

RSA Nos.476 & 5099 of 2016 (O&M)

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

Date of decision : 20.02.2019

1. RSA-476-2016 (O&M)

Ajmer Singh and another

... Appellants

Versus

Surinderpal Kaur

... Respondent

2. RSA-5099-2016 (O&M)

Bant Singh (deceased) through LR's and another

... Appellants

Versus

Surinderpal Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Rupinder K. Thind, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

CM-1367-C-2016 in RSA-476-2016

CM-13249-C-2016 in RSA-5099-2016

For the reasons stated in the applications, which are supported
by the separate affidavits, the delay in refiling the appeals is condoned.

CMs stand disposed of.

CM-1369-C-2016 in RSA-476-2016

For the reasons stated in the application, which is supported by
an affidavit, the application is allowed and the legal heir of appellant No.2-

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Bant Singh is ordered to be brought on record for the purpose of prosecuting the appeal.

CM-13251-C-2016 in RSA-5099-2016

For the reasons stated in the application, which is supported by an affidavit, the application is allowed and the legal heir of appellant No.1- Bant Singh, is ordered to be brought on record for the purpose of prosecuting the appeal.

CM-13252-C-2016 in RSA-5099-2016

For the reasons stated in the application, which is supported by an affidavit, the application is allowed and the legal heirs of respondent No.4-Tehal Singh, are ordered to be brought on record for the purpose of prosecuting the appeal.

MAIN CASES

This order of mine shall dispose of two regular second appeals bearing **RSA No.476 of 2016** titled as **"Ajmer Singh and another V/s Surinderpal Kaur"**, arising out of the Civil Suit No.1227 of 2004 titled as "Bant Singh V/s Surinderpal Kaur and others" and other appeal bearing **RSA No.5099 of 2016** titled as "Bant Singh (deceased) through LRs and another V/s Surinderpal Kaur and others" arising out of Civil Suit No.330 of 2005 titled as "Surinderpal Kaur V/s Ajmer Singh and others".

Since both the suits were consolidated by the trial Court, vide order dated 22.05.2010, the facts are being taken from RSA No.476 of 2016.

The appellant-plaintiff has not been successful in claiming declaration that the plaintiff and defendant No.2 being the co-owners, in joint possession of land measuring 8B-3½B, owned and possessed by

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Amarjit Singh deceased comprised in Khewat No.802, Khatauni No.888, Khasra No.1067 (7-9) Khewat No.803, Khatauni No.889, 890 Khasra No.1063 (5-5), 1064 (9-0), 1065 (9-0), 1066 (10-16), 1068 (5-10), 1069 (5-10), 1070 (6-5), 1071 min (1-15), 974/1 (0-5), 1071 min (4-10), 1072 (5-10), Khewat No.804, Khatauni No.802, Khasra No.974/2 (2-18), 975 (7-18), Khewat No.863, Khatauni No.956, Khasra No.1074 (3-13), as per copy of jamabandi for the year 1999-2000, situated within the revenue estate of Village Ghudani Kalan-A, Tehsil Payal, District Ludhiana, by challenging the Will dated 27.11.2003 being illegal, null and void as well as consequential relief for permanent injunction. It was alleged that Amarjit Singh was son of Sucha Singh and his brother. He died intestate and did not execute the Will propounded by the beneficiaries i.e. defendant-Surinderpal Kaur, if any, was surrounded by the suspicious circumstances as he died, on night of 13/14.12.2003 i.e. 15 days after execution of alleged Will. An FIR was registered and report submitted under Section 173 of Cr.P.C, resulted into, conviction.

The defendants opposed the suit and propounded the Will and stated that the Will was a registered document witnessed by the attesting witnesses. His last rites were performed by defendant Nos.1 & 2 and possession was with them. UCO Bank/defendant No.11 took stand that the loan was extended to Amarjit Singh, on the basis of mortgage.

The trial Court on the basis of the evidence brought on record dismissed the Civil Suit No.1227 of 2004 and partly decreed the Civil Suit No.330 of 2005 and the lower Appellate Court affirmed the judgment and decree, of the trial Court.

Ms. Rupinder K. Thind, learned counsel appearing on behalf of

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the appellants-plaintiffs submitted that in the absence of the Will, the estate of Amarjit Singh would have devolved upon the appellants-plaintiffs being collateral i.e. Class II heirs. The beneficiaries, Surinderpal Kaur and Ram Singh, did not take care of Amarjit Singh. The attesting witnesses have not been coherent and consistent, even the compliance of the provisions of Section 63(c) of the Indian Succession Act, is conspicuously wanting.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Ms. Thind, for, the defendants have able to prove the execution of the Will, through the attesting witness, DW2-Kuldeep Singh and DW4-Harbans Singh, scribe of the Will. They deposed with regard to the execution of the Will and appendation of signatures. There is compliance of Sections 63(c) of the Indian Succession Act and 68 of the Indian Evidence Act. In such circumstances, Amarjit Singh cannot be said to have died intestate.

In this view of the matter, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the present regular second appeals are dismissed.

20.02.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**