

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

**RSA No.5420 of 2017 (O&M)
Date of decision:26.03.2018**

Santokh Singh

... Appellant

Vs.

Ranjit Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. D.S.Gurna, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.14426-C of 2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 88 day in filing the appeal is condoned.

C.M. stands disposed of.

RSA No.5420 of 2017 (O&M)

Appellant-plaintiff no.1 is in Regular Second Appeal against the concurrent findings of facts and law having failed to succeed in suit claiming share in the estate of Karnail Singh on the premise that he was son born out of the wedlock of Karnail Singh and also remained unsuccessful in challenging the registered Will dated 09.08.1989.

The plaintiffs claiming to be brothers of defendants born from the loins of Karnail Singh, claimed inheritance of Karnail Singh by challenging the registered Will and as well as mutation sanctioned in favour of the defendants. The suit aforementioned was filed on 07.11.1998. The

plaintiffs asserted that defendants denied the right in the property of Karnail Singh on the premise that they were not legitimate children of Karnail Singh. Despite repeated requests, nothing was acceded to, compelling them to file the suit in the year 1998. Another ground which was taken in the suit was that the property at the hands of Karnail Singh was ancestral and therefore, he could not alienate or dispose of the suit property except for legal necessity.

The defendant-respondents contested the suit by denying the averment of the suit property being ancestral. It was also denied that Karnail Singh deceased had not executed any Will during this life time or that the Will dated 09.08.1989 produced by the defendants in mutation proceedings. It was also denied the status of being children of Karnail Singh.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the plaintiffs are sons of deceased Karnail Singh? OPP*
- 2. Whether the suit property is joint Hindu Family and coparcenary property? OPP*
- 3. Whether Karnail Singh executed a Will dated 09.08.1989 in favour of defendants? OPD*
- 4. Whether suit not maintainable? OPD*
- 5. Whether the suit is not valued for the purpose of court fee and jurisdiction? OPD*

6. *Relief.*”

Both the parties led the evidence in respect of their cases. The plaintiffs made an attempt to prove on record the excerpt to prove the nature and character of the property being ancestral through the testimony of PW2-Pawan Kumar, Special Sadar Kanungo.

The trial Court dismissed the suit while rendering the finding on issue no.1 in favour of the plaintiffs by holding them to be sons of Karnail Singh but declined to grant the relief on the premise that onus had not been discharged by holding that Will dated 09.08.1989 had been validly executed by Karnail Singh. The appeal laid before the Lower Appellate Court also met with the same fate.

Mr. D.S.Gurna, learned counsel for the appellant-plaintiff no.1 submitted that once the trial Court had rendered the finding vis-a-vis issue no.1 in favour of the plaintiffs that they were sons of Karnail Singh by ignoring the Will, the property of Karnail Singh was required to be devolved upon all the legal heirs by way of natural succession, for, as per the findings of the Courts below, the plaintiffs had not been able to prove the nature and character of the property being ancestral. The Will was surrounded by suspicious circumstances. The defendants, i.e., propounder of the Will had failed to discharge the onus, though plaintiffs also led evidence that contents of the Will in depriving the plaintiffs did not have any rational or valid reason. In fact, Will did not bear any signatures or thumb impressions of Karnail Singh, in spite of the fact, the same was registered. There is no limitation for claiming title in the property, therefore, filing of

the suit in the year 1998 cannot be said to be barred by law of limitation, though no objection qua limitation was taken and thus, prayed for setting aside the findings under challenge.

I have heard the learned counsel for appellant-plaintiff no.1, appraised the judgments and decrees of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Gurna, for the following reasons:-

1) No doubt, the trial Court had rendered the finding on issue no.1 in favour of the plaintiffs by holding them to be sons of Karnail Singh, the question which arises before this Court is whether the appellant-plaintiff no.1 could bring or lay challenge to the Will dated 09.08.1989 in the year 1998 despite the fact that the defendants had not taken the objection of limitation, answer given is that suit was not properly framed and challenge to the Will which is a registered document should not have been laid, for, the claim was for declaring the instrument to be suffering from forgery, the limitation as per Article 56 of the Limitation Act, is three years.

2) It is a matter of record that Karnail Singh had mutated the property in favour of the defendants and they had been in possession of the property, much less cultivating the same. No explanation has come forward as to why the relief of inheritance without challenging the registered document had not been claimed.

3) No doubt, the onus to prove the Will is always upon the propounder but in my view, prayer in the suit should have been confined only to the title to wriggle out from the rigours of Section 3 of Limitation Act. Since the aid of provisions of Section 3 could not have been taken away by the defendant, the Court can always take care of Section 3 of the Limitation Act.

Be that as it may, fact of the matter is that contents of the registered Will are also pointer in disentailing the plaintiffs to succeed in the property of Karnail Singh, for, Karnail Singh had specifically stated that the plaintiffs had always been wishing him to be dead during his life time so that they could lay claim in the property, that was the reason for divesting them from the loin of beneficiary vis-a-vis his estate. All these factors weighed in the mind of the Courts below.

In view of what has been observed above, I do not find any illegality and perversity in the findings of the Courts below 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.

Dismissed.

(AMIT RAWAL)
JUDGE

March 26, 2018
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No