

In the High Court of Punjab and Haryana at Chandigarh

RSA-3774 of 2017(O&M)
Date of Decision:19.1.2018

Gurcharan Singh @ Bhappa and others

---Appellants

vs.

Nachattar Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Manish Kumar Singla, Advocate
for the appellants.

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts below whereby suit filed by the appellants-plaintiffs was dismissed by the Additional Civil Judge (Senior Division), Sunam and the judgment and decree of the trial court were affirmed in appeal by the Additional District Judge, Sangrur.

Counsel for the appellants has submitted that Bhagwan Kaur @ Bhan Kaur wife of Dalip Singh was owner in possession of the suit land that was inherited by her from Chanan Singh, her father. Bhagwan Kaur @ Bhan Kaur executed a valid registered Will dated 16.9.1981 in favour of Gamdoor Singh, Bhura Singh and Hazura Singh sons of Chanan Singh to the extent of 3/4th share in equal share and Beera Singh, Harghol Singh and

Chirri Singh sons of Kapur Singh to the extent of remaining 1/4th share in equal share. Bhagwan Kaur @ Bhan Kaur died on 21.8.1993 and the suit land was inherited by Gamdoor Singh and others on the basis of Will. However, mutation bearing No. 4406 dated 29.11.2004 regarding inheritance of Bhagwan Kaur @ Bhan Kaur was sanctioned in favour of respondents/defendants No. 1 to 3 which is illegal, null and void and has no adverse affect upon rights of the appellants. The respondents/defendants No. 2 to 3 executed sale deed dated 25.2.2011 qua land measuring 4 kanals 10 marlas out of suit land in favour of defendants No. 4 and 5 which is illegal, unlawful and liable to be set aside. It is further argued that as the appellants have become owner of the suit land on the basis of testamentary succession and they are in possession of the land in question, respondents/defendants No. 1 to 5 have no right to interfere in possession of the appellants and to alienate the suit land illegally and forcibly. It is argued with vehemence that findings recorded by the courts are not based upon correct appreciation of evidence, both oral as well as documentary, therefore, the judgments suffer from perversity and liable to be set aside.

The appellants/plaintiffs are the successors-in-interest of Bhura Singh, one of the brothers of Bhagwan Kaur @ Bhan Kaur, erstwhile owner of the suit land. As per plea of the appellants, Bhagwan Kaur @ Bhan Kaur executed registered Will dated 16.9.1981 in favour of Gamdoor Singh, Bhura Singh and Hazura Singh, brothers of Bhagwan Kaur @ Bhan Kaur and Beera Singh etc. sons of Kapur Singh, another brother of said Bhagwan Kaur @ Bhan Kaur whereby Bhagwan Kaur @ Bhan Kaur excluded her class-I heirs namely Nachhattar Singh, Jit Kaur, Karnail Kaur,

son and daughters (defendants No. 1 to 3) from succession.

The trial court framed issue No. 2 qua the Will in question and answered the same against the appellants. The findings recorded by the trial court on issue No. 2 were affirmed by the Court in Appeal. Counsel for the appellants has failed to point out that evidence adduced by the appellants is sufficient to prove the Will in question, in accordance with law. As per plea of the appellants, both the attesting witnesses of the Will have passed away, therefore, the Will was required to be proved in consonance with the provisions of Section 69 of the Indian Evidence Act. Counsel has fairly conceded that the appellants failed to adduce any evidence to prove that the Will bears thumb impressions of Bhagwan Kaur @ Bhan Kaur. As propounders of the Will failed to lead evidence that the Will in question bears thumb impressions of the testator, it can be safely held that the appellants failed to prove the Will in accordance with what is envisaged in Section 69 of the Indian Evidence Act. In this view of the matter, plea of the appellants that they are the co-owners of suit land on the basis of Will dated 16.9.1981 has rightly been negated by the courts.

Counsel would argue that even if the appellants have failed to establish their co-ownership of the suit land on the basis of Will set up by them, they are entitled to relief of permanent injunction restraining defendants No. 1 to 5 from interfering in possession of the plaintiffs or dispossessing them.

A perusal of head note of the plaint, reproduced in the decree passed by the trial court and so also in the judgment passed by the Court in Appeal, makes it evident that relief of permanent injunction against

defendants/respondents No. 1 to 5 has been claimed on the premise that they be restrained from interfering in possession of the appellants and dispossessing the appellants and also from alienating any portion out of the land in dispute, detailed in heading (A) of the plaint on the basis of illegal, null and void mutations and sale deed in dispute and wrong revenue records. Firstly, the appellants have failed to establish their plea that mutations and sale deed in dispute are illegal, null and void and liable to be set aside. The very basis of their claim for grant of permanent injunction is not tenable, therefore, they have disentitled themselves to relief of injunction against true owner. Counsel for the appellants has failed to point out any materials on record as to how the appellants established their plea that defendants No. 1 to 5 threatened to interfere in their possession of the suit land. The trial court, in para 29 pertaining to issue No. 4, has held that Sukhpal Singh plaintiff in his cross examination clarified that they have instituted the present suit to seek possession over the suit land, therefore, the plaintiffs cannot be held entitled to relief of permanent injunction without having right, title and interest over the suit land. Counsel for the appellants has not disputed factual findings with regard to what had been stated by Sukhpal Singh in his cross examination. This apart, the appellants have claimed themselves to be owner in possession of 1/3th share out of land left behind by Bhagwan Kaur @ Bhan Kaur. They placed on record jamabandi for the year 2007-08. In the said jamabandi, some land is recorded to be in exclusive possession of Gurcharan Singh etc. No such plea was raised by the appellants that they are in exclusive possession of a part of the suit land and the respondents/defendants No. 1 to 5 threatened to

interfere in possession of said land. Even otherwise, counsel has failed to point out any evidence as to how defendants No. 1 to 5 threatened to interfere in possession. The respondents/defendants No. 1 to 5 being owners of suit land can not be restrained from alienating the land in question. Analyzed from any angle, consistent findings recorded by the courts below negating plea of the appellants for grant of injunction do not suffer from an error much less perversity giving rise to a legal issue to be decided in the regular second appeal.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

19.1.2018
paramjit

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