

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

**RSA-6730-2016 (O&M)
Date of Decision:12.10.2018**

Balbir Singh & others

... Petitioners

Versus

Swinder Singh & others

... Respondents

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

Present: Mr. Amit Arora, Advocate for the petitioners.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

A suit filed by plaintiffs/respondents herein for declaration to the effect that they are co-owners and co-sharers to the extent of 1/3rd share in equal shares out of the joint khata of land measuring 43 kanals and 3 marlas as detailed in the head note of the plaint along with consequential relief of permanent injunction restraining the defendants from alienating the suit land and also to restrain them to get the land partitioned through revenue Courts forcibly and illegally was decreed by the trial Court on 21.10.2014. Civil appeal preferred by the defendants has been dismissed by the learned Additional District Judge, Tarn Taran vide judgment dated 20.07.2016 and thereby affirming the judgment and decree of the trial Court.

2. Resultantly, the defendants/appellants are in second appeal before this Court.

3. Briefly noticed, the suit filed by the respondents herein was on the strength of a Will dated 21.07.1983 stated to have been executed by

Gurbax Singh S/o of Santa Singh and which was registered on 22.07.1983 in their favour. Case of the respondents herein was that after death of Gurbax Singh, they are co-owners and co-sharers to the extent of 1/3rd share each, out of the suit land on the basis of Will dated 21.07.1983.

4. Learned counsel representing the defendants/appellants has submitted that Gurbax Singh (since deceased) had executed a last Will on 02.03.1988 while he was in the sound disposing mind in favour of his sons i.e. the plaintiffs as also defendants in equal shares. It is argued that it is the last Will that ought to prevail and such aspect has been overlooked by the Courts below. Yet another submission raised by counsel is that the mutation of inheritance on the basis of Will dated 02.03.1988 was sanctioned on 04.01.2003 with the consent of all the sons and daughters of Gurbax Singh and no appeal had been filed by the respondents against the mutation No.2247 dated 04.01.2003 before the competent revenue Court.

5. Having heard counsel for the appellants at length and having perused the case paper book, this Court is of the considered view that there is no merit in the instant appeal and the same deserves to be dismissed.

6. The respondents herein had relied upon Will dated 21.07.1983 registered on 22.07.1983. In order to prove execution of Will, respondents herein had examined PW1 Mohanjit Singh, Clerk of Sub Registrar concerned, PW2 Santokh Singh and PW3 Daljit Singh, who were the attesting witnesses to the Will. As per testimonies recorded of the afore noticed witnesses, it stands duly proved on record that deceased Gurbax Singh had executed a Will on 21.07.1983 (PW1/A). PW1, Mohanjit Singh had produced on record the file as regards registration of the Will from the

office of the Sub Registrar. Even though, appellants herein had set up a plea that Gurbax Singh (deceased) had executed a last Will dated 02.03.1988 in favour of his seven sons but the same has not been proved on the file. Ex.D6 i.e. Will dated 02.03.1988 was an unregistered document and apparently attested by four witnesses, namely, Dilbagh Singh, Jaspal Singh, Kartar Chand and Nambardar Santokh Singh. Appellants herein failed to examine the afore noticed witnesses to prove execution of the Will dated 02.03.1988.

7. Counsel for the appellants does not controvert the factual premise that even though Santokh Singh Nambardar had been stated to be an attesting witness to the alleged last Will dated 02.03.1988 but he was also the attesting witness to the registered Will dated 21.07.1983, Ex.P1/A and he had clearly deposed with regard to due execution of the Will dated 21.07.1983 in favour of the plaintiffs/respondents and had denied the execution of the later/second Will dated 02.03.1988.

8. Furthermore, mutation No.2247, Ex.D5 was sanctioned in favour of all the sons and daughters of Gurbax Singh on the basis of the alleged Will dated 02.03.1988 and the Courts below have recorded a finding that mutation Ex.D5 revealed that the same had been presented before the Revenue Authority by Balbir Singh/appellant No.1 herein only. No evidence had come forth to prove that mutation had been sanctioned upon statements having been made by all the parties and whereby they had admitted as regards execution of the Will dated 02.03.1988. Under such circumstances, the Courts below have rightfully held that sanction of mutation Ex.D5 would not adversely effect the rights of the plaintiffs/respondents pertaining to the suit land.

- 9. The judgments passed by the Courts below are based on cogent and valid reasoning.
- 10. No interference in the matter is warranted.
- 11. Appeal is dismissed.

12.10.2018
harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

- i) Whether speaking/reasoned? Yes/No
- ii) Whether reportable? Yes/No