

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

RSA No.6213 of 2018 (O&M)

Date of Decision: 10.01.2019

Harkuldeep Singh

.....Appellant

Vs.

Bahadur Singh and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE DR. RAVI RANJAN

Present:- Mr.Nirmal Singh Kandhola, Advocate, for the appellant.

DR. RAVI RANJAN, J.

I have heard learned counsel for the appellant and perused the record of this case.

The judgment and decree dated 30.11.2015 passed by Civil Judge (Jr.Divn.) Mohali, by which the suit of the plaintiff-appellant has been dismissed as well as judgment and decree passed by the Additional District Judge, SAS Nagar, Mohali, rendered in Civil Appeal No.30 of 01.03.2016 on 05.10.2018 affirming the judgment and decree of the trial Court, are under challenge in this appeal.

The plaintiff alleged in the plaint that his father was owner and in possession of the suit property having inherited the same from his father, grandfather and great grandfather as the property was ancestral and the same being coparcenary property was in the hands of his father in which the plaintiff, being his only son and legal heir, would have a right by birth to inherit the same. Admittedly, Nirmal Singh died on 01.06.2010 leaving behind the plaintiff as only legal heir, thus, after him he would have a legal

right to succeed the suit property. It has been alleged that defendants are stranger to the family and, thus, no right, title or interest in the suit property but they have started their claim and they have openly threatened the plaintiff to alienate the property also. The revenue officials have also have not entertained the application of the plaintiff for passing the mutation order in his favour, thus, the suit for declaration and permanent injunction was filed.

The defendants No.1 to 5 appeared and filed a joint written statement. They have also admitted that Nirmal Singh was owner in possession of the suit property. However, according to them, the plaintiff had filed a suit against his father Nirmal Singh i.e. Civil Suit No.24 of 1998 claiming his share in the suit property being coparcenary of the Hindu Joint family. In fact, the suit was decreed and he had already got his share as per judgment and decree dated 16.08.2003 passed by Civil Judge (Jr.Divn.) Kharar. Subsequently, Nirmal Singh executed a registered Will dated 19.09.2003 of the remaining property which remained with him and which becomes his exclusive property after aforesaid judgment and decree i.e. after carving out the share of the present plaintiff. In view thereof, the defendants No.1 to 5 became owner in possession of the movable and immovable property of Nirmal Singh. Upon due consideration of pleas, the trial Court framed following issues:-

1. *Whether the plaintiff is entitled for Declaration, as prayed for ? OPP.*
2. *Whether the plaintiff is entitled for the relief of permanent injunction, as prayed for? OPP.*
3. *Whether the suit is not maintainable in the present form? OPD.*

4. *Whether the plaintiff has got no locus standi to file the present suit? OPD.*
5. *Whether Nirmal Singh alias Nirmal Singh executed a valid Will dated 19.09.2003 in favour of the defendants, if so its effect? OPD.*
6. *Relief.*

The plaintiff, in order to prove his case, examined himself as PW1 and one Balbir Singh Kanugo as PW-2 who proved revenue record alongwith his report which is as Ex.P1. The defendants also examined Sukhdev Singh as DW/1 attesting witness of the Will, endorsement of Sub-Registrar Ex.D1/A and also examined DW2B Balwinder Singh who corroborated the version of DW-1 Sukhdev Singh. Defendant No.1 himself stepped into the witness box as DW3 and reiterated the averments of the written statement and corroborated the version of DW-1 and DW-2. Tehal Singh brother of Nirmal Singh was also examined by the defendants as DW-4 who proved on record copy of sale deed executed by Nirmal Singh Ex.D2, endorsement thereon Ex.D2/A, copy of sale deed Ex.D3 and endorsement Ex.D3/A, copy of sale deed Ex.D4 and endorsement Ex.D4/A made thereon.

Both the Courts below, after assessing the evidence led by the parties came to the conclusion that the plaintiff had, on earlier occasion, filed a suit for carving out his share which was decreed and he got half share of the property. The other half remained obviously with his father Nirmal Singh. It would be the fact to be noted here which emanates from the records of the case that the father of the plaintiff Nirmal Singh had a matrimonial dispute with his wife i.e. mother of the appellant and she left

plaintiff/appellant stayed with his mother and subsequently he filed a suit for his share in the property and he ultimately got his share through the Court of competent jurisdiction. Thus, what remained with his father Nirmal Singh cannot be held to be joint family property so that the plaintiff could not have made out a claim on that part of property also in the life time of his father. Thereafter, father of the plaintiff was free to dispose of his property in any legal manner. Had he died without any disposition of his assets, then matter would have been different as even after partition the plaintiff might have got that property by inheritance being on his legal heir. However, in the present case, since there is testamentary disposition of the property for which father of the plaintiff was competent enough to do so, the plaintiff would not be in a position to make out a claim of inheritance, ownership and right.

This may be another question as to whether the Will is actually genuine or not. However, after going through both the judgments, it appears that attesting witness was examined and he supported the execution of the Will in favour of nephew by the father of the plaintiff. He was also witness of registration of the codicil before the Sub-registrar. Since, no cogent evidence to the contrary could be brought or led by the plaintiff, in my considered view, both the Courts have rightly held that the Will is a genuine document. In fact it appears from the perusal of the both the judgment that though it was disclosed that defendants are interfering into the ownership and possession of the plaintiff but the factum of testamentary dispossession was not stated any where and when the defendant filed their written statement, the plaintiff questioned the same but the defendants proved the Will.

Thus, in my considered opinion, no ground or question of law

could be raised by learned counsel appearing on behalf of appellant warranting interference in the concurrent findings recorded by the Courts below.

In the result, this appeal, being devoid of any merit, is dismissed. However, there would be no order as to costs.

(DR. RAVI RANJAN)
JUDGE

10.01.2019

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No