

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

**RSA No.1019 of 1992 (O&M)
Date of Decision.24.01.2019**

Jaswinder Kaur ...Appellant
Vs

Debbo and others ...Respondents

2. RSA No.1020 of 1992

Banso ...Appellant
Vs

Debbo and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Anupam Gupta, Senior Advocate with
Ms. Gurneet Sagoo, Advocate
for the appellant.

None for the respondents.

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AMIT RAWAL J.

This order of mine shall dispose of two regular second appeals bearing Nos.1019 and 1020 of 1992 arising out of decision rendered in the suit bearing No.290 of 1985 titled as “Jaswinder Kaur daughter of Resham Singh through Jasbir Singh Vs. Debbo and others”.

The appellant-plaintiff instituted the suit for declaration claiming herself to be joint owner in possession along with defendant No.2, Banso to the extent of half share each in respect of the land mentioned in the head note of the plaint regarding the share of Charan Singh with consequential relief of injunction restraining defendants No.1 and 3 from alienation of the suit land. It was alleged that she was minor and under the care and protection of Jasbir Singh, who had

no adverse interest to her. Defendant No.3-Paramjit Kaur, her mother remarried with Deesh Singh. Charan Singh was son of Prem Singh. He had two sons namely Resham Singh and Meet Singh and two daughters viz; Banso and Debo. He was owner of the land and before death, had executed a Will dated 01.08.1973 in favour of Resham Singh and Meet Singh to the extent of half share but the inheritance of share after his demise was sanctioned in favour of all the legal heirs including Banso and Debo, which was not in accordance with law. Meet Singh died issueless. Before his death, he had also executed a Will, Ex.P4 and bequeathed half share in favour of Banso.

Defendants opposed the suit and raised objections qua locus standi, maintainability but admitted the plaintiff to be minor. The factum of execution of Will by Meet Singh was denied and supported the mutation which was made on the basis of natural succession.

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

“1. Whether the plaintiff is joint owner in possession along with Banso defendant No.2?

2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP

3. Relief.”

In order to support pleadings, plaintiff examined Gurdev Singh, deed writer as PW1, Darshan Singh Sandhu, SDM Jagraon as PW2, Hansa Singh as PW3 and Mohinger Singh as PW4 whereas the defendants examined Gurdev Kaur DW1, Gural Singh DW2 and

Mohan Singh as DW3.

The trial Court on the basis of aforementioned pleadings decreed the suit by conferring 1/4th share each in favour of plaintiff and Paramjit Kaur and half share to Banso. However, in the appeal taken before the lower Appellate Court, judgment and decree of the trial Court was set aside and held all the siblings i.e. children of Charan Singh to be entitled to 1/4th share each and property left behind by Meet Singh was ordered to be equally divided amongst Jawinder Kaur, Banso and Debo.

Mr. Anupam Gupta, Senior Advocate assisted by Ms. Gurneet Sagoo, learned counsel appearing on behalf of the appellant submitted that judgment and decree of the lower Appellate Court is not sustainable in the eyes of law. The trial Court had examined the evidence in extenso. Defendants did not deny the Will executed by Charan Singh and therefore, the obligation to discharge the onus with regard to Will as the witnesses of the Will had been examined, stood discharged. The Will had duly been approved and its execution. It has been established that Banso had been rendering services to Meet Singh, his brother and out of love and affection, he had bequeathed his half share in her favour. There was agricultural custom in the families that only male children would derive the interest in order to prevent any future litigation. Charan Singh executed Will by bequeathing the property amongst sons in equal shares.

There is no appearance on behalf of the respondents, despite service.

I have heard learned counsel for the appellant, appraised

the paper book and of the view that there is no force and merit. Concededly the original Will dated 01.08.1973 has not seen light of the day and only photocopy and register has been brought on record. In the absence of any application for secondary evidence, photocopy cannot be treated as primary evidence. Even if the witnesses to the Will have been examined, defendants did not have chance to disapprove the Will. Plaintiff did not even take steps to bring on record the same by way of additional evidence whereas the application was filed to file on record the mutation proceedings, thus, failed to discharge onus as per the provisions of Section 101 of the Indian Evidence Act. In these circumstances, Charan Singh deemed to have died intestate and since he had left behind two sons and two daughters, mutation to the extent of 1/4th share each approved by the lower Appellate Court cannot be said to be erroneous but based on natural succession.

In view of the aforementioned circumstances, I do not find any illegality and perversity in the judgment and decree rendered by the lower Appellate Court, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeals are dismissed. Interim order passed by this Court staying the execution of the judgment and decree of the lower Appellate Court stands vacated.

(AMIT RAWAL)

JUDGE

January 24, 2019

Pankaj*

Whether Reasoned/Speaking	Yes
Whether Reportable	No