

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

**RSA No.1043 of 2016 (O&M)
Date of Decision.25.02.2019**

Sohan Singh @ Chain Singh (deceased) through LRs ...Appellant

Vs

Gurdip Kaur (since deceased) through LRs and others
...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. G.S. Virk, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.2860-C of 2016

For the reasons stated in the application, delay of 209
days in filing of the appeal is condoned.

Application is allowed.

RSA No.1043 of 2016

The appellant-defendant, legal representative of Sohan Singh is in regular second appeal against the judgment and decree rendered by the lower Appellate Court partly accepting the claim of the defendant with regard to sale deed dated 07.01.1966 whereby plaintiff-Gurdip Kaur alleged to have sold her share to her both brothers namely Parkash Singh and Sohan Singh.

The plaintiffs filed the suit for declaration qua ownership of 7 kanals 15 marlas, half share in a house and alternative possession of land measuring 7 kanals 15 marlas and recovery of ₹35,000/- as mesne profits of 7 kanals 15 marlas. Mehnga Singh was common ancestor and on his demise, his estate was inherited by Dhan Kaur,

Sohan Singh and Parkash Singh. Parkash Singh stated to have died issueless, allegedly executed, registered Will dated 17.12.1985 whereas Dhan Kaur died on 13.07.1997 and during her life time had executed Will dated 17.06.1985. Both the Wills were propounded by the defendants. Plaintiff alleged that on demise of Dhan Kaur, she was entitled to her share and as well as share of Parkash Singh, even if she had sold the land to Parkash Singh but on his demise, in the absence of any Will, she being collateral was entitled to succeed her share.

Defendants opposed the suit raising preliminary objections and propounded the aforementioned Wills as well as sale deed dated 7.1.1966 whereby plaintiff sold her share of 3 kanals 19 marlas. It was alleged that mutation of inheritance of Dhan Kaur, mother of the plaintiff and defendants was sanctioned in the presence of the plaintiff admitting the validity of the Will dated 17.06.1985.

In support of pleadings, plaintiff examined four witnesses Gurdeep Kaur as PW1, Harbans Singh as PW2, Tufael Mohammad as PW3 and Mohan Singh as PW4 and closed evidence whereas defendants examined seven witnesses, though attesting witnesses of the Will have not been examined except scribe of the Will executed by Parkash Singh dated 17.12.1985 and tendered documents Ex.D1 and D2.

The trial Court on the basis aforementioned evidence discarded the Wills propounded by the defendants decreed the suit in part and upheld the sale deed dated 7.1.1966. In the appeal filed before the lower Appellate Court, judgment and decree of the trial

Court was modified by rejecting the relief of possession qua suit land and house, though upheld the finding qua Wills and sale deed.

Mr. Kanwaljit Singh, Senior Advocate assisted by Mr. G.S. Virk in support of the memorandum of appeal submitted that even if the witnesses of the Will dated 17.12.1985 were not produced but the scribe of the Will was examined, which sufficed requirement of law. The Courts below ought not to have discarded the Wills. In view of the provisions of Section 58 of the Indian Evidence Act, there was no occasion for the defendants to prove the genuity and authenticity, much less, validity of the Will dated 17.06.1985 of Dhan Kaur, as the plaintiff in the mutation proceedings admitted the existence of the same, but the Courts below, abdicated in discarding the same.

I am afraid aforementioned arguments of Mr. Kanwaljit Singh, Senior Advocate are not sustainable, as the proceedings of the revenue record are not binding on Civil Court since title was involved. The plaintiff asserted share in the estate of Dhan Kaur and Paraksh Singh being the first class heir of Dhan Kaur and regarding Paraksh Singh, as collateral, as both died intestate. Once the Wills propounded by the defendants had not been proved, their shares as per the natural succession would devolve upon Sohan Singh and on demise, on his legal heirs and Gurdip Kaur. Though the trial Court did not accept the plea of defendant with regard to sale deeds but modified as defendants were able to prove its execution as the witnesses of the sale deed have been consistent and coherent.

In view of such circumstances, I am of the view that the

finding of fact and law arrived at by the lower Appellate Court cannot be said to be suffering from any illegality and perversity, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 25, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No