

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 4771 of 2013 (O&M)

Date of Decision: 06.03.2020

Seeta Singh

... Appellant(s)

Versus

Gurcharan Singh

... Respondent(s)

AND

2. Regular Second Appeal No. 4891 of 2013 (O&M)

Gurcharan Singh

... Appellant(s)

Versus

Seeta Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. R.V.S.Chugh, Advocate
for the appellant (In RSA-4771-2013) and
for the respondent (In RSA-4891-2013).

Mr. Rakesh Gupta, Advocate
for the appellant (In RSA-4891-2013) and
for the respondent (In RSA-4771-2013).

Anil Kshetarpal, J.

By this order, two appeals i.e. Regular Second Appeal No. 4771 of 2013 and Regular Second Appeal No. 4891 of 2013 shall stand disposed of.

The learned first Appellate Court, after allowing application for

permission to lead additional evidence, has remanded the case to the learned

trial Court for fresh decision. It will be noted here that the dispute is with regard to the genuineness of Will dated 28.08.1991 allegedly executed by Gurnam Kaur in favour of her brother Gurcharan Singh. The Will is attested by two attesting witnesses, namely Nand Singh, Namberdar and Seeta Singh alias Surjit Singh, plaintiff in the suit and appellant in Regular Second Appeal No. 4771 of 2013. Nand Singh has died, whereas Seeta Singh is opposite party being plaintiff. The learned first Appellate Court, in exercise of its discretion, has partly allowed the application for additional evidence with permission to Gurcharan Singh, defendant in the suit to examine an expert so as to compare the signatures/thumb impressions of Nand Singh, Namberdar and Seeta Singh alias Surjit Singh, the plaintiff. However, prayer of Gurcharan Singh to re-examine Seeta Singh alias Surjit Singh has not been allowed.

That is how both the parties have filed these two appeals.

This Court has heard the learned counsel for the parties and with their able assistance, gone through the judgments passed by both the Courts below.

Learned counsel for the appellant-Seeta Singh has submitted that the learned first Appellate Court has erred in setting aside the judgment & decree passed on merits . He submitted that without discussing merits of the case, the learned first Appellate Court has set aside the judgment & decree only on the ground that application for additional evidence has been allowed. He, hence, submitted that the learned first Appellate Court could have sought report in view of the provisions of Order XLI Rule 27 CPC.

appellant in Regular Second Appeal No. 4891 of 2013, has submitted that in the peculiar facts of the case, Seeta Singh, who is no doubt the opposite party, but is only alive attesting witness should have been permitted to be examined.

This Court has considered the submissions of learned counsel for the parties. It will be noted here that plaintiff-Seeta Singh had suffered a decree with respect to half share of his property in favour of Gurnam Kaur, his wife, vide judgment & decree dated 12.10.1990. Gurnam Kaur is stated to have died on 23.02.2002. The plaintiff claims that he is owner of the property, whereas Gurcharan Singh, the defendant, brother of Gurnam Kaur, claims the property in dispute on the basis of registered Will dated 28.08.1991.

Keeping in view the aforesaid facts, this Court is of the considered view that the learned first Appellate Court should have exercised its power under Order XLI Rule 27 CPC and allowed the application in entirety. The Courts are to do substantive justice between the parties and Rules of procedure have to be interpreted in a manner which advance the cause of justice.

Keeping in view the aforesaid facts, the impugned judgment passed by the learned first Appellate Court is set aside on two counts – (1) the learned trial Court would be requested to permit the parties to lead their evidence and thereafter, submit a report to the learned first Appellate Court within a period of six months and (2) Seeta Singh alias Surjit Singh shall be permitted to be examined by the defendant in additional evidence. The parties, through their learned counsel, are directed to appear before the

**Regular Second Appeal No. 4771 of 2013 (O&M) AND
Regular Second Appeal No. 4891 of 2013 (O&M)**

4

learned first Appellate Court on 15.04.2020.

With the observations made above, both the appeals shall stand disposed of.

The miscellaneous application(s), if any, filed in both the appeals, shall also stand disposed of.

**(Anil Kshetarpal)
Judge**

March 06, 2020
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No