

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

RSA No.1764 of 2018 (O&M)
Date of Decision: February 05, 2019

Charan Singh and others

...Appellants

Versus

Major Singh and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Pradeep Virk, Advocate
for the appellants.

JAISHREE THAKUR, J. (Oral)

CM-4797-C-2018

1. There is delay of 93 days in filing the main appeal.
2. The application is supported by the affidavit.
3. For the reasons mentioned in the application, the same is allowed and delay of 93 days in filing the appeal is condoned.

Main case

1. The appellants-plaintiffs herein seeks to challenge the impugned judgment and decree dated 16.02.2016 passed by the learned Additional Civil Judge (Senior Division), Patti whereby the suit filed by the appellants-plaintiffs has been dismissed, as well as the impugned judgment and decree dated 21.08.2017 passed by the Additional District Judge, Tarn

Taran, dismissing the appeal.

2. In brief, the facts stated are that the appellants-plaintiffs filed a suit for declaration to the effect that the appellants-plaintiffs and defendants No.8 to 10 are entitled to the inheritance of Bhagat Singh (since deceased) son of Ishar Singh to the extent of $1/6^{\text{th}}$ share out of the total land measuring 73 kanals 12 marlas consisting, as mentioned in the copy of jamabandi for the year 1981-82 situated in the revenue estate of Village Bhikhiwind, Tehsil Patti, District Tarn Taran along with the relief of permanent injunction restraining respondents No.1 to 4/defendants No.1 to 4 from interfering and dispossessing them from the suit land. The appellants-plaintiffs averred that there were three brothers namely Bhagat Singh, Ujagar Singh and Thakur Singh and they all were sons of Ishar Singh. They were owners to the extent of $1/3^{\text{rd}}$ share of the property in dispute. Bhagat Singh died issueless and widowless. Bhagat Singh had also some agricultural land in village Bhikhiwind other than the property in dispute and after the death of Bhagat Singh, mutation of his inheritance qua the said land was sanctioned in favour of Thakur Singh being one of the brother of Bhagat Singh to the extent of $1/2$ share, and in favour of Hazara Singh and Makhan Singh both sons of Ujagar Singh to the extent of $1/4$ share each. Appellants No.1 and 2/plaintiffs No.1 and 2, who are sons of Hazara Singh s/o Ujagar Singh and appellants No.3 to 6/plaintiffs No.3 to 6, who are sons, daughter and widow of Ajit Singh s/o Hazara Singh s/o Ujagar Singh submitted that they are in possession of their share inherited by them qua the estate of Bhagat Singh through their predecessor-in-interest Ujagar Singh and they were under impression that mutation qua the inheritance of Bhagat Singh would have been sanctioned in their favour as mutation of

other land has already been sanctioned. It is further averred that respondents No.1 to 4/defendants No.1 to 4 have alleged that they all have inherited the entire estate of deceased Bhagat Singh and also alleged that no one is entitled to his inheritance except respondents No.1 to 4/defendants No.1 to 4. The appellants-plaintiffs were surprised to see that respondents No.1 to 4/defendants No.1 to 4 have been shown as owners of 2/3rd share in connivance with revenue agency without any notice to all the legal heirs of Bhagat Singh. Hence, the present suit.

3. Upon notice, respondents-defendants appeared and filed their written statement while taking preliminary objections as to locus standi of the appellants-plaintiffs. The respondents-defendants submitted that they are in possession of the suit land in due course of law by way of partition and the appellants-plaintiffs have not come to the court with clean hands. It was averred that Bhagat Singh died wifeless and issueless in the year 1966 and Ujagar Singh predecessor-in-interest of the appellants-plaintiffs had died prior to the death of Bhagat Singh, as such, appellants-plaintiffs being children of predeceased brother of Bhagat Singh i.e. Ujagar Singh fall in sub category IV of Class II legal heirs, and therefore, they are not entitled to inherit the estate of Bhagat Singh under the Hindu Succession Act, 1956. It was claimed that Thakur Singh, during his life time, having sound disposing mind, executed valid registered Will dated 27.08.1982 in favour of the respondents-defendants and appointed them to be his sole legal heirs and mutation to this effect has also been sanctioned. Remaining averments have been denied.

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

1. Whether plaintiffs are entitled to decree of declaration that they along with defendants No.8 to 10 are entitled to inheritance of deceased Bhagat Singh to the extent of 1/6 share out of suit property?
2. Whether the plaintiffs are entitled to decree of permanent injunction restraining defendants No.1 to 4 from interfering in their possession and dispossessing them from their share along with defendants No.8 to 10 and further restraining defendants No.1 to 4 from alienating the suit land forcibly?OPP.
3. Whether deceased Thakur Singh executed a Will dated 27.08.1982 in favour of defendants No.1 to 4?OPD.
4. Relief.

5. In order to prove their case, the appellants-plaintiffs have examined appellant No.1/plaintiff No.1 Charan Singh as PW1, whereas, the respondents-defendants have examined respondent No.4/defendant No.4 Lakhwinder Singh as DW1, Wassan Singh as DW2, Dilbagh Singh as DW3 and Charan Singh as DW4.

6. After hearing learned counsel for both the sides, the lower court dismissed the suit of the appellants-plaintiffs and the first appeal filed by the appellants-plaintiffs has also dismissed by the lower Appellate Court. Aggrieved, both the said judgments and decrees have been challenged in this regular second appeal.

7. Learned counsel for the appellants argues that the impugned judgments and decrees passed by the courts below are perverse and liable to be set aside, as the courts below have not applied judicious mind. It is contended that finding of both the courts below on issue No.1 are against the law and the facts of the case.

8. At this stage, Mr. Vikas Gupta, Advocate puts in appearance on

behalf of the respondents-plaintiffs on his own and files the memo of appearance, which is taken on record. It is argued that both the courts below have rightly declined the relief to the appellants-plaintiffs, while passing the well reasoned judgments.

9. I have heard learned counsel for the parties and have also gone through the pleadings of the case.

10. The lower court, while dismissing the suit of the appellants-plaintiffs, has observed as under:-

“13. xxx xxx xxx It is pertinent to mention here that plaintiffs Charan Singh and Swaran Singh are sons of Hazara Singh and plaintiff Nirmal Singh, Shinder Singh are sons of Ajit Singh and plaintiff Raj Kaur is the daughter of Ajit Singh and plaintiff Dalbir Kaur is the widow of Ajit Singh and they are claiming the inheritance of brother of Ujagar Singh namely Bhagat Singh and plaintiff Charan Singh while facing cross-examination has clearly mentioned that Thakur Singh has expired and Bhagat Singh has also expired and Ujagar Singh died 15/20 years earlier to the sanctioning of mutation in favour of Makhan Singh and Hazara Singh and he admitted that Thakur Singh expired in the year 1984 and he has also made admission about the death of Nambardar Gurjit Singh and Nand Singh when he deposed that Nambardar Gurjit Singh has expired and Nand Singh has also expired. Therefore, testimony of plaintiff himself demolish the case of plaintiff upon all material points and it is settled principle of law that if Ujagar Singh has died earlier to Bhagat Singh and Ujagar Singh has died 15/20 years earlier to sanctioning of mutation No.911, then certainly plaintiffs cannot get any share in the inheritance of Bhagat Singh deceased particularly when defendants No.1 to 4 have placed on record Will Ex.D1 and defendants have

proved the due execution of Will by deceased Thakur Singh by examining material witnesses and plaintiffs have not led any cogent and convincing evidence to prove the forgery of Will and no handwriting and finger print expert has been examined by plaintiffs to prove the forgery of Will and there is no evidence on record which could prove forgery of Will. Therefore, without such evidence, it cannot be accepted that Will Ex.D1 is forged and fabricated document particularly when defendants have proved the said Will as per by examining DW2 Wassan Singh, DW3 Dilbagh Singh and DW4 Charan Singh because the witnesses of Will namely Gurjit Singh and Nand Singh have died and this fact has been admitted by plaintiff Charan Singh, while facing cross-examination. Therefore, this court is satisfied that defendants have not able to prove the due execution of Will and Will Ex.D1 has been rightly executed by deceased Thakur Singh and Will is not surrounded by any suspicious circumstances. It is also pertinent to mention that as per Section 11 of Hindu Succession Act, 1956 property of an intestate shall be divided between the heirs in any one entry in class II of the schedule so that they share equally. Brother falls in such category II of class II legal heirs and brothers of children fall in sub category IV. So the preferential right goes with the brother and not with the children of brother.”

11. The lower Appellate Court, while dismissing the appeal of the appellants-plaintiffs, affirmed the findings so recorded by the lower court.

12. This court is of the considered view that both the courts below have rightly declined the relief to the appellants-plaintiffs, who are claiming share in the property left by Bhagat Singh through their predecessor-in-interest Ujagar Singh, who was one of the brother of Bhagat Singh, apart from Thakur Singh. During his cross-examination, appellant No.1/plaintiff

No.1 Charan Singh himself admitted that Ujagar Singh died prior to his brother Bhagat Singh. As such, the property of Bhagat Singh had rightly gone into the hands of Thakur Singh being sole surviving brother of Bhagat Singh, who died issueless and widowless. Under these circumstances, Thakur Singh being sole surviving brother of Bhagat Singh fall under sub category II of Class II heirs, whereas, the appellants-plaintiffs being children of predeceased brother fall under sub category IV of Class II heirs. As such, there is nothing wrong in the concurrent findings so recorded by both the courts below while placing reliance on Section 11 of Hindu Succession Act, 1956. So far as Will dated 27.08.1982 Ex.D1 executed by Thakur Singh is concerned, the respondents-defendants have sufficiently proved on record the same, whereas, the appellants-plaintiffs have miserably failed to prove their plea of forgery and fabrication. So, it cannot be said that the Will Ex.D1 is surrounded by any suspicious circumstances.

13. In view of the above, this court finds no illegality or perversity in the concurrent findings so recorded by both the courts below. As such, no question of law requiring determination arises in this regular second appeal filed by the appellant-plaintiff, which has no merit.

14. Dismissed.

February 05, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No