

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 2586 of 2014 (O&M)

Date of decision : 31.7.2019

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Sahoon and another

.....Appellants

vs.

Smt. Hasina and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Argued by: Mr. Shailendra Sharma, Advocate for the appellants

Mr. S.K. Bawa, Advocate for respondent No. 1.

Mr. Farukh Abdullah, Advocate
for respondents No. 2 to 4.

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H. S. Madaan, J.

Briefly stated facts of the case are that Sahoon and Farukh both sons of Dindar son of Ghutmal, residents of village Balai, Tehsil Ferozepur Jhirka, District Mewat, had brought a suit against defendants – Smt Hasina-widow, Vakila, Shakila minor daughters of Kashmira son of Rehman, Mubin son of Usman, seeking possession of 31 Kanal 15 marla of land situated at village Balai, Tehsil Ferozepur Jhirka, District Mewat. In addition to that they craved for issuance of a declaration that Will dated 29.12.2009 executed by Rehman in favour of defendants No. 1 to 4 is illegal, null and void

and without any legal necessity, besides being in contravention of agricultural custom of the parties.

As per version of the plaintiffs, Rehman son of Ghutmal, since deceased, was earlier owner of the suit land; that he had not left behind any male issue and rather was survived by his wife Smt. Nijarbi, daughters, grand daughters and widow of his predeceased son in the year 2010; that plaintiffs were sons of Deendar brother of Rehman and were his collaterals and successors, as such they had a right to inherit the estate left by Rehman; that the suit land was ancestral property of the plaintiffs in the hands of Rehman, which was inherited by him in natural course of succession; the parties belong to Meos caste, a dominant agricultural tribe of erstwhile State of Punjab and now Haryana, with agriculture as the main source of their income and they are governed by agricultural custom of Punjab and Haryana and of District Gurgaon, now Mewat in the matter of succession and alienation etc.; that as per such custom, the property in the hands of Meo proprietor is inherited by his son, his widow in absence of son and after her by the nearest collaterals; that the daughters have no right of succession in the property either ancestral or non-ancestral in the hands of said Meo proprietor; that the property is inherited by his widow in the absence of sons as a limited owner or life estate and on her death, it is inherited by the nearest collaterals of the said property; that a Meo proprietor cannot alienate/transfer his ancestral property in any manner to any person without any legal necessity or without the consent of all the successors and any

alienation or transfer made in contravention of the existing custom is illegal, null and void and does not affect the rights of his successors to succeed to the said property on his death. Inter alia in the plaint, the plaintiffs contended that some time earlier, they came to know that defendants No. 1 to 4 had succeeded in obtaining a Will bearing document No. 6 dated 29.12.2009 in respect of the suit land from Rehman. According to the plaintiffs Rehman had not executed the Will moreover, he was not competent to do so. The Will is a result of fraud, mis-representation and collusion and had been obtained secretly without being in knowledge of the plaintiffs. When the defendants refused to admit the claim of the plaintiffs, they filed the suit in question.

On notice, the defendants appeared and filed a joint written statement, contesting the suit controverting the material assertions in the plaint, raising preliminary objections with regard to maintainability of the suit, locus standi of plaintiffs to institute it, furthermore, denying that any cause of action had arisen to the plaintiffs to bring the suit. On merits, the defendants conceded that Rehman deceased was owner in possession of the suit land earlier and when he departed from this mortal world in the year 2010, he had not left any male issue and as such his estate devolved upon his wife Smt. Nijari, daughters and granddaughters and widow of his predeceased son. However, the defendants denied that plaintiffs were nearest collaterals and successors of Rehman or that they had any legal right to inherit his estate. The defendants further refuted the

assertions that the land in the hands of Rehman was having nature of ancestral property, rather according to them, Rehman was absolute owner in possession of the suit land. However, the defendants conceded that they were Meos by caste and were governed by agricultural custom in the matter of alienation, Will etc. According to defendants, property of a sonless proprietor is inherited by his widow as a full owner and she has every right to deal with the property inherited by her in any manner she feels like. The defendants denied that daughters have no right to succeed to the property either ancestral or non-ancestral and that a Meo proprietor cannot alienate his ancestral property in any manner to any person without legal necessity or without the consent of all his successors. With regard to the Will, impugned by the plaintiffs, the defendants claimed that it was a legal and valid documents and testator was fully competent to execute it. On the basis of said Will mutation was sanctioned in favour of defendants No. 1 to 4. According to the defendants, as per custom prevalent amongst agricultural tribes of District Gurgaon, alienation in lieu of services, as well as to any person or relative with whom the alienor had special love and affection, is recognized; that defendant No.1 was widow of predeceased son of Rehman and defendants No. 2 and 3 are her daughters, whereas defendant No.4 is daughter's son of Rehman; that Rehman and his wife Smt. Nijarbi were pleased with services rendered by the defendants, they were residing with defendant No.4 and his wife, who were rendering services in respect of the land as well as harvesting the crop and also

day to day household chores, therefore the defendants have rightly inherited the suit land on the basis of Will dated 29.12.2009. According to the defendants in the presence of Smt. Nijarbi and defendant No.1, the plaintiffs do not have any right of inheritance. In the end, the defendants prayed for dismissal of the suit.

From the pleadings of the parties, following issues were framed:-

1. Whether plaintiff is entitled to the decree of possession in respect of suit land declaring Will dated 29.12.2009 as wrong, illegal, null and void, as prayed for ? OPP
2. Whether the present suit is not maintainable? OPD
3. Whether the plaintiffs have no locus standi and cause of action to file the present suit? OPP
4. Whether the suit is bad for non-joinder of necessary parties? OPD
5. Relief.

Parties were afforded adequate opportunities to lead their evidence.

During the course of their evidence, the plaintiffs examined Noor Mohd. As PW-1, plaintiff Sagoon got his own statement recorded as PW-2. The plaintiffs produced in evidence the following documents :-

- i) Exhibit P-1 Certified copy of Will dated 29.12.2009
- ii) Exhibit P-2 Mutation No. 3003
- iii) Exhibit P-3 Jamabandi for the year 2006-07

- iv)Exhibit P-4 Jamabandi for the year 2001-02
- v) Exhibit P-5 Jamabandi for the year 1996-97
- vi)Exhibit P-6 Jamabandi for the year 1991-92
- vii)Exhibit P-7 Jamabandi for the year 1986-87
- viii)Exhibit P-8 Jamabandi for the year 1981-82
- ix)Exhibit P-9 Jamabandi for the year 1981-82
- x) Exhibit P-10 Jamabandi for the year 1976-77
- xi)Exhibit P-11 Jamabandi for the year 1996-97
- xii)Exhibit P-12 Jamabandi for the year 1962-63
- xiii)Exhibit P-13 Jamabandi for the year 1958-59
- xiv)Exhibit P-14 Mutation of partition No. 2624
- xv)Exhibit P-15 Mutation No. 2505

Thereafter the evidence of the plaintiffs was closed.

In rebuttal, the defendants examined Shyam Parkash Deed Writer as DW-1, Sher Mohd. as DW-2 and Mubin as DW-3. The defendants produced in evidence the following documents :-

- i) Exhibit D-1 Original Will dated 29.12.2009
- ii)Exhibit D-2 Mutation No. 3003
- iii)Exhibit D-3 Copy of judgment dated 15.9.1986 in case titled Mislu vs. Smt. Khatuni
- iv)Exhibit D-4 Decree sheet
- v) Exhibit D-5 Copy of judgment dated 27.9.2010 in case titled Smt. Moharbi vs. Subedar
- vi)Exhibit D-6 Decree sheet
- vii)Exhibit D-7 Judgment dated 26.4.2010 in case titled

Mehmood Khan vs. Bhondu etc.

viii)Exhibit D-8 Decree sheet

Thereafter the evidence of the defendants was closed.

In rebuttal, the plaintiffs placed on record the following documents:-

i) Exhibit P-16 Jamabandi for the year 1971-72

ii)Exhibit P-17 Mutation No. 1857

iii)Mark A Judgment dated 1.5.2012 in case titled Smt.

Mehram vs. Shamsuddin

iv)Mark B Decree sheet

v) Mark C Judgment dated 28.11.2011 in case titled

Smt. Maksoodan vs. Subhan Khan

vi)Mark D Decree sheet

vii)Mark E Judgment dated 19.9.2001 in case titled Smt.

Nafisa vs. Chao Khan etc.

viii)Mark F Decree sheet

ix)Mark G Judgment dated 11.1.1999 in case titled

Mohd. Idrish vs. Rehman

x) Mark H Decree sheet

xi)Mark I Judgment dated 19.2.2001 in case titled

Rehman vs. Mohd. Idrish

xii)Mark J Decree sheet

xiii)Mark K Judgment dated 5.1.2013 in case titled Smt.

Khatiza vs. Mohmad Hanif

xiv)Mark L Decree sheet

After hearing the arguments, the trial Court decided issue No. 1 against the plaintiffs and in favour of the defendants. Issues No. 2 and 3 were decided against the plaintiffs and in favour of the defendants. Issue No. 4 was decided against the defendants and in favour of the plaintiffs. As a result of findings on issues, the suit of the plaintiffs was dismissed with costs, vide judgment and decree dated 30.5.2013.

Plaintiffs felt aggrieved by such judgment and decree passed by the trial Court of Additional Civil Judge (Senior Division), Ferozepur Jhirka, and preferred an appeal before District Judge, Nuh, which was assigned to Additional District Judge, Nuh, who vide judgment and decree dated 20.12.2013, dismissed the appeal upholding the judgment and decree passed by the trial Court.

Still feeling dissatisfied, the plaintiffs have approached this Court by way of filing the present Regular Second Appeal, notice of which was given to the defendant-respondents, who have put in appearance through counsel.

I have heard learned counsel for the parties, besides going through the record and I find that there is absolutely no merit in the appeal.

The trial Court considering the factual as well as legal position in light of the evidence adduced before it, had framed three questions for the convenience of adjudication, which were as follows:-

1. Whether parties are governed by customs?

2. Whether the suit land is ancestral?
3. Whether Rehman was competent to alienate the property in favour of defendants No. 1 to 4?

Answering the first question, the trial Court has observed that it is admitted case of the parties that they are Meos by caste and are governed by agricultural custom prevailing in Gurgaon District of Haryana.

Coming to the second question, the trial Court has observed that property had devolved upon Rehman and the plaintiffs from a common ancestor namely, Ghutmal; that Rehman and Dindar were sons of Ghutmal, who had inherited his property after his death by way of natural succession. The plaintiffs had inherited share of Dindar by way of natural succession. As such the land in question in hands of Rehman deceased was ancestral qua the plaintiffs and his right to alienate the same was not absolute.

Dealing with the third question, the trial Court referring to Will dated 29.12.2009, Exhibit D1 by Rehman, observed that the testator has expressly mentioned therein that Mubin son of Akhtari daughter of Rehman, resided with him since childhood and had been brought up by him and further defendants No. 1 to 3 and 4 while residing with the testator were also rendering services to him and they were taking care of him in his old age.

Making reference to explanation 3 of para 59 of the Rattigan's digest on customary law, the trial Court found that alienation in favour of relation between whom and the alienor there is

some tie, as by their having been brought up by him or by their being associated with him or by their assisting him in cultivation or rendering him services in the management of land, when he himself is incapable of doing so, are very generally recognized by custom. The trial Court went on to observe that in the present case defendants No. 1 to 4 are relatives of deceased Rehman and that Rehman had no male issue at the time of his death. Prior to his death he had executed a Will in favour of defendants No. 1 to 4 who are his close relatives and that the term 'special tie' mentioned in exception 3 to para 59 of the Rattigan's Digest has not been qualified by the author or by any other. Therefore, it can be any tie which is special because of its status and that what can be more special than a relation of a man with his own family members i.e. granddaughters and grandson and also daughter-in-law. The defendants are more nearer and more closer than the plaintiffs who are brother's sons of the deceased and testator had mentioned so in the recital of the Will executed by him that he being satisfied with the services of the beneficiaries, was bequeathing his property to them.

The trial Court had observed that the plaintiffs had failed to bring any evidence to show that Mubin had not been brought up by the testator and was not residing with him at village Balai and further more as mentioned in the Will, age of Rehman at that time was 75 years and it is extremely difficult for a man of that age to carry out agricultural activities, manage his land without assistance of others and further since it comes out that defendants were residing with

Rehman, its natural to assume that defendants were assisting Rehman in performing agricultural activities and in managing the land in question. Furthermore, there was no evidence to show that the land in question was cultivated on behalf of Rehman by someone else and not the defendants. The Court found the Will executed in favour of defendants No. 1 to 4 by Rehman to be a valid document and that Rehman was competent to do so.

In view of that discussion, the trial Court found that suit was not maintainable and plaintiffs had no locus standi and cause of action to bring the suit.

Learned Additional District Judge, Nuh, was in agreement with the trial Court with regard to the findings recorded. Learned additional District Judge, has referred to judgment **Amin Lal vs. Om Parkash 1993 (3) RRR 699**, wherein it was held that alienation of agricultural property by gift to a near relation in consideration of services and love and affection is permissible in District Gurgaon.

Furthermore, learned Additional District Judge, has observed that there was no evidence that impugned Will in favour of defendants is result of fraud and misrepresentation. The propounders of Will, namely, defendants -respondents had successfully proved its validity and genuineness by removing all suspicious circumstances. They had placed on file the original Will Exhibit D-1 and examined Sher Mohd. Nambardar of village Balai as well as Hanif son of Rampat, scribe of the Will as well as one of the attesting witness appearing as DW-1 and DW-2 and from their depositions it came out

that the Will had been executed by the testator voluntarily without any threat or coercion.

It was further observed that widow of Rehman, executant of Will, was still alive and even in the absence of male issue to the proprietor Rehman, in case of intestate, after his death, property would have been inherited by his widow, though she would have been life interest as per custom but in view of the judgment **Kanwar Khan vs. Khatoni 2005 (3) RCR (Civil) P&H High Court 243**, that restriction has been held to be unconstitutional.

Therefore, during the life time of widow of Rehman and widow of predeceased son of Rehman, the plaintiffs-appellants have no locus standi to stake claim in the property of Rehman.

The judgments by both the Courts below are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. I do not see any reason to disagree with the concurrent findings recorded by the Courts below. Furthermore, no substantial question of law arises in the present appeal

The appeal is found to be without any merit and is dismissed accordingly.

31.7.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No