

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

RSA No.2479 of 2018 (O&M)

Date of decision:30.04.2018

Ravinder Kaur

... Appellant

Vs.

Kulwinder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Inderjit Sharma, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.6541-C of 2018

For the reasons stated in the application, which is duly supported by an affidavit, delay of 6 days in filing the appeal is condoned.

C.M. stands disposed of.

RSA No.2479 of 2018 (O&M)

Appellant-plaintiff is aggrieved of the concurrent findings of facts and law, whereby, suit seeking declaration to the effect that she was owner to the extent of 1/4th share in the land measuring 64 kanals 6 marlas situated in village Satkoha, Teshsil and District Gurdaspur and 15 kanals 19 marlas situated in village Taragrah, Tehsil and District Gurdaspur with consequential relief of joint possession as co-sharer, has been dismissed by the trial Court and upheld by the Lower Appellate Court.

The appellant-plaintiff instituted the suit on the ground that

land at the hands of Chanan Singh was ancestral as Chanan Singh inherited it from Wadhawa Singh and Wadhawa from Buta Singh. Chanan Singh had three sons namely, Narinder Singh, Kulwinder Singh, Dalvinder Singh. Appellant is the daughter of Narinder Singh. The aforementioned claim was laid down by challenging the sale deed dated 10.08.2005 executed by Chanan Singh in respect of land measuring 61 kanals 15 marlas in favour of defendants No.1 and 2 on the ground that it was forged and fabricated document.

The suit was contested by the defendants by taking up the various preliminary objections available in law. On merit, it was stated that Chanan Singh died on 05.03.2008 and not in April 2008, whereas, Narinder Singh died on 24.06.1996 and not on 24.04.1996. Chanan Singh during his life time executed a Will dated 07.08.2000 bequeathed his entire estate in favour of defendants no.1 and 2 and mutation in that respect was also sanctioned. Narinder Singh did not had alleged $\frac{1}{4}^{\text{th}}$ share in the suit property. Mother of the plaintiff had left the matrimonial home on 14.01.1998. Chanan Singh also gave due share of his property to mother of plaintiff but she established illicit relations with Kanwaljit Singh and then contracted second marriage with him in December, 1998.

Since the parties were at variance, the trial Court framed as many as five issues including the issue of relief.

The plaintiff examined Baljinder Kaur as PW1 and brought on record the documentary evidence as Ex.P1 to Ex.P9 and closed the evidence. On the other hand, defendants brought on record the Will dated

07.08.2000 Ex.D2.

The trial Court on the basis of evidence discarded the Will propounded by the defendants but upheld the transfer deed dated 10.08.2005 and dismissed the suit by holding that plaintiff failed to prove the nature and character of the property being ancestral at the hands of Chanan Singh. The Lower Appellate Court dismissed the appeal with the modification by partly decreeing the suit to the extent that plaintiff was owner in joint possession as co-sharer to the extent of $\frac{1}{4}$ share of the land measuring 16 kanals 9 marlas of the suit land by upholding the transfer deed Ex.D1 and discarding the Will Ex.D2.

Mr. Inderjeet Sharma, learned counsel appearing on behalf of the appellant-plaintiff in support of the grounds of appeal submitted that defendants have not proved on record the transfer deed, *ibid*. In the absence of the same, document was liable to be discarded. The aforementioned sale deed was executed by Chanan Singh by playing fraud and misrepresentation. Though Chanan Singh had died in the year 2008 and thereafter, the plaintiff and her mother were threatened giving a cause of action to file the suit. The defendants were required to prove the transfer deed and in the absence of the witness, the trial Court was required to set aside the mutation. Though trial Court had granted the share in the remaining land and sale deed pertaining to land measuring 61 kanals 15 marlas and thus, urged this Court for setting aside the findings under challenge as there is illegality and perversity.

I have heard the learned counsel for the appellant, appraised the impugned judgments and decrees of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Sharma, for, concededly, plaintiff miserably failed to prove the nature and character of the property being ancestral at the hands of Chanan Singh. In the absence of same, the land subject matter of sale deed had been proved to be self-acquired property. The transfer deed is of 10.08.2005, whereas, Chanan during all that period was alive and died in the year 2008. Once no challenge was laid during her life time, no cause of action accrued in favour of the appellant-plaintiff as she had no right to stake any claim in his self acquired property.

Vis-a-vis other property, since Will has been discarded, the judgment and decree of the trial Court has been modified, the judgment and decree of the Lower Appellate Court is perfectly legal and justified and do no call for any interference .

As regards the arguments of Mr. Sharma, for, non-examination of any witness of the transfer deed, I am of the view that onus was upon the plaintiff as aforementioned transfer deed was under challenge. Having failed to discharge the onus under Section 101 of Indian Evidence Act, plaintiff miserably failed to prove the per-pleaded case in the plaint.

As per the ratio decidendi culled out by the Supreme Court of India in **Bayanbai Kaware Vs. Rajendra son of Baburao Dhote 2018 (1) Supreme Court Cases 585**, it has been held in the absence of examination

of attesting witness, is irrelevant, for, in the aforementioned case, executant did not raise any plea. It is only after his demise, his grand daughter came forward.

In view of the aforementioned observations, I do not find any illegality and perversity in the findings rendered by Lower Appellate Court which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

April 30, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No