

Regular Second Appeal No.1615 of 2015 (O&M) { 1 }

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1615 of 2015 (O&M)
Date of Decision: February 14, 2019

Maan Singh & others

...Appellants

Versus

Waryam Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: None for the appellants.

AMIT RAWAL, J. (Oral)

CM No.4462-C of 2015

Prayer in the application is for impleading the legal heirs of Sukhdev Singh plaintiff No.2, who is stated to have expired on 22.02.2013.

Allowed subject to all just exceptions. The persons mentioned in Para 3 of the application are impleaded as legal heirs of Sukhdev Singh plaintiff for the purpose of prosecuting the present appeal only.

RSA No.1615 of 2015

Appellant-plaintiffs are in Regular Second Appeal against the judgment and decree of the Lower Appellate Court, whereby the appeal preferred by defendant No.7 against the partial decretal of the suit, has been partly allowed and the findings on issue Nos.5A and 5 decided against defendant No.7, have been set-aside.

Plaintiffs sought the declaration to be owners in possession of 1/24 shares by challenging the Will dated 20.12.2002 and consequential mutation No.2171 in respect of the land to be null & void on the premise

that they along with defendants constituted a Joint Hindu Family being common ancestor. Daya Singh, Charan Singh and Tarlochan Singh sons of Dhanna Singh jointly purchased 3/8 share of the land measuring 211 kanals 5 marlas. However, in the year 1965, Charan Singh sold his 1/8th share to Tarlochan Singh son of Dhanna Singh and defendant No.1 in equal shares vide registered sale deed dated 01.07.1965. Tarlochan Singh, father of plaintiffs No.1 to 3 and defendant No.1 and grand-father of defendant Nos.4 and 5 was in actual possession of the suit land since the date of purchase. Daya Singh and defendant No.1 did not make any contribution regarding levelling of the land. In the year 1980, as per the family settlement, Tarlochan Singh purchased the land at Assandh in the name of his brother Daya Singh in lieu of the share of Daya Singh in the land situated at Village Rasoolpur. Land measuring 18 kanals 0 marla was accordingly purchased in the name of Daya Singh. He was left with no right and title in the suit land. However, Tarlochan Singh remained in cultivation possession of the land situated in Village Rasoolpur. Daya Singh died on 25.10.1993 and after his death, 1/8th share of the suit land was inherited by defendant No.1 Jeet Singh and mother of defendant Nos.2 to 6 and one Surinder Kaur, the mother of defendant Nos.8 and 9 vide mutation No.1950.

After the death of Daya Singh, father of plaintiff Nos.1 to 3 and grand-father of plaintiff Nos.4 and 5 requested the legal heirs of Daya Singh to transfer the share of Daya Singh in the suit land in the names of his sons as per the family settlement. They conceded to the request and transferred their shares in the suit land by way of a registered gift deed dated 03.07.2000. Defendant No.1 even alienated his 1/16th share which he purchased from Charan Singh son of Dhanna Singh in the name of the

plaintiffs. However, Surinder Kaur daughter of Daya Singh did not transfer her share. Although Surinder Kaur intended to do so, but defendant No.7 prevented her from executing the gift deed in favour of the plaintiffs. Unfortunately, Surinder Kaur died on 22.01.2003 leaving behind defendant Nos.8 and 9 as her legal heirs. Defendant No.7 prepared a forged and fabricated Will dated 20.12.2002 of Surinder Kaur thereby depriving the natural legal heirs of Surinder Kaur and also got sanctioned mutation No.2171 on the basis of the Will.

Defendant Nos.7 to 9 appeared and filed the written statement and alleged that Daya Singh was co-owner in joint possession and after his death, Surinder Kaur inherited to his estate being his daughter. She became exclusive owner of 1/24 share and executed a legal and valid Will in favour of her husband and supported the mutation no.2171.

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

- “1) Whether the plaintiff is entitled for a decree for the declaration as prayed for? OPP*
- 2) Whether the plaintiff is entitled for a decree for permanent injunction as prayed for? OPP*
- 3) Whether this Court has the jurisdiction to try and entertain the present suit? OPP*
- 4) Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPP*
- 5) Whether the Will dated 20.12.2002, is not legal and valid? OPP*
- 6) Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 7) Relief.”*

Plaintiffs, in support of the pleadings, examined PW-5 Navdeep

Gupta Handwriting Expert and brought on record various documentary evidence, whereas defendants examined three witnesses.

The trial Court, decided issue No.1 against the plaintiffs and in favour of the defendants and issue No.2 in favour of the plaintiffs and against the defendants, whereas issues No.3 and 4 with regard to jurisdiction and affixation of court fees were decided in favour of the plaintiffs. Issue No.4A regarding the Will was also decided in favour of the plaintiffs and against the defendants by discarding Will. Under issue No.5, the suit of the plaintiffs was held to be maintainable and in result, the trial Court partly dismissed the suit and partly decreed to the effect that the plaintiffs were not owners of the share of the land of deceased Surinder Kaur as the defendants failed to establish their possession over the suit land because plaintiff No.3 was shown in possession of the suit land in the column of cultivation (Ex.D15) and restrained the defendants from dispossessing the plaintiffs from the suit land except in due course of law. The Will and the mutation were also set-aside as all the legal heirs of deceased Surinder Kaur were held entitled to her share over the moveable and immovable properties.

Plaintiffs did not assail the findings, but defendant No.7, i.e., husband of Surinder Kaur preferred the appeal. As noticed above, the Lower Appellate Court rendered the findings on issues Nos. 5A and 5 and held the Will to be valid.

The argument raised in the present appeal is that the Will dated 20.12.2002 was not genuine as there was a strong element of suspicious. Defendant No.1 even alienated his 1/6th share purchased from Charan Singh son of Dhanna Singh in the name of plaintiffs vide gift deed dated

03.07.2000 as the controversy only revolved towards the estate of Surinder Kaur.

I am afraid, the aforementioned argument is not sustainable as the plaintiffs did not have any locus standi to challenge the validity of the Will. At the best, the other legal heirs other than the husband-defendant No.7 had a cause of action. Even if the Will was not there, the property would have been inherited by the legal heirs as the plaintiffs had no right to challenge the Will. It is not the case of the plaintiffs that they have been guardian of the children of deceased Surinder Kaur. Both the children were major and yet did not assail the aforementioned observations.

For the reasons aforementioned, I do not find any illegality or perversity in the findings arrived by the Lower Appellate Court being the last Court of fact and law. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed on merits and as well as on delay.

February 14, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No