

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

**RSA No.6187 of 2016 (O&M)
Date of Decision.03.12.2018**

Mukhtiar Kaur and others

...Appellants

Vs

Gurdev Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Kumar Saini, Advocate
for the appellants.

-:-

AMIT RAWAL J. (ORAL)

C.M. No.16273-C of 2016

For the reasons stated in the application, delay of 23 days
in re-filing of the appeal is condoned.

Application is allowed.

C.M. No.16274-C of 2016

For the reasons stated in the application, delay of 8 days
in filing of the appeal is condoned.

Application is allowed.

RSA No.6187 of 2016

The appellants-defendants are the disgruntled daughters,
who have not been successful in defending the suit for injunction
restraining them from interfering into peaceful possession of land
measuring 61 kanals 14 marlas bequeathed by Bahadur Singh, their
father in favour of respondent No.1 to 3, plaintiffs.

The appellants-defendants opposed the suit and relied
upon the mutation bearing No.1853 sanctioned on the basis of natural
inheritance. Relationship between the parties was admitted but

exclusive possession of the plaintiff was emphatically denied. Defendant also denied the ownership of the plaintiff much less execution of the Will dated 14.07.2003 in favour of the plaintiff.

On the variance of the parties, trial Court framed the following issues:-

“1. Whether Bahadur Singh has executed a Will dated 14.7.2003 in favour of the plaintiffs, if so, its effect?

OPP

2. Whether the suit is not maintainable in the present form? OPD

3. Whether the Will dated 14.7.2003 is a forged and fabricated document? OPD

4. Relief.”

Mr. Saini, learned counsel appearing on behalf of the appellants-defendants submitted that khasra girdawari Ex.D1 established the claim of daughters, who were living in the same village. The remedy in such situation was to seek partition as the status of the parties to the *lis* was of co-sharers. The suit for injunction was, thus, liable to be dismissed.

The suit simplicitor for injunction in the absence of declaration and possession, as per the settled law, was not maintainable. The trial Court could not have framed the issue of Will and give finding on that.

I am afraid aforementioned arguments of Mr. Saini are not sustainable, for, on perusal of the issues extracted herein above, defendants were alive to the situation and placed onus on Will being

fraud and fabricated. It is settled law that where the parties are alive to the situation and have led evidence in the absence of issue, the Court can give finding but the position in the present case is converse. Khasra girdawari, Ex.D2 in favour of one of the appellants-defendants was set aside by the order of the Assistant Collector in 2011, though it has been apprised that the appeal is pending against the same. Be that as it may, the Courts have not accorded the status of owner as the decree does not confer title in favour of plaintiffs but confined it to injunction, being in exclusive possession.

As an upshot of my finding, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 03, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No