

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

RSA No. 809 of 2018 (O&M)

Date of decision : April 11, 2019

Sulakhan Singh and others

.....Appellants

Versus

Chhindo and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. C.M. Munjal, Advocate
for the appellants.

LISA GILL, J.

Appellant - plaintiffs are aggrieved of judgment and decree dated 29.02.2016 passed by the learned Additional Civil Judge (Senior Division), Baghapurana as well as judgment and decree dated 12.09.2017 passed by the learned Additional District Judge, Moga.

Appellant – plaintiffs filed a suit for declaration to the effect that they are owners in possession of the suit property as per the share, detailed in the plaint, and in the alternate a suit for joint possession of the property, as detailed, was sought.

Some of the facts, which are not in dispute are that Hari Singh was the owner of the suit property. He was initially married with one Basant Kaur. Plaintiffs – appellants No. 1 and 2 as well as Jeeto whose legal heirs are arrayed as plaintiffs – appellants No. 3 to 6 were born out of this wedlock. Basant Kaur died in the year 1945 and Hari Singh solemnised second marriage with Gurnam Kaur in the year 1947. Defendant No. 1 – Chhindo (daughter) and two sons namely Charat Singh (whose legal heirs are impleaded as defendants No. 2 to 4) and Gurcharan Singh were born out of the second wedlock. Gurcharan Singh died unmarried and issueless in the

year 1986. Charat Singh also passed away leaving behind his widow and two children arrayed as respondents. Hari Singh passed away on 14.09.1998 and his estate devolved upon his legal heirs vide mutation Nos. 4843 and 4630 on the basis of a registered Will dated 22.07.1994. Gurnam Kaur widow of Hari Singh also passed away on 14.03.2005. It is the estate of Gurnam Kaur, which is in dispute, in the present case. Appellants-plaintiffs filed the abovesaid suit claiming to be the legal heirs of Gurnam Kaur and, thus, entitled to inherit her estate. It is pleaded that the plaintiffs after the death of Gurnam Kaur stepped into her shoes and became owners of the suit property to the extent and in the manner, as detailed in the plaint. In the alternate, it is prayed that, in case, the plaintiffs are not found entitled to the relief of declaration, they claimed joint possession as owners/co-owners.

Suit filed by the appellants-plaintiffs was resisted by the defendants-respondents. Various preliminary objections were taken in the written statement. It is stated that the plaintiffs have concealed material facts. It is stated that Hari Singh died on 14.09.1998 and his property devolved as per the registered Will dated 22.07.1994 as reflected in mutation Nos. 4843 and 4630. It is alleged that the plaintiffs in collusion with Numberdar Sukhdev Singh and other revenue officials wrongly got mutation No. 5132 sanctioned regarding inheritance of deceased Gurnam Kaur in their favour and the defendants by submitting false affidavits alleging themselves to be the natural legal heirs of Gurnam Kaur. However, vide order dated 22.12.2009 passed by the learned Assistant Collector First Grade, Baghapurana, previous mutation No. 5132 was set aside and mutation in regard to the entire estate of the deceased Gurnam Kaur was then sanctioned solely in favour of the defendants. It is stated that the

defendants are the only natural heirs of Gurnam Kaur and entitled to inherit her estate. Plaintiffs being the step sons and daughter of Gurnam Kaur are not entitled to her estate. Dismissal of the suit was prayed for.

Replication was filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

- i) Whether Gurnam Kaur died intestate? If so, its effect?OPP.
- ii) Whether the plaintiffs are entitled to get relief of declaration as prayed for?OPP
- iii) Whether plaintiffs are entitled to get relief of possession as prayed for? OPP.
- iv) Whether in the alternative, plaintiffs are entitled to get relief of joint possession as owners/co-owners of the suit land? OPP.
- v) Whether suit of the plaintiffs is not maintainable?OPD
- vi) Whether plaintiffs have concealed material facts from the Court? if so, its effect?OPD
- vii) Whether suit is not properly valued for the purpose of court fee and jurisdiction? OPD
- viii) Relief.

Evidence was led by both the parties.

Learned trial Court on considering the evidence on record, facts and circumstances of the case dismissed the suit filed by the plaintiffs – appellants. Appeal filed by the appellants was also dismissed by the learned Additional District Judge, Moga vide judgment dated 12.09.2017. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellants has vehemently argued that both the learned courts below have erred in law and on facts in dismissing the suit filed by the appellants – plaintiffs. Pleadings of the parties have been totally ignored and the impugned judgments have been passed on the

basis of conjectures and surmises without advertence to the evidence on law. It is submitted that once the suit property is admitted to be owned by Hari Singh – father of the plaintiffs and the same was inherited by Gurnam Kaur being his second wife, the plaintiffs are entitled to a share in the suit property. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 29.02.2016 passed by the learned Additional Civil Judge (Senior Division), Baghapurana as well as judgment and decree dated 12.09.2017 passed by the learned Additional District Judge, Moga.

I have heard learned counsel for the appellants and have perused the file with his able assistance.

Learned counsel for the appellants does not dispute that mutation Nos. 4843 and 4630 were sanctioned regarding the property of Hari Singh after his death on the basis of registered Will dated 22.07.1994 by Hari Singh. Said Will was duly proved by DW2, Gurdev Singh, who is an attesting witness of the Will (Ex.D2/A). DW3, Shiv Shamkar, Document Writer has also proved the entry in this regard in his register at serial No. 1207 as Ex. DW3/A. It is proved on record that Gurnam Kaur inherited the property of Hari Singh to the extent of 20 kanals 10 marlas being 1/3rd share out of 61 kanals 9 marlas being different khasra numbers on the basis of the above said Will. There is no doubt about the death of Gurnam Kaur on 14.03.2005 or that she died intestate without executing any Will during her lifetime. Needless to say, property of Gurnam Kaur has to devolve in accordance with the provisions of Section 15 of Hindu Succession Act, 1956. Plaintiffs – appellants are admittedly step children of Gurnam Kaur. Therefore, both the learned courts below have rightly dismissed the suit filed by the appellants. Merely because the property originally belonged to

the plaintiffs' father Hari Singh, it cannot be a ground to decree their suit. Admittedly, the property in question devolved upon Gurnam Kaur by way of a registered Will and the same was duly accepted by the plaintiffs. After demise of Gurnam Kaur, the property in question, needless to say, has to devolve upon her successors as per the provisions of the Hindu Succession Act. Plaintiffs-appellants are admittedly the step children of Gurnam Kaur. Thus, their suit has been rightly dismissed.

Both the learned courts below have rendered concurrent findings of fact against the appellants on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

Learned counsel for the appellants is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 29.02.2016 passed by the learned Additional Civil Judge (Senior Division), Baghapurana as well as judgment and decree dated 12.09.2017 passed by the learned Additional District Judge, Moga. which calls for any interference by this Court in second appeal.

No other argument has been addressed.

Accordingly, this appeal is dismissed with no order as to costs.

(Lisa Gill)
Judge

April 11, 2019
rts

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No