

157 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No.6019 of 2017(O&M)
DATE OF DECISION:13.11.2018

Surjit Kaur

...Appellant

Vs.

Sukhwinder Singh & others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Nand Lal Sammi, Advocate
for the appellant.

Mr. G. S. Bains, Advocate for
Mr. Vijay Sharma, Advocate
for the respondents.

AMIT RAWAL, J.(ORAL)

Appellant-plaintiff has not been successful in seeking declaration regarding challenge to the judgments and decrees dated 17.02.1981 and 09.10.1979 executed by Sampuran Singh her father in favour of his sister Gurdial Kaur. The defendants are none-else but successor-in-interest of Gurdial Kaur. Plaintiff alleged that property at the hands of Sampuran Singh were ancestral and he could not have disposed of the property in that manner and mode. Fraud was played upon him and therefore, the alienation was without legal necessity.

Defendants opposed the suit by admitting relationship between the party supported the decree on the premise and asserted it was voluntarily act of Sampuran Singh. Plaintiff in support of the pleadings examined two witnesses and brought on record Exhibits P-1 to P-10. The defendants also propounded a Will dated 18.02.1976 of Sampuran Singh in favour of

Gurdial Kaur. Trial Court, on the basis of preponderance of evidence dismissed the suit which was upheld by the lower appellate also.

Learned counsel appearing on behalf of the appellant submitted that no reasons have been assigned to deny the right in the property qua the share of appellant-plaintiff as Sampuran Singh had only three daughters and in the absence of any brother and she had a right by birth. It is unbelievable that once a decree had already been suffered in favour of defendants no question of execution of will did not arise at all.

I have heard the learned counsel for the appellant and of the view that aforesaid arguments are not sustainable for Sampuran Singh died in the year 1981 i.e. two years after the execution of decree in 1979. No explanation has come forth in challenging the decree in the year 2000 as the suit was filed on 25.09.2000.

Be that as it may it is not comprehensible that decree was not in the knowledge of the plaintiff as throughout defendant had been cultivating the land. Ingredients of fraud or misrepresentation as per the provisions of Order 6 Rule 4 have not been proved. On the contrary, the defendants have been able to prove the execution of the Will in accordance with law which has gone un rebutted.

No ground for interference is made out. Accordingly, the appeal is dismissed.

13.11.2018
rimpal/dkp

(AMIT RAWAL)
JUDGE

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