

RSA Nos.1686 to 1689 of 2017 (O&M)

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

Date of decision : 13.02.2019

1. RSA-1686-2017 (O&M)

Varinder Kaur

... Appellant

Versus

Gulab Singh and others

... Respondents

2. RSA-1687-2017 (O&M)

Varinder Kaur

... Appellant

Versus

Samarjeet Kaur Garewal and others

... Respondents

3. RSA-1688-2017 (O&M)

Varinder Kaur

... Appellant

Versus

Talwinder Singh and others

... Respondents

4. RSA-1689-2017 (O&M)

Varinder Kaur

... Appellant

Versus

Lakhwinder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Jain, Advocate
for the appellant(s).

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Mr. S.K. Arora, Advocate
for the respondents-caveator.

AMIT RAWAL, J. (ORAL)

CM-4057-C-2017 IN RSA-1686-2017

CM-4058-C-2017 IN RSA-1687-2017

CM-4059-C-2017 IN RSA-1687-2017

For the reasons stated in the applications, the delay in filing and refiling the appeals is condoned.

CMs stand disposed of.

MAIN CASES

This order of mine shall dispose of four regular second appeals bearing **RSA Nos.1686 and 1687 of 2017** arising out of the dismissal of the Civil Suit Nos.306-1 of 2010 and 80-1 of 2010, respectively, at the instance of the appellants-plaintiffs, being daughters of Sikandar Singh and **RSA Nos.1688 and 1689 of 2017**, at the instance of the appellants-defendants, arising out of the Civil Suit Nos.716-1 and 84-1 of 2007, filed by the subsequent vendees, who have succeeded before the Courts below.

Sikandar Singh and Mohinder Kaur, husband and wife, owned 137 and 193 Kanals of land, respectively. Out of the loins, one son Jagbir Singh and four daughters, namely, Varinder Kaur, Samarjeet Kaur, Renu Gill and Kiran Garewal, were born. Mohinder Kaur died on 08.06.1998, whereas Sikandar Singh on 11.01.2006. The dispute arose with regard to inheritance of their estate. The appellants-plaintiffs in the first two regular second appeals, set up the Will of Sikandar Singh, dated 31.10.2005 and 15.01.1998 of Mohinder Kaur, whereas the defendants in Civil Suit Nos.306-1 of 2010 and 80-1 of 2010 and the plaintiffs, in Civil Suit

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Nos.716-1 and 84-1 of 2007, set up the Will dated 01.05.1997 of Mohinder Kaur and 26.11.1993 of Sikandar Singh.

It is a matter of record that the Wills of Sikandar Singh, dated 26.11.1993 and of Mohinder Kaur dated 01.05.1997, had not been produced in the proceedings or have been proved. The mutation proceedings in respect of estate of Mohinder Kaur was sanctioned on the basis of natural succession, whereas regarding estate of Sikandar Singh, in favour of Jagbir Singh on the premise that Jagbir Singh had already executed the sale deeds from 2004 to 2009, in favour of various persons, who claimed to be *bona fide* purchasers in other two suits i.e. in Civil Suit Nos.716-1 and 84-1 of 2007, whereby RSA Nos.1688 and 1689 of 2017, have arisen. The Will dated 15.01.1998 of Mohinder Kaur, was unregistered and similarly of the 2005, of Sikander Singh. Despite two Wills of Mohinder Kaur, revenue authorities sanctioned mutation of her estate in favour of all the siblings.

Mr. Amit Jain, Advocate assisted by Mr. Dhuruv Mittal, learned counsel appearing on behalf of the appellants, in all the appeals, submitted that it is most intriguing that during the lifetime of Sikandar Singh, who died on 11.01.2006, Jagbir Singh, the only son, without specification or determination of the shares, had sold the following parcels of land, by various sale deeds and four mortgages:-

" Sale deeds by Jagbir Singh in favour of different respondents

27.1.2004	9K-3M	Gulab Singh S/o Dalip Singh
25.3.2004	6K-1M	-do-
30.8.2004	16K	-do-
10.2.2005	25K-13M	Talwinder Singh s/o Gulab Singh
14.11.2005	12K	Lakhwinder Singh s/o Gulab Singh

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12.5.2006	11K-3M	-do-
2.12.2009	8K	Kulbir Singh and Malkiat Singh
4 mortgages	68K	Pishora Singh s/o Dalip Singh”

Though the appellants had relied upon the Will dated 31.10.2005 of Sikandar Singh, but the same was erroneously discarded owing to the fact that it bore two signatures on one page and between them, there was some space and similarly with regard to Mohinder Kaur. Even assuming for an argument sake, though not admitting, the Wills were to be discarded, particularly, when the other side did not produce on record, the mutation of inheritance in respect of estate of both the parents, should have been on account of natural succession, though the Wills have been proved through the testimony of one of the attesting witness each, the defendants cannot be said to be *bona fide* purchasers, for a consideration as they did not verify the revenue record, even the previous injunction obtained, by them, was in collusion with Jagbir Singh.

Mr. S.K. Arora, learned counsel appearing on behalf of the respondents-caveators, rendered assistance to this Court, by submitting that Ex.D18, mutation qua land measuring 128 kanal of Sikandar Singh, was sanctioned in favour of Jagbir Singh, on the basis of decree of 1993. The jamabandi and khasra girdawaris reflected his name and the possession, therefore, he was fully competent to execute the sale deeds in favour of his clients, who had purchased the land after making the reasonable enquiry, thus, were *bona fide* purchasers.

It is also a matter of record that the sale deeds have been challenged by the plaintiffs in RSA Nos.1686 & 1687 of 2017, in such circumstances, inheritance of Sikandar Singh, could not have been in favour

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of all the siblings, owing to the mutation and decree, during his lifetime. The subsequent vendees had also filed a suit for injunction, wherein, the Court after framing the issue of possession, vide judgment and decree dated 24.01.2013 (Ex.D21), decreed the suit. The aforementioned suit was filed against Jagbir Singh. The present suit has been filed in collusion with Jagbir Singh as in one of the suit i.e. Civil Suit No.80-1 of 2007, his son has also been arrayed as plaintiff No.2-Tejbir Singh Deol and in other suit i.e. Civil Suit No.306-1 of 2013, his wife as plaintiff No.2 and son as plaintiff No.3.

In rebuttal, Mr.Amit Jain, submitted that the factum of collusive decree of 1993 was neither pleaded or bought on record, therefore, the plaintiffs were deprived of their right to lay challenge.

I have heard learned counsel for the parties and appraised the paper book.

The provisions of Section 41 of the Transfer of Property Act, protects the subsequent transferees to be *bona fide* purchasers, in case, on making reasonable enquiry, he or she forms an opinion of ownership of vendor, after verification of the revenue records. Mutation (Ex.D18), on the basis of decree of 1993, was effected in the year 1998 i.e. during the lifetime of Sikandar Singh and thereafter, Ex.D19 reflected the mutation in favour of Jagbir Singh and in favour of the defendants, by virtue of the sale deeds. In the judgment and decree of injunction (Ex.D21), not only the sale deeds executed by Jagbir Singh, in favour of the subsequent vendees, came on record, but the revenue records i.e. jamabandis, exhibited as Ex.P-7 to Ex.P9 and Ex.P12 and the Court, after noticing all the facts, granted the injunction by restraining the plaintiffs in first two suits i.e. Civil Suit Nos.306-1 of 2013 and 80-1 of 2013, from forcible interference and

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dispossession. In such circumstances, the Will of Sikandar Singh, would pale into insignificance as he did not have any title in the suit property.

As regards the estate of Mohinder Kaur, since the defendants have not been able to prove on record the Will dated 01.05.1997 propounded by them, nor the appellants-plaintiffs have been able to establish the suspicious circumstance with regard to the Will dated 15.01.1998, mutation of inheritance, on the basis of the natural succession, in favour of all the four daughters and son, was the most appropriate, even if, the Courts below did not determine their share.

With the aforesaid clarification, I do not find any illegality and perversity in the judgments and decrees, under challenge, much less, no substantial question of law arises for determination. No ground is made out for interference. Accordingly, the regular second appeals are dismissed.

13.02.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**