

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1615 of 2018 (O&M)

Date of Decision: 22.03.2018

Bhagat Singh and others

.....Appellants

Vs.

Butta Singh

.....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:-

Mr.Pardeep Sharma, Advocate, for the appellants.

Mr.Aakash Singla, Advocate, for
the respondent/caveator.

RITU BAHRI, J. (ORAL)

CM No.4327-C of 2018

For the reasons stated in the application, delay of 390 days in
filing the appeal is condoned.

Application stands disposed of.

Main Case

Appellants have come up against the judgments of the trial Court
dated 11.03.2016 and appellate Court dated 20.10.2016 whereby suit for
declaration to the effect that the plaintiff is owner of the land comprising
khewat/khatauni No.39/43 khasra No.5(1-17) 6 (2-14) 7 (0-12) has been
decreed.

Both the Court have given their concurrent findings of fact while
decree the suit that father of defendants i.e. Jeewa Singh filed a civil suit 50-
65 years ago and also disclosed that his brother might be having the record

the death of Arjun Singh and further denied as wrong that the decree dated 24.11.1971 was obtained by the defendants after playing fraud with the Court and also further denied that the mutation was further obtained by the defendants after acting in connivance with the revenue officials on the basis of the decree dated 24.11.1971. He also denied as wrong that Arjun Singh had executed a Will in the favour of Jeewa Singh. He also denied that the decree dated 24.11.1971 had been obtained in the absence of Arjun Singh. It is further held that defendants have denied having knowledge about the death of deceased Arjun Singh at the time when they had filed the suit which led to the passing of decree dated 24.11.1971, however, in the written statement in para No.4 it has been specifically admitted by them that Arjun Singh had died on 28.01.1971. the said suit was filed by the defendants on 20.05.1971 as is evident from Ex.p2. It has been further averred that neither Arjun Singh nor his legal heirs had ever challenged the decree dated 24.11.1971 passed by the then Senior Sub Judge, Roopnagar and due to that the plaintiff was estopped by his own act conduct and admission to file the present suit. Likewise, the sanctioning of the mutation on the basis of the judgment and decree dated 24.11.1971 has been also emphasized. As far as the date of acquiring the knowledge of the decree dated 24.11.1971 with the plaintiffs is concerned, both PW1 and PW2 have thoroughly explained in their evidence the manner in which they had acquired the knowledge about the impugned decree. The plaintiffs here are none else but the legal heirs of deceased Arjun Singh. It has further been observed that other legal heirs is entitled to own and possess the suit property. Even though in his oral evidence before the Court, the plaintiff has averred about a will executed by

proved on record despite there being a specific issue. Hence, it cannot be considered that the plaintiff had become the legatee under the will executed by deceased Arjun Singh. Son the will pleaded by plaintiff stands discarded as admissible evidence. Resultantly, all the legal heirs of Arjun Singh are entitled to an interest in the suit property subject to the detail and requisite proof of the will existing in the favour of the plaintiff separately. The learned appellate Court has also held that the appellants have not been able to give any cogent and convincing reason why the findings given by the learned lower Court on the above issues are not sustainable in the eyes of law when these findings have been rightly returned in favour of respondent/plaintiff after appreciation of oral and documentary evidence led by the parties. The appellants have not been able to point out any illegality and any infirmity in the impugned judgment and decree due to which the said judgment and decree do not call for any interference of this court and the appeal filed by the appellants being without merit was dismissed.

So in view of the above, the orders of the Courts below do not reflect any material irregularity or perversity which warrant interference. Hence the present regular second appeal stands dismissed.

(RITU BAHRI)
JUDGE

22.03.2018

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No