

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: May 23, 2019

1. RSA No.5482 of 2017 (O&M)

Jaspal Singh

...Appellant

Versus

Charan Kaur & others

...Respondents

2. RSA No.5483 of 2017 (O&M)

Jaspal Singh

...Appellant

Versus

Charan Kaur & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Naveen Batra, Advocate,
for the appellants in both the cases.

Mr. Sarju Puri, Advocate,
for the caveators in RSA No.5483 of 2017

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two Regular Second Appeals bearing No.5482 and 5483 of 2017 as the common question of law and fact is involved. The facts are being taken from RSA No.5482 of 2017.

Appellant-plaintiff has not been successful in defending the appeal of the respondent-defendants preferred against the judgment and decree dated 05.04.2016, whereby the suit seeking declaration being co-

owner in joint possession has been decreed and the partial decree of counter claim set up by the respondents.

It was alleged that Bachan Singh son of Chet Singh was the owner of the property. He had three children, i.e., two sons Jaspal Singh and Jasvir Singh and one daughter Narinder Kaur and widow Charan Kaur. The alleged Will executed by him during his life time was suffering from suspicious circumstances. As per the Will, Bachan Singh bequeathed 1/3rd share in favour of Narinder Kaur and 2/3rd share in favour of Charan Kaur including the house. In fact, it was an ancestral property and such entire coparcenary property could not have been alienated except for his share.

Defendant Nos.1 to 3 opposed the suit and admitted that Bachan Singh was exclusive owner of the property and denied to have died intestate. It was further alleged that as per writing dated 29.01.1985, the plaintiff was taken care of, as a sum of ₹ 22,000/- was paid to him vide receipt dated 30.06.1985. In the counter claim, it was alleged that declaration of the ownership by way of Will in favour of defendant Nos.2 and 3 was in lieu of the services rendered by them.

The trial Court on 22.04.2014 framed eight issues and thereafter issues Nos.8-A, 8-B and 8-C were framed on 10.08.2015 with regard to the counter claim.

Both the parties led extensive evidence.

Plaintiff himself appeared as PW-1 and brought on record certain documents, i.e., jamabandies to establish the nature and character of the property to be ancestral commencing from 1965-66, 1970-71, 1975-76, 1980-81, 1985-86, 1990-91 and 1995-96. On the other hand, the defendants examined DW-1 Charan Kaur (defendant No.1), DW-2 Atma Singh Deed

Writer, DW-3 Ajit Singh brother-in-law (Sarpanch) of Charan Kaur regarding the writing and DW-4 Tarsem Singh regarding the damages caused by the plaintiff to the crop.

On the basis of the aforementioned evidence, the trial Court discarded the Will by holding that Bachan Singh died intestate and conferred 1/4th share. The counter claim was partly decreed, but in appeal the defendants have been successful.

Mr. Naveen Batra, learned counsel representing the appellants submitted that as per the jamabandi Ex.P3 for the year 1965-66, the property at the hands of Bachan Singh was ancestral as he had inherited from his father Chet Singh. Chet Singh was the grand father and, thus, had a right by birth. The Will did not disclose the reasons for disinheritance and at the second page of the Will, the name of testator is mentioned as Charan Singh, whereas it is signed by Bachan Singh. The Will did not reflect the writing dated 29.01.1985 nor the details of the property. Witness Avtar Singh did not depose as per the provisions of Section 63(c) of the Indian Succession Act, thus, there is abdication.

I have heard the learned counsel for the appellants, appraised the paper book, jamabandies shown to me during the course of hearing and of the view that there is no force and merit in the submissions of Mr. Batra.

The Will as per the testimony of Avtar Singh has been proved as he was coherent and consistent with regard to the attestation, appending of his signatures and the directions of the testator. The beneficiaries are both the daughters and the wife. Jasbir Singh, other brother, had also accepted and respected the wishes of his father. Jamabandies do not disclose the nature and the character of the property as ancestral as in order to establish

the claim, ownership from the great grand-father was required to be proved. The deed writer brought on record the register bearing entry No.235. There was a correction regarding the name of testator by way of additional evidence Ex.DX. The clarification of the deed writer had also been noticed. All these factors lead to an irresistible conclusion that Bachan Singh, during his life time, had actually executed the Will. The dismissal of the suit, in such circumstances, was in accordance with the evidence led.

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 appeals are dismissed.

May 23, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No