

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

**\* \* \* \* \***

**RSA No. 1279 of 2019 (O&M)**

Date of decision : November 14, 2019

**\* \* \* \* \***

Sabha Chand and others

.....Appellants

Versus

Smt. Oman and others

.....Respondents

**\* \* \* \* \***

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

**\* \* \* \* \***

Present: Mr. Varun Sharma, Advocate for the appellants.

**\* \* \* \* \***

**RITU BAHRI, J.**

The appellants-defendants No. 1 to 3 have come up in appeal against the judgment dated 20/11/2018 passed by the District and Sessions Judge, Rewari, whereby appeal against the judgment and decree dated 11/01/2016 passed by Civil Judge (Junior Division) Rewari was allowed and a decree for declaration was passed to the effect that the plaintiff was held to be co-owner to the extent of 1/7<sup>th</sup> share in the disputed property and the Will claimed to have been executed by her father was held to be not duly proved. Vide the trial court judgment dated 11.1.2016, suit filed by the plaintiff was dismissed.

The case of the contesting respondent-plaintiff (hereinafter referred to as `the plaintiff') is that she along with defendants No. 1 to 6 was

joint owner in possession of agricultural land mentioned in para No. 1 of the plaint to the extent of 1/7<sup>th</sup> share which came to be 11 kanals 13 marlas out of the total 81 kanals 9 marlas of land. Sh. Nand Lal, father of the plaintiff and defendants No. 1 to 6 was co-owner in joint possession to the extent of half share in the total land measuring 162 kanals 19 marlas. He died intestate in the year 1991 and after his death, the plaintiff as well as defendant No. 1 to 6 became joint owners in possession in equal shares of the property left by Sh. Nand Lal being his class-I legal heirs. In the month of November 2012, the plaintiff asked defendants No. 1 to 4 to give her share in the disputed property by way of partition. However, the defendants refused to partition the property on the ground that their father had left an oral Will in their favour. Hence, the present suit was filed.

Notice of the suit was served upon the defendants. Defendants No. 4 and 7 failed to appear and were proceeded against ex parte vide order dated 12/03/2013. Defendants No. 1 to 3 filed a joint written statement taking the plea that the plaintiff never remained in possession of any portion of the disputed property, at any point of time. It was pleaded that Nand Lal had executed an oral will in favour of the defendants No. 1 to 4 during his lifetime on 15/05/1987 and after his death on 13/03/1991, defendants No. 1 to 4 had become owners of the same. Mutation No. 1062 dated 18/03/1991 was also sanctioned in their favour. It was denied that Nand Lal had died intestate. It was submitted that defendants No. 1 to 4 used to take care of Nand Lal and served them during his lifetime and feeling satisfied with the services rendered by defendants No. 1 to 4, the former had executed this Will in their favour. Defendants no. 5 & 6 filed a separate written statement raising the same pleas as raised by defendants no. 1 to 4.

From the pleadings of the parties, the following issues were framed by the trial court:-

1. *Whether the plaintiff is entitled to a decree for declaration as prayed for and in the alternative if defendants No. 1 to 4 succeed in ousting plaintiff totally from the suit land or the exclusive possession over the whole suit land is presumed then a decree for joint possession to the extent of 1/7<sup>th</sup> share out of share of Nand Lal in the suit land as prayed for? OPP*
2. *Whether the plaintiff and defendants are joint owners in possession and whether the alleged will in favour of defendant No. 1 to 4 is false, fabricated and null and void? OPP*
3. *Whether the suit is not maintainable in the present form? OPP*
4. *Whether the plaintiff has no cause of action to file the present suit? OPD*
5. *Whether the plaintiff has no locus standi to file the present suit? OPD*
6. *Whether the suit is liable to be dismissed for affixation of less Court fee? OPD*
7. *Whether the suit of the plaintiff is barred by limitation? OPD*

After going through the records of the case and evidence placed on

record by the parties, the trial court observed that the defendants have duly removed all the suspicious circumstances around the Will. Once the defendants had proved on record execution of Will, the onus was totally upon the plaintiff to prove that the Will was result of fraud, forgery and was not the mental act of Nand Lal. The plaintiff has not examined any witness or placed on record any evidence to show that the Will was not executed by Nand Lal. Further, it is also not the case of the plaintiff that the Will was not signed/thumb impressioned by Nand Lal. When defendants had proved due execution of Will, the onus to prove fraud was upon the plaintiff. But, in the present case the plaintiff failed to prove the alleged fraud or forgery. Hence, it was clear that Will was duly proved on record by the defendants. Thus, since the Will was duly proved, the suit of the plaintiff was dismissed.

Feeling aggrieved, the plaintiff filed appeal against the judgment of the trial Court in the lower appellate court.

After hearing counsel for the parties and going through the file of the case, findings of the trial court on issues No. 1 and 2 were reversed by the lower appellate court on two main grounds. The first ground was that after the death of Nand Lal in the year 1991, as per copy of mutation No. 709 sanctioned on 01/03/1999 as Ex. P-4 it was revealed that the agricultural land owned by Nand Lal and situated within the revenue estate of village Dohna had been transferred not only in favour of defendants No. 1 to 4 but in favour of his daughters as well that is the plaintiff and defendants No. 5 and 6 to the extent of equal shares by way of inheritance. Further, as per Ex. P5, copy of mutation No. 806 and Ex. P6 copy of sale deed dated 01/07/1997, in the year 1997, some of the property previously owned by Nand Lal and then inherited by the plaintiff and defendants

situated in village Dohna was sold in favour of Daya Kishan etc. and in this mutation also, the plaintiff as well as defendants No. 1 to 6 are shown to be co-sharers of the said property and if in fact any Will was in existence, then the defendants would not have allowed to show the plaintiff and respondents No. 5 and 6 as co-sharers of that property and this fact also goes a long way to show that no such Will executed by the father of the parties was in existence and was intended to be acted upon. At that time, the defendants did not raise any objection and the plea of existence of such Will was not taken by the defendants at that stage.

The second ground, on the basis of which, the findings of the trial Court were reversed by the lower appellate court was that mutation Ex. DW3/B, which was registered on the basis of Will the execution of which is not proved cannot confer any title upon the defendants. The scribe DW5 Sh. Hira Lal, Naib Tehsildar deposed in his examination in chief that defendant Bani Singh as identified by Charanjeet Lal had produced a Will before him and he had entered mutation on the basis of the same. Though during cross examination, it was stated by him that the plaintiff along with defendants No. 5 and 6 and Sh. Bani Singh were present at the spot at that time but it was also admitted by him that he had not given any notice to the legal heirs of the deceased Nand Lal prior to entering mutation. He admitted that he had not procured the thumb impressions or signatures of the persons present at that time. It was also admitted by him that as per the records only Charanjit Lal and Bani Singh had appeared before him. He also admitted that he had never seen any such Will and was not personally aware about existence of any such Will. Hence, keeping in view the deposition of this witness, the lower appellate court observed that when the mutation was

sanctioned, the plaintiff was not present, at that time. It was sanctioned without giving any notice to her.

DW6, Kamal grandson of Charanjeet Lal had simply identified the signatures of the latter on the mutation Ex. DW5/A. As per the testimony of DW5 Hira Lal, the original Will had been attached with the mutation and as per the procedure after incorporation of such Will in the Jamabandi, the same used to be kept in the record of the Daftar Kanungo. DW4 Parkashveer, Daftar Kanungo stated that as per the record, no Will was attached with the mutation No. 1062 or its record and also stated that if there would have been any such Will in existence copy of the same would have been attached in the mutation register. Reliance was placed upon a judgment in the case of *Ranjit Singh versus Kanwaljit Singh and others 2004 (2) RCR (Civil) 525*, wherein mutation was shown to be entered on the basis of the Will. The mutation was challenged. Will was not produced. The entry for the same was held to be bogus and fraudulent. In paragraphs 7, 8 and 9 of the judgment, it was observed as under:

7. Having heard the learned counsel and perusing the judgments and decrees of both the Courts below, I am of the considered opinion that this appeal is liable to be dismissed because no substantive question of law warranting admission of the appeal has been raised. The Will on which reliance has been placed by the defendant-appellant has never seen the light of the day nor it was produced before the Courts below. The mutation on the basis of the Will got entered by

the defendant-appellant was again a bogus and fraudulent transaction as has been found by both the Courts below. As a matter of fact these findings were not even assailed by the defendant-appellant before the first appellate Court. It was in these circumstances that the first appellate Court has held that the suit land has to be considered in joint possession of the plaintiff-respondents, defendant-appellant as well as defendant-respondents in equal shares as provided by [Section 15](#) of the Hindu Succession Act, 1956 because all of them were the first class heirs being sons, daughters and husband.

8. The argument of the learned counsel regarding maintainability of the suit has to be examined in light of the findings returned by both the courts below, namely, that the defendant-appellant was a co-sharer in the suit land. The mutation as well as the Will having been found to be bogus and fraudulent would not adversely affect that status. Similarly, the entry into the revenue record had also come into existence from the fraudulent and bogus mutation. In these circumstances, the suit land can never be considered exclusively owned and possessed by the defendant-appellant.

9. It is true that if a defendant is in possession and the suit has not been filed for restoration of possession but merely for a declaration, then such a suit would not be maintainable. However, in the instant case, the suit has not been simply for a declaration but for a declaration to the effect that the plaintiff-respondents and defendant-appellant as well as defendant-respondents are owners in joint possession in equal share of the suit land. A further prayer for restraining the defendant-appellant from alienating the suit land more than his share was also made which has been accepted. Therefore, the judgments of the Supreme Court in the cases of Ram Saran (supra); Vinay Krishna (supra) and that of this Court in the case of Kedara (supra) have no application to the facts of the instant case because in those cases a mere declaration of ownership was prayed without anything more. I am further of the view that fraud vitiates everything which is an additional factor present in the instant case. Therefore, the argument raised by the learned counsel is without any merit.

The appellate court observed that though the appellant failed to produce any convincing evidence on record to prove that she was in actual physical possession of any share of the disputed property but she had

claimed a relief of joint possession apart from claiming the relief of declaration. Being class one legal heir of the deceased Nand Lal was deemed to have become co-sharer in joint possession of the disputed property and was entitled to seek the relief claimed by her. Thus the judgement of the trial court dated 11/01/2016 was set aside and the suit was accordingly decreed and a decree for declaration was passed to the effect that the plaintiff was held to be owner to the extent of 1/7 share in the disputed property and the Will claimed to have been executed by her father was not held to be duly proved and hence was not binding upon her rights. The entries made in mutation No. 1062 and subsequent Jamabandi recording defendants No. 1 to 4 only as co-sharers in the disputed property were held to be illegal. The plaintiff was held entitled to joint possession of the same.

In view of all that has been discussed above, no ground is made out to interfere in the judgment of the lower appellate court. No substantial question of law arises for consideration in the present appeal hence the same is hereby dismissed.

November 14, 2019

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( **RITU BAHRI** )  
**JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

No