

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

RSA No.1882 of 2018 (O&M)

Date of Decision : 05.11.2019

Manjit Singh

Versus

.....Appellant

Hardeep Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.S.S.Rangi, Advocate for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the appellant-plaintiff was dismissed by the trial Court vide judgment and decree dated 22.12.2015, however, as the appeal preferred against the said decree was partly accepted vide impugned judgment dated 28.08.2017, the appellant-plaintiff, is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff prayed for a declaration that he was the owner in possession of a plot No.110/86 as depicted in the cause title of the plaint or the lot which fell to the share of his father Fakir Singh in a family settlement.

In brief, the case set out by him was that defendants No.1 and 2 happened to be his real brothers and defendant No.3 was his nephew i.e. son of his deceased brother late Kuldeep Singh and defendant No.4 was the widow of Kuldeep Singh. Late Fakir Singh, father of the plaintiff was the owner in possession of the suit property which had fallen to his share pursuant to a family settlement. Though, a civil suit between the parties was decreed by the Additional Civil Judge (Sr.Divn.), Jagadhri qua their

share in the suit property but appeal filed against the said decree by the plaintiff was pending. Fakir Singh died on 03.09.2011 and vide Will dated 11.12.2006, he bequeathed his entire property in favour of the plaintiff. However, post death of Fakir Singh as the defendants were asserting their rights in the suit property, despite the registered Will in favour of the plaintiff, thus, the suit.

In the written statement filed by defendants No.1 to 4 relationship between the parties was admitted. Further, Fakir Singh was owner of portion of the suit property marked with letters WHYG shown in the site plan produced in Civil Suit No.365 of 2007, however, in the present suit plaintiff had mischievously tried to include the total property which had already been distributed amongst all the parties in the Civil Suit No.365/07. The Will dated 11.12.2006, was alleged to be illegal and void, for, late Fakir Singh had decided that suit property would be inherited by all his children equally.

On consideration of the rival claims of the parties, the trial Court, vide judgment dated 22.12.2015, held that a Civil Suit No.365/07 (Hardeep Singh and another Vs. Manjit Singh and others) was filed by the defendants, which was decreed. As per the said judgment dated 17.09.2013 (Ex.D2) the suit property/house was distributed amongst Fakir Singh and his four sons. Even Manjit Singh-plaintiff (PW1) conceded in his cross-examination that suit property/house was distributed by his father amongst his sons during his life time. However, the Will dated 11.12.2006 (Ex.P1), propounded by the plaintiff was surrounded by the suspicious circumstance, and thus, the plaintiff failed to prove the same. Accordingly, the suit was

dismissed.

However, the Appellate Court in an appeal filed by the plaintiff against the said decree, upon due and comprehensive analysis of the matter concluded that in an earlier litigation between the parties i.e. Civil Suit No.365/07, vide judgment and decree dated 17.09.2013, rights of the parties in the suit property were determined. Further, pursuant to the family settlement and yadastnama executed by the parties, Manjit Singh, Hardeep Singh, Kanwaljit Singh, Kuldeep Singh and even their father Fakir Singh were assigned their specific shares in the suit property. Although, plaintiff claimed the entire property on the plea that yadastnama was subsequently cancelled by his father, but the question as regards cancellation of the family settlement/yadastnama was no longer in issue, for, it had already been decided in the previous suit, vide judgment and decree dated 17.09.2013, and even the appeal preferred against the said decree was dismissed on 25.08.2017. It would be apposite to point out at this juncture that plaintiff had assailed the decree dated 25.08.2017, vide RSA No.1900 of 2018 (Manjit Singh Vs. Hardeep Singh and others), which too has been dismissed by this Court vide order and judgment of an even date. Therefore, the question as regards family settlement and memo thereof (yadastnama), vide which the suit property was distributed amongst Fakir Singh and his sons, could not be re-agitated. Thus, the short issue that required determination was: share of late Fakir Singh in the suit property and the alleged Will whereby he bequeathed his interest in favour of plaintiff.

Upon consideration of the reasons assigned by the trial Court it

was held that Will was surrounded by suspicious circumstance, the Appellate Court held: the fact that Fakir Singh was not familiar with the English language was inconsequential, for, Prem Kishan Dass (PW2) testified in his deposition that he prepared the Will as instructed by Fakir Singh and he duly explained the contents thereof to Fakir Singh in Hindi and Punjabi language. Further, in the affidavit Ex.PW2/A it was stated that Will was presented to the Sub Registrar for registration, who also read over its contents to Fakir Singh. Just because Fakir Singh was aged between 75-80 years and was brought on a wheel chair was hardly of any significance. Nothing was brought on record to show, if he was mentally unfit to execute the Will. On the contrary the evidence on record showed that late Fakir Singh was fully alert and in a conscious state of mind. Further, he was even able to understand and speak. Thus, it could not be said that the Will in question was surrounded by any suspicious circumstance. Thus, plaintiff was entitled to an alternate relief: share of late Fakir Singh, in terms of the family settlement/yadastnama, pursuant to the Will dated 11.12.2006.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the finding recorded by the Appellate Court. The appeal being devoid of merit is accordingly dismissed.

05.11.2019

*Manoj Bhutani***(ARUN PALLI)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No