

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

RSA No.5067 of 2015

Date of decision: 1st May, 2018

Swaran Kaur & others

... Appellants

Versus

General Public

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Anupam Bhardwaj, Advocate
for the appellants.

None for the respondent.

FATEH DEEP SINGH, J.

The present regular second appeal is against the judgment passed by the Court of learned Additional District Judge, Amritsar whereby the appeal of appellants Swaran Kaur and others, who were unsuccessful plaintiffs against general public, stood dismissed by the impugned judgment.

Heard Mr. Anupam Bhardwaj, Advocate for the appellants and perused the records of the case whereas none appeared on behalf of the respondent/general public to oppose the relief sought.

Brief facts are that plaintiffs Swaran Kaur, her son Gurpreet Singh, Sukhchain Singh, Jaswant Singh and Lakhwinder Singh had earlier filed a suit for declaration to the effect that they are owners in possession of the suit land detailed in the head note of the plaint to the

extent of 1/5 share of deceased Taaro daughter of Teja Singh son of Maghar Singh on the basis of a Will dated 05.08.2000. It is claim of the plaintiffs that the suit property was owned by Taaro (now deceased) who used to reside with her grandsons Kashmir Singh, Sukhchain Singh, Jaswant Singh and Lakhwinder Singh, who were looking after her and that Taaro died on 24.12.2002 and before her death she had executed a Will whereby the plaintiffs No.3 to 5 were given the bequeath. It is on the basis of this Will, they approached the revenue authorities for the sanction of mutation but they refused to do so and hence the suit in question. None appeared for the general public before the Court below.

The plaintiffs in their evidence, examined Gurpreet Singh PW1 who tendered his affidavit PW1/A and thereafter Sarabjit Singh PW2 tendered his affidavit as PW2/A whereby both the witnesses reiterated the case of the plaintiffs and proved the Will dated 05.08.2000 as Ex.P1. Further, PW3 Balwant Singh tendered his affidavit as PW3/A proving the original Will and the fact that it was scribed by Sarabjit Singh and tried to prove due execution of the Will and after tendering jamabandi for the year 2009-10 Ex.P2 and 2011-12 Ex.P3, death certificate of Taaro Mark-A and that of Kashmir Singh Mark-B, closed the evidence.

The Court of learned Additional Civil Judge (Sr. Divn.), Ajnala through judgment and decree dated 06.05.2014 dismissed the suit. That is how the unsuccessful plaintiffs are before this Court.

Learned counsel for the appellants, at the very onset of his submissions, does not disputes the fact that they have filed a suit for declaration which was instituted on 20.02.2014 whereby they have sought to take refuge to Will purported to have been executed on 05.08.2000 i.e. after about fourteen years and there is not even an iota of evidence, much less even a whimper as to what has led to this inordinate delay when it is not even their claim that they are in continuous possession of this property consequent upon the death of its alleged owner, Taaro. Learned counsel could not impress this Court how the suit falls within the period of limitation from the date of knowledge of the Will and therefore, the learned lower Court has rightly held that the suit was hopelessly time barred.

The next line of submissions by the appellant side is over the fact that it is a general un-partitioned co-sharer property and none of the co-sharers has ever been arraigned as a defendant in the suit which was a legal necessity for comprehensive and proper adjudication. The fact as has been highlighted in the impugned findings that it is the stand of the plaintiffs that Taaro happens to be daughter of Teja Singh son of Maghar Singh and who is widow of late Ajaib Singh, but no semblance of

evidence has come about as to the other legal heirs of the alleged owner, deceased Taaro. Rather to the mind of this Court, the present suit is an outcome of some deception being played with a view to usurp the property in question without having proper recourse to law. The two courts below have correctly appreciated the serious lacunas and drawbacks in the case of the plaintiffs and have rightly given a concurrent finding and therefore, there being no illegality or perversity in the impugned findings they need to be upheld and the present appeal being without any merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

May 1, 2018
rps

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