

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3416 of 2017

Date of Decision: May 21, 2019

Mohinder Singh

...Appellant

Versus

Amar Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Surender Dhull, Advocate &
Mr. Paramjit Singh Sullar, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

The present Regular Second Appeal is directed against the concurrent findings, whereby the suit of the appellant-plaintiff claiming to be joint owner in possession of 1/3rd share in the land measuring 135 kanals 05 marlas by challenging the mutation dated 16.01.1967 with consequential relief of injunction seeking restraint qua alienation, mortgaging or changing the nature of the suit land, has been dismissed by the trial Court and affirmed in appeal.

Plaintiff, in the aforementioned suit, staked the claim on the premise that his grand-father Sunder Singh, during his life time, could not have sold away the right in the property in favour of the defendants during the life time of his father by virtue of the registered Will dated 24.05.1966 (Ex.D12) as it was ancestral/coparcenary property. The plaintiff acquired the knowledge of the mutation only on 08.09.2009 and, therefore, the suit

was filed on 19.03.2010 as his perpetual requests upon the defendants for correction of the mutation were not acceded to.

Defendants opposed the suit and alleged that Sunder Singh, during his life time, by way of a gift deed dated 28.04.1950 gifted away land measuring 12 acres to the father of the plaintiff, namely, Dalip Singh @ Ajmer Singh and other sons Bachan Singh and Gurdial Singh. He was having all the rights in the remaining piece of land as the mutation with regard to the gift was already effected.

Plaintiff in support of the aforementioned pleadings examined five witnesses and brought on record documents Ex.P1 to Ex.P20, i.e., jamabandies, mutations etc. to establish the nature of the land as ancestral, whereas the defendants examined five witnesses and brought on record the order dated 07.08.2015 Ex.D4.

Mr. Surender Dhull, learned counsel appearing on behalf of the appellant-plaintiff submitted that both the courts below have non-suited the appellant and believed the Will being a registered document by relying upon the provisions of Section 90 of the Indian Evidence Act (for short, the Act). The aforementioned provisions of the Act do not apply to the registered Will, though the onus of the Will was on the propounder and the defendants made a fainted attempt to examine the son of one of the witnesses, but it was not compliance under Section 69 of the Act. Once it has been proved on record that the land was ancestral, Karta, i.e., Sunder Singh grand-father could not have alienated the property in not protecting the interest of the plaintiff as his father did not protect his interest. His date of birth is 14.03.1967. There is no limitation in asserting the right on the basis of the inheritance.

I have heard the learned counsel for the appellant-plaintiff, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel.

Section 30 of the Hindu Succession Act enables any Hindu to dispose of by Will or other testamentary disposition any property of his share. No doubt, the presumption under Section 90 of the Act to the registered Will, as per the settled law, is not applicable, but there were many hurdles or rumbles to cross as the plaintiff had attained the majority in the year 1985, but the suit was filed in 2010. Article 60 of the Limitation Act enables the party to assail certain acts within three years of attaining the majority. All these factors, if looked cumulatively, lead to an irresistible conclusion that the suit could not have been even entertained.

For the reasons mentioned above, I do not find any illegality or perversity in the findings under challenge. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

May 21, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No