

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.5171 of 2017

Date of Decision.15.01.2018

Beant Kaur and others

.....Appellants

Vs

Charanjit Kaur and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashok Bhardwaj, Advocate
for the appellants.

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AMIT RAWAL J.(ORAL)

The present appeal has been preferred against the concurrent finding of fact whereby the suit filed by the respondents-plaintiffs claiming the following relief, has been decreed.

“Amended suit for declaration to the effect that the plaintiffs are owners in possession in equal shares to the extent of 2/9 share in the land measuring 40 kanals 3 marlas out of land measuring 53 kanals 5 marlas Khewat No.1/1, Khatoni No.1, Khasra Nos.2199/0-16, 2256/0-6, 3756/8-0, 3757/7-11, 3759/8-0, 3751/2(9-2), 3752/2(5-16), 3753/2(3-8), 3754/2(4-2), 3755/2(6-4), 803/1065 share, being the natural heirs of deceased Hardial Singh as entered in the jamabandi for the year 2007-08 situated in Revenue Estate of Bhaini Mehraj, Tehsil and District Barnala. The defendant no.1 has prepared a forged and fabricated Will dated 01.06.1978 executed by deceased Hardial Singh, in connivance with the witnesses to defeat the right of the plaintiffs, the Will dated 01.06.1978 which was never executed by deceased Hardial Singh during his life time and the defendant no.1 on the basis of forged and fabricated Will dated 01.06.1978 got sanctioned mutation of inheritance No.3745 dated 03.02.1979 in her name with the connivance of the officials, in the absence of the plaintiffs. The said Will dated 01.06.1978 is a forged and

fabricated document, which has no effect on the rights of the plaintiffs and the plaintiffs are not bound by the same, which was never executed by deceased Hardial Singh in favour of defendant No.1 and the same is illegal and nullity. The same is liable to be declared as null and void and mutation No.3745 sanctioned on the basis of the same regarding the inheritance of deceased Hardial Singh, sanctioned by Assistant Collector, Second Grade, Sub Division Barnal on 03.02.1979 is illegal and nullity and the same is also liable to be declared null and void, which has no effect on the rights of the plaintiffs. Vide this suit, the plaintiffs are seeking declaration to the effect that the plaintiffs are owner in possession of above mentioned land to the extent of 2/9 share, consequently, decree for declaration and permanent injunction may kindly be passed and the defendants will restrained from interfering in the land in question.”

Mr. Ashok Bhardwaj, learned counsel appearing on behalf of the appellants-defendants submitted that the suit aforementioned was based upon the fact that Hardial Singh son of Bhajan Singh was owner of the suit property, who was married with the mother of the plaintiffs namely Seeto but owing to demise of Seeto, he solemnized another marriage with Nachhttar Kaur, out of the wedlock, seven girls were born out of which one died earlier, therefore, claimed inheritance of the property by way of natural succession. The respondents-plaintiffs did not prove on record documentary evidence to establish that Hardial Singh had exclusive ownership of the property whereas the candid defence taken in the written statement was that Hardial Singh, during his life time executed an unregistered Will dated 01.06.1978 in favour of Nachhttar Kaur. Even a mutation bearing No.3745 dated 03.09.1979 in this regard was also effected. Various objections qua maintainability of the suit and limitation were taken but the Courts below did not address all the issues and erroneously decreed the suit. The matter having been taken before the

lower Appellate Court also met with the same fate despite the fact that during the pendency of the appeal, an application under Order 41 Rule 27 CPC was moved to place on record the certified copy of the plaint dated 21.10.1985 of Civil Suit No.426, certified copy of written statement dated 20.11.1985 filed by Gurdial Singh, certified copy of judgment and decree dated 03.12.1985 and certified copy of mutation No.4621 but the lower Appellate Court in a most casual and cursory manner did not decide the aforementioned application the way it should have been done, resulting into illegality and perversity. The Will aforementioned was submitted to the Revenue Authorities for the purpose of mutation but the same was kept by the Revenue Authorities. When the witness from the Revenue Authorities was produced, it was pointed out that the entire record had been destroyed. The Courts below have gone in the area of surmises and conjectures in blaming defendants of having not discharged the onus of proving the Will as the order dated 03.02.1979 Ex.P3/D7, prima facie, established that copy of the original Will was produced but the finding given was that it was only the copy of the Will, thus, there is misreading of the documentary evidence, which resulted into illegality and perversity.

The documents sought to be placed on record as additional evidence would have established that the suit property is not of Hardial Singh but that of some Gurdial Singh, which owing to the consent decree had fallen to the share of Nachhttar Kaur, and therefore, documents sought to be produced were essential and necessary for adjudication of the controversy and the ingredients of Order 41 Rule 27 CPC has also been, prima facie, established.

I have heard learned counsel for the appellants and appraised the paper book. No doubt, both the Courts below have not correctly read the order dated 03.02.1979, Ex.P3/D7 as the original Will was stated to have been produced before the concerned authority but the fact of the matter is that during

the pendency of the appeal, application for secondary evidence was moved yet the appellants-defendants have failed to prove the ingredients of Section 65 of the Indian Evidence Act in accordance with law. In the absence of the same, no reliance can be placed to the document Ex.P3/D7. The loss has not been proved as the witness was required to be examined, thus, in my view, appellants-defendants have failed to discharge the onus *viz-a-viz* execution of the Will by Hardial Singh claiming exclusive ownership of the property instead of natural succession, as the plaintiffs were none else but the daughters of Hardial Singh from first marriage.

With regard to other issue/argument of not passing the separate order while deciding the appeal on the application under Order 41 Rule 27 CPC, I am of the view that the said plea sans merit as the lower Appellate Court while dealing with the aforementioned application, in paragraph 15 observed as under:-

“During the pendency of this appeal, appellants have moved an application for additional evidence to prove some documents showing that the suit property has been inherited by Nachatter Kaur from one Gurdyal Singh and Gulab Kaur, not from Hardyal Singh. Whereas in the suit they have taken the plea that the suit property came to Nachatter Kaur on the basis of Will dated 01.06.1978 executed by said Hardyal Singh in her favour. So in the present appeal they have taken a contradictory stand which shows the conduct of the appellants.”

That itself is an indication of the adjudication of the application. Once the defendants have failed to prove the identity of the property alleged to have been evolved by way of consent decree from Gurdyal Singh, in my view, it would be an exercise of futility to allow application at this stage or even before the lower Appellate Court and would amount to initiation of *de novo*

trial. Even no objection qua identity of the property was taken, much less, no issue was pressed in this regard. The dispute is amongst the daughters of Hardial Singh born from the first marriage and the consent decree envisaged the enjoyment of the property by way of natural succession i.e. to the extent of 2/9th share.

In view of the aforementioned, the judgments and decrees passed by the Courts below are based upon the preponderance of facts and law and I do not find any reason to arrive at a finding different to what has already been rendered by the Courts below. No ground for interference is made out, much less, no substantial question of law arises for determination by this Court.

The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 15, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No