

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

**RSA No.806 of 2002 (O&M)
Date of Order: 10.01.2019**

Ram Singh and others

..Appellants

Versus

Nachhatar Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajaypal Singh, Advocate,
for the appellants.

Mr. Mandeep Singh Dhaliwal, Advocate,
for respondent nos.1 and 2.

ANIL KSHETARPAL, J(Oral)

Defendants-appellants-purchasers are in the regular second appeal against the concurrent findings of fact arrived at by both the courts below.

Dispute is with regard to the estate of Darbara Singh who was common ancestor of plaintiffs and most of the defendants except purchasers. Darbara Singh and Sohan Singh, 2 brothers were joint owners of the suit property. Darbara Singh executed an unregistered will dated 31.12.1989 in favour of his 2 sons late Sh. Atma Singh and Bikkar Singh, ignoring 4 daughters. Plaintiffs who are heirs of Atma Singh filed a suit claiming declaration that they are owners to the extent of 1/4th share in the joint property which was owned by Darbara Singh and Sohan Singh. Certain sale deeds executed by various natural heirs of Darbara Singh including Bikkar Singh were also challenged.

Learned trial court on appreciation of evidence held that the Will is proved. In fact the validity of will had already been upheld in a previous suit. Reference whereof has been given in the judgment under appeal. Learned trial court granted decree, operative part whereof is extracted as under:-

“25. In view of my observations, while deciding aforesaid issues, suit of the plaintiffs for declaration to the effect that they are co-owners to the extent of $\frac{1}{4}$ share in the suit property and the sale deeds Nos.19 dated 7.4.93, 152 dated 10.5.93, 297 dated 19.5.93 , dated 03.11.93 and 898 dated 3.11.93 are null and void and ineffective qua the rights of the plaintiffs in the suit property and the plaintiffs are also entitled for the joint possession of the suit property and for permanent injunction restraining the defendants Nos.1 to 4 and 6 to 16 from alienating the same is decreed with costs. Decree sheet be prepared. File be consigned to the record room.”

Learned counsel for the appellant has a limited grievance. He submits that the sale deeds which have been executed by various heirs including Bikkar Singh should be upheld to the extent of share of Bikkar Singh.

On the other hand, learned counsel for the respondents has submitted that the decree granted by the trial court affirmed by the first appellate court is only to that effect. However, learned counsel for the appellants has pointed out that the words used by the trial court are that the

sale deeds are null and void.

This court has gone through the operative part of the decree. According to this court, the sale deeds would not effect the rights of the plaintiffs (heirs of Atma Singh). The sale deeds as such have not been set aside.

Accordingly, the appeal is disposed of by observing that the plaintiff's right as per Will would remain intact and sale deeds executed would not effect their rights. In other words plaintiffs would be entitled to 1/4th share in the entire property which was initially jointly owned by Darbara Singh and Sohan Singh.

January 10, 2019
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No