

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Regular Second Appeal No.1704 of 2017
Date of Decision: March 20, 2019

Gurcharan Singh & another

...Appellants

Versus

Mukand Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Hariom Sharma, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

Appellant-plaintiffs have not been successful before the Courts below, whereby the suit claiming declaration that the suit property owned by Jagir Singh, who was related to the plaintiffs, was liable to be succeeded by laying challenge to the sale deeds dated 24.11.1986 and 08.12.1986.

It was alleged that Santo, real sister of Jagir Singh, had a daughter Nasib Kaur, who was married to Mehar Singh, grand-father of the plaintiff. In other words, Jagir Singh's sister's daughter was grand-mother of the plaintiff. Jagir Singh died wife-less and issueless. He was looked after and served by the plaintiffs as he was closely related to them. He executed a Will dated 09.08.1972 in favour of the plaintiffs. Witnesses of the Will had already died, therefore, carried a presumption being thirty years old document. Cause of action arose only when the defendant asserted the right on the basis of the aforementioned sale deeds.

Defendant opposed the suit by alleging that the plaintiffs had not come to the Court with clean hands. It was denied that Jagir Singh died

without wife. In fact, he was married and left behind his widow, who is still alive and denied the execution of the Will.

Both the parties led extensive evidence.

Mr. Hariom Sharma, learned counsel for the appellant-plaintiffs submitted that both the courts below have erred in deciding issues No.1 and 2A against the plaintiffs, which could have been decided separately. Since the witnesses of the Will had died, therefore, the same carried the presumption under Section 90 of the Indian Evidence Act. Respondent-defendant failed to lead any evidence under Section 50 of the Indian Evidence Act.

I am afraid, the aforementioned arguments are not sustainable in the eyes of law as the Will has not been proved. On the other hand, the defendants has been able to prove the title on the basis of the sale deeds executed by Jagir Singh during his life time, which have been proved on record. In such circumstances, plaintiffs had no locus standi to assail the same.

For the reasons aforementioned, the concurrent findings of fact and law cannot be said to be suffering from illegality or perversity. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

March 20, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No