

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM No.1346-C of 2007 in/and
RSA No.618 of 2017 (O&M)
Date of Decision: 01.02.2018

Pal Singh

.....Petitioner

Vs.

Gurnam Singh and others

.....Respondent

CR No.1459 OF 2017

Pal Singh

.....Petitioner

Vs.

Gurnam Singh and others

.....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Ms.Shweta Singh, Advocate, for
Mr.Agam Jund Mullanpur, Advocate, for the petitioner.

Mr.A.K.Goel, Advocate, for respondents No.1 to 7 in
CR No.1459 of 2017.

RITU BAHRI, J. (ORAL)

The appellant has come up in regular second appeal against the judgment of trial Court dated 28.07.2009 and learned appellate Court dated 20.10.2010 whereby, suit filed by the respondents/plaintiffs Gurnam Singh, Sham Lal, Rakhsha Devi has been decreed and they have been declared in possession of 6/25 share in the agricultural land.

A perusal of the judgment of the lower Appellate Court shows that the Will dated 06.05.1989 in favour of defendant No.1/Pal Singh on account of being happy with the services rendered by him. The suit of the plaintiffs has been decreed it is held that plaintiffs No.1 and 2 and defendant No.1 are co-owners to the extent of 6/25 share each in the agriculture land, fully described in the heading of the plaint, defendant No.2 Nachhataro Devi is co-owner to the extent of 1/25 share in the agricultural land, plaintiffs No.3 to 5/defendants No.3 and 4 jointly own 6/25 share in the agriculture land.

Further it was declared that plaintiffs No.1, 2 and defendants No.1 and 2 are co-owners to the extent of 1/5th share each in the house in dispute fully described in the heading of the plaint and remaining 1/5th share is jointly owned by the plaintiffs No.3 to 5 and defendants No.3 and 4. The plaintiffs are entitled to get separated their share out of the said house and a preliminary decree to this effect is passed in favour of the plaintiffs/respondents. Further, it is also declared that sale deed dated 19.06.2000 executed by defendant No.1/appellant in favour of defendant No.5/respondent No.8 is valid to the extent of 6/25 share only i.e. share of the defendant No.1/appellant.

After the judgment of learned lower appellate Court, counsel for respondents No.1 to 7 has informed that final decree of partition has already been passed on 03.09.2015 and thereafter, execution proceedings have been initiated. The present appellant in the RSA was proceeded ex-parte in execution. The appellant was proceeded against ex-parte on 30.08.2017 and this order was challenged by filing an application was dismissed on 23.11.2016 and against the said order appellant has filed the aforesaid Civil Revision No.1459 of 2017.

Present RSA has been filed after a delay of 2194 days. After going through the judgment of the learned trial Court and learned appellate Court, it transpires that appellant/defendant Pal Singh had made an attempt to prove the execution of the Will dated 06.05.1989 Ex.D1. However, he has tried to prove the said Will as per Section 69 of the Evidence Act. But in the opinion of the Court, the evidence produced by the defendant/appellant does not fulfill the requirements of Section 69 of the Evidence Act. As per Section 69 of the Evidence Act, it was necessary to prove that the Will bears the thumb impression of deceased Chhaju and signatures of one of the witnesses are in his handwriting. However, DW3 Gurdial Singh has nowhere stated that Will was thumb marked by the deceased Chhaju in his presence. He stated that about signing of the Will by Kharaiti Lal in his presence only and no other witness has deposed regarding thumb impression of the deceased Chhaju on the Will in question. The defendants/appellants could not have examined any member of the family of Kharaiti Lal to identify his signatures. Reversing findings of the

trial Court on issue No.7, the learned appellate Court has further observed that Defendant/appellant Pal Singh during his cross-examination admitted that during 2 to 4 years preceding his death Chhaju was not having sound state of mind. He used to remain sick and during 8/9 years prior to his death, he was unable to move and hence, the will was ascribed and property was given by way of natural succession to the plaintiffs as well as the defendants. This finding of fact has been rightly recorded and there is no need to interfere on reversing the findings on issue number 7.

Since the present regular second appeal has been filed after a gap of 2194 days without any explanation, it is being dismissed only on the ground of delay.

Since the regular second appeal is dismissed on the ground of delay, the present revision petition is also dismissed as such.

(RITU BAHRI)
JUDGE

01.02.2018

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No