

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

**RSA No.633 of 2016 (O&M)
Date of Decision.08.04.2019**

Jeet Singh and another

...Appellants

Vs

Daljit Kaur and others

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Surender Deswal, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

C.M. No.1725-C of 2016

For the reasons stated in the application, delay of 299 days in re-filing of the appeal is condoned.

Application is allowed.

RSA No.633 of 2016

The appellants-defendants are in regular second appeal against the judgment and decree of the trial Court rendering finding on issue Nos.4 to 8 and judgment and decree of the lower Appellate Court against dismissal of cross-appeal and decretal of the suit qua issue No.1 to 3 in favour of plaintiffs.

Plaintiffs/respondents No.1 and 2, daughters of Joginder Singh sought declaration to be owner in possession of the land to the extent of 1/6th share and 1/48th share out of share of Phuman Singh son of Bishan Singh regarding agricultural land described in the plaint by laying challenge to the alleged Will dated 29.03.2003 and judgment and decree dated 22.01.1994 with consequential relief of

injunction seeking restraint against defendants from creating third party rights.

The controversy involved with regard to estate of Phuman Singh. Phuman Singh had five sons and three daughters. Plaintiffs are the daughters of Joginder Singh son of Phuman Singh and beneficiaries of the Will and decree are other three sons namely Jeet Singh, Hakam Singh and Randhir Singh. Plaintiffs alleged that property of Phuman Singh was ancestral on account of mutation of inheritance from Bishan Singh and their father was 3rd generation, they being 4th generation had right by birth, as the succession opened on demise of Phuman Singh on 11.01.2000. It was alleged that defendants propounded a forged and fabricated Will. The alleged family settlement referred to in the judgment and decree had not seen light of the day, therefore, it was *in praesenti* and required registration.

Defendants opposed the suit by raising numerous objections. On merits, did not deny ownership of Phuman Singh over the land but it was alleged that Phuman Singh got some parcel of land from his uncle Sadhu Singh, therefore, entire property was not ancestral. He was an absolute owner of the suit property and by virtue of the Will bequeathed 18 bighas of land in favour of Randhir Singh and remaining 63 bighas 11 biswas in favour of Jeet Singh and Hakam Singh in equal shares.

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

“(1) *Whether the suit property is ancestral and*

coparcenary property, as alleged by the plaintiffs? OPP

(2) If issue no.1 is proved, whether the plaintiffs are entitled to relief of declaration, as prayed for? OPP

(3) Whether the plaintiffs are entitled to relief of permanent injunction, as prayed for? OPP

(4) Whether the suit is not maintainable in the present form? OPD

(5) Whether the suit is not properly valued for the purpose of court fees and jurisdiction? OPD

(6) Whether the plaintiffs have not come to the court with clean hands? OPD. If so, its effect? OPD

(7) Whether Phuman Singh executed Will dated 29.03.1993, if so, its effect? OPD

(8) Whether the property in dispute was transferred in favour of the defendants vide decree dated 22.11.1994. If so, its effect? OPD

(9) Relief.”

The trial Court dismissed the suit on issue Nos.1 to 3 and non-suited the defendants on having not pressed issue Nos.4 to 8. Both the parties, since, aggrieved filed appeal and cross-appeal, resulting into allowing of appeal of the plaintiffs and dismissal of defendants.

Mr. Deswal, learned counsel appearing on behalf of the appellants submitted that the plaintiffs miserably failed to prove nature and character of the property to be ancestral. Mere admission in another proceedings, resulting into ex parte judgment and decree

Ex.D3 and D4 qua nature of the suit land as ancestral would not dispense with onus as no revenue excerpt except mutation has been placed on record. Even relations between the parties were not denied. Inheritance of the property from Bishan Singh cannot assume character of ancestral property as the source remained mystery. Decree was not *in praesenti* but recognition of a family settlement and therefore, did not require registration. Defendants discharged onus in compliance of provisions of Section 68 of the Indian Evidence Act and Section 63(c) of the Indian Succession Act. It is not necessary requirement of law that witnesses have to be from the same village. Execution of Will is always a deviation from the line of succession.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit. As far as the first point of registration is concerned, appellants-defendants have not been able to prove family settlement, resulting into decree to be not merely recognition of pre-existing right. Law with regard to registration of decree is no longer *res integra* as two judgments of Hon'ble Supreme Court rendered in **Bhoop Singh Vs. Ram Singh Major (1995) 5 SCC 709** and **K. Raghunandan Vs. Ali Hussain Sabir (2008) 13 SCC 102** were not found to be suffering from any ambiguity in **Phool Patti and another Vs. Ram Singh (dead) through LRs and another 2015 (1) RCR (Civil) 606**. It is settled law that if family partition oral or written recognizing the decree has not been proved then inheritance of succession would be *in praesenti* and requires registration, as other two sons were not

parties, thus, for all intents and purposes it cannot be stated that sons of Phuman Singh had a pre-existing right and therefore, did not require registration, thus, the aforementioned argument must fail.

Now coming to point of Will, both attesting witnesses concededly were not resident of same village and there is no reference of other two sons namely Nand Singh and Joginder Singh, brothers of Randhir Singh, Jeet Singh and Hakam Singh (beneficiaries). No doubt testator expressed his wish sometimes resulting into deviation from line of succession but there must be reason of disowning or discarding share of other two siblings. The witnesses were also not consistent and coherent and did not depose regarding the appendation of signature on the direction of testator. Phuman Singh had acquired the property from Sadhu Singh, which would be self-acquired property and in the absence of any documentary document or decree, rule of natural succession would prevail.

In view of such circumstances, I do not find any illegality and perversity in the judgment and decree rendered by the lower Appellate Court, being the last court of fact and law, 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

April 08, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No