

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

RSA No.1970-2018 (O&M)
Date of decision:-25.10.2018

Jasbir Singh and others

.....Appellants

versus

Sarup Singh and others

.....Respondents

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

Present:- Mr. Mohit Jaggi, Advocate for the appellants.

TEJINDER SINGH DHINDSA, J.(ORAL)

A suit filed by the appellants herein for possession and permanent injunction pertaining to the suit property, was decreed by the Trial Court vide decision dated 07.12.2013. A civil appeal preferred by the defendants/respondents has been accepted vide judgment dated 30.08.2017 passed by the learned Additional District Judge, SAS Nagar, Mohali and thereby setting aside the judgment of the Trial Court and dismissing the suit that had been filed by the plaintiffs

Resultantly, plaintiffs-appellants are in second appeal before this Court.

Counsel for the appellants has argued that lower Appellate Court has fell in error in reversing a well-reasoned judgment passed by the Trial Court. It has been argued that there has been a mis-appreciation and mis-reading of evidence.

Counsel for the appellants has been heard and even the records of the case that were requisitioned have been perused.

Briefly noticed the suit for possession and permanent injunction had been filed on the pleadings that plaintiffs/appellants herein were heirs of the daughter of Isher Kaur. Gurdial Singh son of Isher Kaur had predeceased his mother and accordingly his share of the suit land came to vest in Isher Kaur. Isher Kaur died in 1989 and as such her land was to be inherited by his six children i.e. four sons and two daughters. The appellants being the legal heirs of the daughter of Isher Kaur, as such were vested with the right to be given share in the suit property whereas mutation of inheritance of Isher Kaur, had been sanctioned in favour of her four sons only and not her daughters.

Permanent injunction was sought restraining the defendants from alienating the suit land.

As has been noticed herein above Trial Court decreed the suit in favour of the plaintiffs/appellants but such judgment stands reversed by the Lower Appellate Court.

In the considered view of this Court the judgment of reversal passed by the Civil Court is based upon due appreciation of evidence and is well reasoned.

The precise case set up on behalf of the plaintiffs/appellants in their pleadings was that Isher Kaur had died in the year 1985 whereas her son Gurdial Singh had pre-deceased her. On the other hand case of the defendants/respondents herein was that Isher Kaur died in the year 1960 and Gurdial Singh died subsequently in point of time. Prosecution witnesses PW1 Mukhtyar Singh son of Waryam Kaur, PW2 Jasbir Singh son of Jaswant Kaur @ Yashoda and PW3 Harbant Singh son of Inder Singh in their cross-examination categorically deposed that Isher Kaur

died in the year 1960 whereas Gurdial Singh had died subsequently in the year 1978.

The Lower Appellate Court has further noticed that no evidence had been adduced and the appellants herein had also not proved on record any pedigree table to establish the names of the sons and daughters of Isher Kaur so as to establish any relationship with her. No death certificate of the alleged daughter of Isher Kaur was placed on record and it was not even proved as to when they died and if they were alive why they have failed to appear in the Court. Without proving the factum of death of the alleged daughters of Isher Kaur, the plaintiffs/appellants herein clearly could not claim their share out of the estate of Isher Kaur, by way of inheritance. The Lower Appellate Court as such rightfully non-suited the present plaintiffs/appellants and reversed the judgment/decreed of the Trial Court which has been found to be rather cryptic and having been passed in a casual manner and without even discussing the evidence on record.

There is no merit in the instant appeal and the same as such is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

25.10.2018

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No