

In the High Court of Punjab and Haryana at Chandigarh

RSA-4977 of 2017(O&M)

Date of Decision:22.5.2018

Surinder Singh and others

---Appellants

vs.

Gurpreet Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Dinesh Ghai, Advocate
for the appellants

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for declaration with consequential relief of permanent injunction filed by Surinder Singh and others claiming themselves to be legal heirs of Smt. Rajinder Kaur daughter of Harcharan Kaur and S. Partap Singh son of late Sh. Harnam Singh and therefore, entitled to inherit to estate of Smt. Rajinder Kaur has been dismissed by the trial court and the judgment and decree passed by the trial court came to be affirmed in appeal by the Additional District Judge, Karnal.

Counsel for the appellants would urge that Smt. Rajinder Kaur died on 2.6.1969 leaving behind the appellants/plaintiffs as her legal heirs. Surinder Singh is the husband and Kulwinder Singh and Narender Kaur are the children of said Smt. Rajinder Kaur and they are entitled to 1/42 share in equal three shares but Smt. Harcharan Kaur by concealing the true facts

about existence of the plaintiffs got mutated land owned by Smt. Rajinder Kaur in her name vide mutation No. 4756. Smt. Harcharan Kaur also expired on 6.12.1974 and her estate was inherited by respondents/defendants vide mutation No. 13049 dated 15.6.2007 whereas in the said mutation, one daughter of Smt. Harcharan Kaur namely Jaswinder Kaur defendant No. 6 was left out of inheritance to Smt. Harcharan Kaur and Jaswinder Kaur also filed a suit for declaration challenging mutation No. 13049. After death of Smt. Harcharan Kaur, plaintiffs are entitled to inherit 1/35 share of Smt. Rajinder Kaur as well as share of Smt. Harcharan Kaur. As such, they are entitled to 1/42 share out of total land, detailed in para 2 of the plaint.

The suit was contested by defendant No. 6 by raising preliminary objections with regard to locus standi; maintainability; cause of action; limitation; misjoinder and non-joinder of parties; estoppel and concealment of material facts. She has denied that Rajinder Kaur was wife of plaintiff No. 1 and mother of plaintiffs No. 2 and 3 with the averments that she died unmarried. She has supported mutation No. 4756 sanctioned qua inheritance in favour of Smt. Harcharan Kaur, mother of Rajinder Kaur. All other material averments of the plaint have been denied with a prayer for dismissal of the suit.

The controversy between the parties led to framing of issues, reproduced in para 4 of the judgment of the trial court. Parties were permitted to adduce evidence in support of their respective claims. After hearing counsel for the parties in the light of materials on record, the trial court negated plea of the appellants/plaintiffs that they are the husband and

children of Smt. Rajinder Kaur who passed away as back as in the year 1969 and have challenged authenticity of mutation No. 4756 in a suit instituted in 2008 i.e. after about 40 years of death of Smt. Rajinder Kaur.

As has been noticed hereinbefore, the appellants remained unsuccessful before the first Appellate Court as appeal filed by them was dismissed being devoid of merit and resultantly, judgment and decree passed by the trial court were affirmed.

Counsel for the appellants would urge that reasoning adopted by the Courts to negate plea of the appellants with regard to their being class-I heirs of deceased Rajinder Kaur suffers from gross error and has resulted in perversity. It is argued that Surinder Singh appeared in the witness box and examined the witnesses to establish plea of the appellants that Rajinder Kaur was wife of Surinder Singh and mother of Kulwinder Singh and Narender Kaur.

I have heard counsel for the appellants, perused the paper book particularly the judgments impugned.

Before advertng to the submissions made by counsel for the appellants, it is appropriate to recapitulate that in the regular second appeal, it is not open for the Court to re-appreciate evidence to record a finding different from what has been held by the courts. Counsel has failed to point out any materials on record sufficient to establish plea of the appellants on the basis of balance of probabilities that Surinder Singh was married to Rajinder Kaur and the two children namely Kulwinder Singh and Narender Kaur were born out of the wedlock of Surinder Singh and Rajinder Kaur. On the contrary, the appellants started creating evidence before institution

of the suit. The application dated 3.7.2008 was submitted by Surinder Singh plaintiff No. 1 to the Additional District Registrar, Birth and Death for incorporating name of his alleged wife in the birth certificate (Ex. P1) but remained unsuccessful in his effort to get registered Rajinder Kaur in the birth certificate (Ex. P1). Kulwinder Singh plaintiff No. 2 appeared in the witness box and in his cross examination had stated that he was born on 19.4.1963. Ex. P1 records birth of a child to Surinder Singh on 29.5.1963. As a matter of fact, appellants failed to adduce satisfactory much less cogent evidence on record to prove that Rajinder Kaur was married or the appellants are class-I heirs of Rajinder Kaur being her husband and children. The story propounded by the appellants has rightly been examined with a serious doubt as the appellants remained silent for a period of about 40 years to claim any right qua inheritance to the estate of Smt. Rajinder Kaur as she passed away in 1969 but the suit has been instituted in August 2008. In this view of the matter, I do not find any reason to interfere in the well founded and well considered findings recorded by the Courts when otherwise the present appeal does raise a question of law that needs determination after notice to the contesting party.

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

Before parting with this order, it is pertinent to mention that the appellants filed an application for additional evidence (CM No. 1618-C of 2018) by invoking Order 41 Rule 27 of the Code of Civil Procedure. Counsel for the appellants has not advanced any arguments to substantiate his plea that the application is meritorious and liable to be accepted much

less the evidence sought to be adduced by way of additional evidence is otherwise necessary for doing complete justice. As such, the application stands disposed of accordingly.

(Rekha Mittal)
Judge

22.5.2018
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Whether speaking/reasoned: Yes
Whether reportable : Yes/No