

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

RSA No.579 of 2015 (O&M)
Date of decision : 04.02.2019

Jaswinder Singh and others

...Appellants

Versus

Joginder Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Sanjay Majithia, Sr. Advocate with
Mr. Inderjeet Singh, Advocate for the appellants.

Mr. C.L. Sharma, Advocate for respondent No.1.

ANIL KSHETARPAL, J.

Defendants-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

At the time of admission, following substantial questions of law were framed:-

“i) Whether the undisputed facts and circumstantial evidence proved on the record that the mutation of inheritance of the deceased was correctly decided will not dis-entitle the plaintiff to claim any relief in the suit?

ii) Whether the question of limitation as embodied in Article 58 of the Limitation Act and read with Section 3 of the Limitation Act and Section 115 of Evidence Act will not dis-entitle the plaintiff to maintain the suit and claim the relief as propounded by her?

iii) Whether the admission of the claim of Satnam Singh

son of the testator, by his two sisters Rajinder Kaur and Surinder Kaur who are identically placed like the plaintiff should not have been given due weight while examining the claim of the plaintiff? Their admission and action to their own detriment creates estoppel by conduct and give credence to the version of the defendants?

iv) Whether the plaintiff's own admission in her affidavit as reproduced above does not negate her claim as she cannot be allowed to wriggle out of it?"

In the present case, dispute is with regard to the property left behind by Gurbachan Singh who died on 28.08.1991. Plaintiff is undisputedly one of the daughter, hence, Class 1 heir.

Defendants contested the suit and pleaded that Gurbachan Singh had executed a testament bequeathing his entire property in favour of his only son late Sh. Satnam Singh who died during the pendency of the suit.

Both the Courts, on appreciation of the evidence, have found that original Will has not been proved on file and only one attesting witness i.e. Sudesh Kumar was produced who after examination-in-chief did not appear for cross-examination. The correctness of both these findings are not being disputed. However, learned counsel for the appellants submitted that on the death of late Sh. Gurbachan Singh, during mutation proceedings, Joginder Kaur had appeared and filed an affidavit admitting the correctness of the Will.

Learned counsel on being asked, admitted that when the plaintiff-Joginder Kaur appeared in evidence, she was not confronted with the affidavit. The affidavit has not been exhibited on the record. It is only

the mark document which cannot be read in evidence.

As regards question No.(i), it may be noted that mutation is entered and sanctioned for updation of the record. The mutation is sanctioned by the Revenue Officers in exercise of their executive function. At the time of sanctioning mutation, the revenue authorities are not entitled to decide the question of title. It is the Civil Court which has to decide question of title and validity and correctness of the Will. Accordingly, question No.(i) is answered against the appellants.

As regards question No.(ii), it may be noted that plaintiff had filed a suit claiming that she is owner to the extent of 1/4th share in the property. The succession never remains in abeyance. In absence of the Will, she being Class 1 heir is entitled to 1/4th share of the property. The sanctioning of the mutation does not give rise to cause of action. Accordingly, question No.(ii) is also answered against the appellants.

As regards question No.(iii), it may be noted that admission of two other sisters would not debar the plaintiff to stake her right in the property. No doubt, admission of two sisters out of three is a circumstance which has to be considered by the Court while deciding the case, however, once neither the original Will has been produced nor it has been proved in accordance with law, the suit cannot be decided only on the ground that two other sisters have contested the claim of the plaintiff and admitted the existence of the testament in favour of Satnam Singh. Accordingly, question No.(iii) is also answered against the appellants.

As regards question No.(iv), it has already been answered against the appellants because it was the duty of counsel for the defendants-

appellants to confront the alleged affidavit of the plaintiff given in the mutation proceedings when she appeared in evidence in the suit. Still further, no evidence has been produced to prove that such affidavit was ever submitted by plaintiff-Joginder Kaur.

In view of the aforesaid, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below .

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of in view of the abovesaid judgment.

04.02.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No