

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.5356 of 2017 (O&M)

Date of decision:27.3.2019

Hardev Singh and others

... Appellants

Vs.

Harpal Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Suresh Ahlawat, Advocate for
Mr. J.S.Maanipur, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The appellant-plaintiffs have not been successful in claiming the declaration to the effect that plaintiffs no.1 to 3 are owners and in possession of suit property described at Part A of the plaint to the extent of 1/3 share in equal share and plaintiffs no.1 to 5 and defendants no.1 and 2 are owners and in possession to the extent of 1/7th share equally from the share in the property left by the deceased Pirthi Singh in Part B with permanent injunction *inter alia* on the ground that Pirthi Singh son of Arjan Singh, their predecessor in interest died on 08.12.2011.

Pirthi Singh has two wives namely Surjit Kaur (first wife, since deceased) and plaintiff no.4-Harbhajan Kaur (second wife). The plaintiffs claimed to be his children from the loins of Pirthi Singh and Surjit Kaur. The dispute is amongst the children from his first wife and second wife.

It was alleged that a suit titled as Bhagat Singh Vs. Pirthi

Singh” of 1992 was decided on 09.12.1995 on the basis of compromise, Pirthi Singh suffered a statement that plaintiffs no.1 to 3 declared to be owners to the extent of 3/5 share and defendant no.1 Harpal Singh and deceased Harbans Singh were owners to the extent of 2/5 share from his share in the property Part A. After the death of Harbans Singh, present defendant filed the suit against Pirthi Singh and plaintiffs no.1 to 3 tiled as “Harpal Singh Vs. Pirthi Singh etc.” which was decided vide judgment and decree dated 21.07.2006 whereby suit in part was decreed and defendants were declared to be owners to the extent of 2/5 share from property Part A in question. However, inadvertently, the entry of share of plaintiffs no.1 to 3 remained in the name of Pirthi Singh as plaintiffs and defendants were the only legal heirs, therefore, entitled to 1/3 share each in property A and 1/7 share each in property B.

The defendants opposed the suit on the ground of maintainability, locus standi, suppression of material facts and denied that Harbhajan Kaur was the widow of Pirthi Singh.

Since the parties were at variance, the trial Court framed as many as six issues including the issue of Relief.

In support of the evidence, plaintiff no.2 examined himself as PW1 and Tej Kaur as PW2 and brought on record the documents Ex.P1 to Ex.P13. On the other hand, defendant no.1 examined himself as DW1 and brought on record Ex.DW1/A and certified copy of the order of Collector dated 12.10.2015 (Ex.DA) and closed the evidence.

The trial Court noticing the fact that previous decree conferred

the share of the parties in respect of the property, therefore, there was no occasion for filing the suit and partly decreed the suit holding that plaintiffs and defendants 1/7 share each in the share of deceased Pirthi Singh described in Part A and B of the plaint.

The aforementioned findings were assailed by the plaintiffs before the Lower Appellate Court resulting into dismissal.

Learned counsel for the appellants submitted that plaintiffs were satisfied with the previous decree wherein Harpal Singh and Jaswant Kaur, defendants were recorded 3/10 share and 1/10 share in respect of the property mentioned in Part A of the property and as well as 5/16, 2/3, 1/3 and 1/293 share in khasra numbers 1606(0-8), 859(1-3), 1230(1-0), 1231(0-1), 1229(0-4) and 864/1(64-13) and the suit with regard to other khasra numbers was dismissed.

In fact, Pirthi Singh died in 2011 and entry in the revenue record was not correct, therefore, cause of action accrued for the plaintiffs to seek correction. The Courts below could not have exceeded the jurisdiction beyond the decree Ex.P6. The judgment and decree dated 09.12.1995, Ex.P3 and Ex.P4 has not been adverted to, therefore, there is perversity.

I have heard the learned counsel for the appellants, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Ahlawat, for the simple reason that Pirthi Singh died intestate. There was no occasion for the plaintiffs, who were defendants in suit no.5 of 2002 resulting into judgment and

decree 21.07.2006, Ex.P6, shares, as noticed above were determined in favour of plaintiffs no.1 and 2 therein and defendants no.1 and 2 herein and description of the property at Part B was not subject matter of the previous suit in Part A except two khasra numbers but the area in the present case is 14(0-7). The succession opened on the demise of Pirthi Singh who died in 2011.

The findings of fact and law according 1/7th share to all the siblings is correct view. No ground is made out for interference.

The regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 27, 2019
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No