

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

RSA No.4506 of 2018 (O&M)
Date of Decision: March 26, 2019

Sudha Singh (since deceased) through his LRs

...Appellant

Versus

Ambo @ Amarjit Kaur and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. K.S. Lakhanpal, Advocate
for the appellant.

JAISHREE THAKUR, J. (Oral)

CM-11954-C-2018

1. There is delay of 06 days in filing the appeal.
2. The application is supported by affidavit.
3. For the reasons mentioned in the application, the same is allowed and delay of 06 days in filing the appeal is condoned.

CM-11953-C-2018

1. There is delay of 52 days in re-filing the appeal.
2. For the reasons mentioned in the application, the same is allowed and delay of 52 days in re-filing the appeal is condoned.

CM-11955-C-2018

1. This is an application for impleading the legal heirs of appellant No.(i), who is stated to have died, leaving behind heirs as

mentioned in para 2 of the application.

2. For the reasons mentioned in the application, the same is allowed, subject to all just exceptions.

Main case

1. This regular second appeal has been directed against the judgment and decree dated 11.01.2018 passed by the lower Appellate Court, whereby the appeal filed by the appellant-defendant No.1 against the judgment and decree dated 14.01.2016 passed by the lower court, has been dismissed.

2. In brief, the facts of the case are, that respondent No.1-plaintiff filed a suit for declaration to the effect that she is co-sharer in the joint possession to the extent of 1/4th share in the suit land situated at Village Dulla Nangal H.B. No.415, Tehsil and District Gurdaspur. It has been averred that Smt. Kartar Kaur was owner in possession of the land measuring 12 kanals 18 marlas, who died leaving behind respondent No.1-plaintiff and defendants as her legal heirs, who are entitled to inherit her estate equally to the extent of 1/4th share each being her sons and daughters. It has been submitted that the appellant-defendant No.1 alleged that Kartar Kaur executed a Will regarding the said land in his favour whereas, said Kartar Kaur never executed any Will during her life time and respondent No.1-plaintiff has been receiving her share of produce from the appellant-defendant No.1 on harvest of each and every crop. In the year 2012, the appellant-defendant No.1 refused to give share to respondent No.1-plaintiff by alleging that he has become absolute owner of the suit land and is not liable to give any share of produce to respondent No.1-plaintiff.

Respondent No.1-plaintiff inquired from the Halqa Patwari and came to know that the appellant-defendant No.1 has got mutation of suit land sanctioned in his name on the basis of Will of Kartar Kaur. Hence, the present suit.

3. Upon notice, the appellant-defendant No.1 put in an appearance and contested the suit by filing written statement, in which preliminary objections as to the maintainability of the suit and the suit being time barred have been taken. On merits, it has been submitted that Kartar Kaur executed a Will dated 26.01.1996 in his favour, while she was possessing sound mind and the said Will was executed with her own consent and free will. After the death of Kartar Kaur on 02.09.1996, mutation was sanctioned in favour of the appellant-defendant No.1 on the basis of Will dated 26.01.1996. It was stated that respondent No.1-plaintiff and other defendants did not raise any objection at the time of sanctioning of mutation in favour of the appellant-defendant No.1, therefore, they be estopped from claiming any share in the suit property. Other averments were denied. Respondents No.2 to 4/defendants No.2 to 4 also appeared and filed their written statement, admitting the case of respondent No.1-plaintiff.

4. The following issues were framed by the lower court for determination:-

1. Whether the plaintiff is entitled for declaration as prayed for?OPP.
2. Whether the plaintiff is entitled for permanent injunction as prayed for?OPP.
3. Whether the suit is not maintainable?OPD.
4. Whether the suit is time barred?OPD.

5. Relief.

5. In order to prove her case, respondent No.1-plaintiff examined herself as PW1 whereas, the appellant-defendant No.1 did not lead any evidence.

6. After hearing both the sides, the lower court decreed the suit of respondent No.1-plaintiff. Feeling aggrieved, the appellant-defendant No.1 filed an appeal before the lower Appellate Court, which came to be dismissed. Now, both the judgments and decrees passed by the courts below are under challenge in this regular second appeal.

7. Learned counsel for the appellant-defendant No.1 argues that findings of the courts below on all the issues are based upon conjectures and surmises and no cogent reasoning has been given while deciding all the issues. It is contended that the courts below have wrongly held that the Will remained unproved on record and all the children of deceased Kartar Kaur are entitled to claim equal share in her estate.

8. I have heard learned counsel for the appellant-defendant No.1 and have gone through the file.

9. The lower court, while allowing the suit of respondent No.1-plaintiff, has observed as under:-

“xxx xxx xxx In the present case, what to talk about original Will dated 26.01.1996 defendant No.1 has not placed even a photocopy of said Will on record nor he has tried to get it proved by summoning the record from revenue department. Further none has appeared on behalf of defendant No.1 to rebut the version of plaintiff. It is well settled that if a party does not enter into the witness box to state his own case on oath and does not

offer himself for cross-examination by the other side then presumption would arise that case set-up by him is not correct. xxx xxx xxx Applying the above discussed principles to the instant case, it has been found that defendant No.1 has abstained from entering the witness box and has not made any statement on oath to support his pleadings, set out in the written statement, and has not placed on record Will dated 26.01.1996. As such, an adverse inference has, therefore, to be drawn against him and it cannot be believed that Katar Kaur executed Will dated 26.01.1996 in favour of defendant No.1. When Will has remained unproved on record then all the children of deceased Kartar Kaur are entitled to claim equal share in her estate.”

10. The lower Appellate Court affirmed the findings recorded by the lower court.

11. In the present case, the appellant-defendant No.1 propounded Will dated 26.01.1996 in his favour, allegedly executed by deceased Kartar Kaur in his favour, regarding the suit property, however, he neither produced the said Will in the court nor stepped into the witness box. As such, he failed to prove the sanction of the mutation No.2403 qua the suit property in his favour on the basis of said Will dated 26.01.1996. Under these circumstances, the appellant-defendant No.1 has miserably failed to discharge the onus, which lies on him. Consequently, all the legal heirs of deceased Kartar Kaur are entitled to inherit the suit property on the basis of natural inheritance.

12. 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-defendant No.1, which has no merit.

13. Dismissed.

March 26, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No