

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

**RSA No.1320 of 2019 (O&M)
Date of Decision:06.03.2019**

Smt. Krishna and others

.....Appellants-plaintiffs.

Versus

Jai Kishan and others

..... Respondents-defendants

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.S.P.Chahar, Advocate
for the applicant-appellants.

LISA GILL, J.

Appellants-plaintiffs are aggrieved of judgment and decree dated 18.12.2015, passed by the learned Civil Judge (Jr. Division), Bahadurgarh, as well as judgment and decree dated 16.11.2018, passed by the learned Additional District Judge, Jhajjar, whereby suit for declaration with consequential relief of permanent injunction filed by the plaintiffs-appellants has been dismissed.

Brief facts necessary for the adjudication of the case are that appellants-plaintiffs filed a suit for declaration with consequential relief of permanent injunction to the effect that the property in question as described in the plaint was owned and possessed by a Hindu Undivided Family (for short 'HUF') consisting of Amar Singh and his sons and daughters namely Ram Singh (predecessor-in-interest of appellants no.1 to 7), Partap Singh (predecessor-in-interest of appellants no.8 to 12), Jai Kishan (defendant-respondent no.1), Smt. Ram Rati, Smt. Krishna, Smt. Bala, Smt. Sheela and

Smt. Sumitra in equal shares being coparceners as reflected in the pedigree table. The parties to the suit were stated to be in cultivating possession of the land through the male line of descent from last more than 100 years as tenants. The land in question was claimed to be purchased by Amar Singh and his sons out of the joint income of HUF, but it was purchased in the individual name of Amar Singh only being the *karta* of the HUF. Ram Singh son of Amar Singh died intestate on 12.02.2000 and his estate i.e. 1/9 share was inherited by plaintiffs no.1 to 7 in equal shares. Partap Singh son of Amar Singh died intestate on 28.11.2009. Plaintiffs no.8 to 12 succeeded to his share. Amar Singh was illiterate but he never thumb marked on any paper as he used to sign in Urdu. Amar Singh passed away on 01.05.2011 intestate, leaving behind the plaintiffs, defendants no.1 to 6. After the death of Amar Singh, defendants no.2 to 6 voluntarily and out of their own free will relinquished their respective shares in favour of the plaintiffs and defendant no.1. Suit property was claimed to be joint and in possession of the plaintiffs and defendants in which plaintiffs no.1 to 7 and 8 to 12 claimed 1/ 3rd share each besides the remaining share belonging to defendant no.1. Plaintiffs claimed that a conspiracy was hatched against Amar Singh and plaintiffs by defendant no.1 and a fraudulent will dated 18.03.1998 was registered in connivance with the scribe, witnesses and Sub-Registrar, Bahadurgarh, whereas Amar Singh had never executed any will in favour of defendant no.1. Mutation was wrongly sanctioned in favour of defendant no.1 by the revenue authorities on the basis of will dated 18.03.1998 although the suit land was in the joint ownership and possession of the plaintiffs and defendant no.1. Mutation on the basis of the will was stated to

be illegal, null, void and not binding on the rights of the plaintiffs. Despite request, defendant no.1 refused to accept the claim of the plaintiffs. Hence the suit was filed.

Defendant no.1 resisted the suit. Various preliminary objections were taken in the written statement. Averments on merits were controverted. It was stated that Amar Singh was the owner of the suit property. It was his self acquired property being purchased through registered sale deed dated 29.10.1957. Therefore, Amar Singh was the sole owner in possession of the property in question. Amar Singh was taken care of and looked after by Jai Kishan. A valid registered will dated 18.03.1998 was executed by Amar Singh in favour of defendant no.1-Jai Kishan. Suit was stated to be false and frivolous. Dismissal of the same was prayed for.

Defendants no.2 to 6 filed a written statement admitting the claim of the plaintiffs.

Replication was filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiffs are entitled to the decree of declaration as prayed for?OPP
2. Whether the plaintiffs are entitled to the decree of permanent injunction as prayed for?OPP
3. Whether the suit of the plaintiffs is not maintainable in the present form?OPD
4. Whether the plaintiffs have no locus standi to file the present suit?OPD
5. Whether no cause of action arose to the plaintiff against the answering defendants to file the present suit?OPD
6. Whether the plaintiffs have not come to the Court with clean hands and suppressed the material and true facts from the court?OPD
7. Whether the suit of the plaintiffs is barred by limitation? OPD
8. Relief.

Both the parties led evidence in support of their respective

claims/stands.

Learned trial Court on considering the facts and circumstances as well as the evidence on record concluded that the property in question was the self acquired property of Amar Singh. Furthermore, will dated 18.03.1998 was duly proved on record. It was further concluded that it was proved on record that deceased-Amar Singh was living together with defendant no.1-Jai Kishan at the time of his death and was being looked after by him. Amar Singh, it was observed was proved to be in sound disposing mind at the time of execution of will which stood duly proved on record. Suit was accordingly dismissed vide judgment and decree dated 18.12.2015.

Appeal filed by the plaintiffs-appellants was dismissed by the learned Additional District Judge, Jhajjar, vide impugned judgment and decree dated 16.11.2018.

Aggrieved therefrom, present appeal has been filed by the appellants-plaintiffs.

Learned counsel for the appellants vehemently argues that both the learned Courts below have erred in dismissing the suit filed by the plaintiffs. It is argued that will dated 18.03.1998 is not proved on record. The said will is shrouded in suspicious circumstances, therefore, the same should be discarded. There is no reason whatsoever, in the will for bequeathing of the property by Amar Singh to defendant no.1 to the exclusion of the other two sons and daughters of Amar Singh. It is thus prayed that this appeal be allowed and the impugned judgements and decrees passed by the learned Courts below be set aside. Consequently, suit filed by

the appellants-plaintiffs be decreed throughout.

I have heard learned counsel for the appellants and have gone through the file with his assistance.

Plaintiffs have claimed the property in question to be the property of HUF having been purchased from the funds of the HUF. It is a matter of record that the suit property was purchased by Amar Singh by way of a registered sale deed dated 29.10.1957, Ex.D-1. The same was proved by DW-3-Naresh Kumar. There is not an iota of evidence on record to even indicate, much less prove that the suit property was purchased out of the funds of the HUF, if any. The said property is clearly the self acquired property of Amar Singh. Learned counsel for the appellants is unable to deny that documents on record Ex.D-18 and Ex.D-19 i.e. the registers regarding admission and withdrawal of the sons of Amar Singh namely Ram Singh and Partap Singh revealed that they were minors at the time of purchase of the property in the year 1957. There is indeed no evidence on record to indicate that the suit property could not have been the subject matter of will dated 18.03.1998 executed by Amar Singh.

Defendant-respondent no.1-Jai Kishan has successfully proved the execution of the registered will dated 18.03.1998. Defendant no.1 has examined Om Parkash as DW-7, who was the attesting witness of the will. DW-10-Amir Singh, who was the Sub-Registrar, Bahadurgarh at the relevant time has also proved the said will. DW-6-Hans Raj, the scribe has also testified about the execution of the will. Defendant no.1 has duly proved the execution of the will in terms of Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act. Furthermore, defendant no.1 has

also examined DW-11-V.B.Kashyap (wrongly mentioned as DW-10), handwriting and finger print expert, who opined that the disputed thumb impressions on the will dated 18.03.1998 matched with the standard thumb impressions of Amar Singh.

Argument by learned counsel for the appellants that the will dated 18.03.1998 is shrouded in suspicious circumstances is devoid of any merit. It is a matter of record that PW-1-Pardeep admitted in his testimony that his grandfather Amar Singh was residing with defendant no.1-Jai Kishan during his last days. PW-2-Om Parkash, admitted the possession of defendant no.1 over the suit property. PW-3-Sumitra, daughter of Amar Singh has also admitted the possession of defendant no.1-Jai Kishan over the suit property. She further admitted that Amar Singh, her father was not suffering from any disease. He was of sound disposing mind and health. therefore, there is nothing on record to show that Amar Singh was not of sound disposing mind at the time of execution of the will in question. There is no medical evidence on record to prove the same. To the contrary, Ex.D-20 is the Senior Citizen Identity Card of Amar Singh, which was prepared before the death of Amar Singh does not indicate unsoundness of mind.

I have also perused the photocopy of will dated 18.03.1998, Ex.D-17, furnished in Court today, by learned counsel for the appellants. The testator has specifically mentioned all of his legal heirs besides the fact that he has given share of two of his sons as per his wish and he sought to bequeath the rest of his property in favour of his son-Jai Kishan with whom the testator was residing. There is a specific recital that the testator is pleased with the services rendered by defendant no.1-Jai Kishan. It is further recited

in the will that all the daughters of Amar Singh were married of by him and he spent adequate amount at the time of their marriage and thereafter on various traditional occasions and festivals as well. It is rightly held by both the learned Courts below that the plaintiffs have failed to prove their case on the basis of the evidence on record.

Learned counsel for the appellants-plaintiffs is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

There is an application for permission to make good the deficiency in Court fee. Deficient court fee stands deposited, though after the stipulated time. In view of the facts and circumstances of the case, time to affix the same is extended till then. Application is disposed of.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decrees dated 18.12.2015 and 16.11.2018 passed by the learned Civil Judge (Jr. Division) Bahadurgarh and learned Additional District Judge, Jhajjar, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

06.03.2019
s.khan

[LISA GILL]
Judge

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