of the property measuring 62 Kanals 10 Marlas remained with their father-Assa Singh. Plaintiff in this case while

appearing as PW-1 candidly admitted in the cross-examination that the dispute in the present case pertains to 10 Kanal 18 Marlas of land. However, the suit has been filed for a declaration regarding the entire property of Assa Singh. In any case, evidence on record does not prove that the property in question is joint ancestral coparcenary property.

Learned trial Court has rightly opined that no reliance can be placed upon the testimonies of PW-2 and PW-3, who in their examination-in-chief claimed the transfer deed dated 27.10.2004 to be a false and fabricated document, but in the cross-examination, they stated that they had no knowledge about the said transfer deed executed by Assa Singh.

Will dated 17.09.1999 has been proved by the defendants while leading clear and cogent evidence. DW-1-Amrik Singh, who is the attesting witness of the will specifically deposed that Assa Singh executed the will in favour of defendant-Iqbal Singh in his presence and the other attesting witness-Jagdip Singh. DW-1 further stated that the testator signed the same after admitting its correctness in their presence.

In the facts and circumstances of the case, the fact that the attesting witness-Amrik Singh was the brother-in-law of defendant-Iqbal Singh cannot *per se* be treated to be a suspicious circumstance. Argument raised on behalf of the plaintiff that there was no reason to deprive the plaintiff from the property in question is of no avail to him. It is not in dispute that the plaintiff, defendant-Iqbal Singh and their other brother-Rachhpal Singh (now deceased represented by his widow-Sukhwinder Kaur) received 1/ 4th share of the property in question and they were in

exclusive possession thereof. Order dated 09.05.1972 (Ex.D-3) has not been denied. Admittedly, Assa Singh retained 1/ 4th share of the property in question. In the given facts and circumstances, Assa Singh was well within his rights to dispose of the 1/ 4th share fallen upon him in any manner as he pleased. In case, the said property had been bequeathed upon the son, who was looking after him, it cannot be said that the same is out of ordinary or casts a cloud upon the said will. The plea of Assa Singh not being mentally fit and alert at the time of execution of the will has not been proved on record. There is not an iota of evidence on record to prove such a plea. Defendant no.1 has successfully proved the execution of the registered will dated 17.09.1999.

It is relevant to note, at this stage, that the earlier civil suit filed by the plaintiff against his father-Assa Singh, brother-Iqbal Singh and widow of his pre-deceased brother-Rachhpal Singh, whereby he had challenged the transfer deed dated 27.10.2004, was dismissed by the learned trial Court on 14.08.2013. Appeal filed by the plaintiff against the said decision was also dismissed on 17.05.2016 by the learned Additional District Judge, Ferozepur. The said judgements are under challenge in R.S.A No. 6404 of 2017 preferred by the present appellant. The said appeal has also been dismissed by this Court vide order of even date.

Learned counsel for the appellant-plaintiff is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decree dated 20.11.2014 and 17.05.2016 passed by the learned Civil Judge (Jr. Division) Ferozepur and learned Additional District Judge, Ferozepur, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

11.10.2018

s.khan

**(LISA GILL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No