

Sr. No.119

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

RSA No.14984 of 2018 (O&M)

Date of Decision: 23.01.2020

Jasvir Kaur and another

...Appellants

Versus

Janak Singh (deceased) through LRs

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Satbir Rathore, Advocate,
for the appellants.

ARUN MONGA, J.

1. Having suffered the concurrent findings by the Courts below, the defendants are before this Court in Regular Second Appeal assailing the trial Court judgment and decree dated 23.09.2015 as upheld by the learned First Appellate Court vide its judgment and decree dated 16.07.2018.

2. The plaintiff/respondent filed a suit for declaration that the plaintiff is the owner in possession of the suit property being the residential house and was successful in getting the declaration to this effect as per the judgments and decree passed by the Courts below.

3. Briefly stated the facts as noticed by the Courts below are that Plaintiff's father (Udham Singh S/o Anant Singh) was the sole owner in possession of the suit property. The nature of the property was ancestral. Udham Singh had two wives-Harnam Kaur and Harbans Kaur. He had only one child namely Janak Singh i.e.

plaintiff who was born from the wedlock with Harnam Kaur. Udham Singh had executed a Will dated 30.07.1975 in favour of the plaintiff and died on 29.09.1993. The plaintiff was in joint possession of the property along with his step mother (Harbans Kaur) till her death on 29.09.1993. Since then plaintiff is the sole owner in possession of the suit property. The defendants are claiming to be the legal heirs of Harbans Kaur i.e. Daughters of Gurbachan Singh, stated to be the brother of Harbans Kaur w/o Udham Singh. Defendants are threatening to take forcible possession of the suit property with the intention to destroy and reconstruct the house. A previous suit filed by the plaintiff for permanent injunction was dismissed by learned Additional Civil Judge vide order dated 16.10.1998. On appeal, the plaintiff was held to be the son of Udham Singh but the suit was dismissed owing to a technical defect.

4. The defendants pleaded that Udham Singh was not the father of Janak Singh. The plaintiff never resided in the suit property. Udham Singh was the sole owner in possession of the suit property and the same was self acquired by Udham Singh. However it was a Kacha house. The defendants are in the actual possession of the house and they have reconstructed the same subsequent to the death of Udham Singh and Harbans Kaur. There was no second marriage of Udham Singh and he was never married to Harman Kaur. She or Janak Singh did not have any relation with Udham Singh and Harbans Kaur. The defendants served both Udham Singh and Harbans Kaur for over 20 years.

They denied the execution of Will dated 30.07.1975 by Udham Singh saying that it is a fabricated document. After the death of Udham Singh, Harbans Kaur inherited the suit property and subsequent to her death Gurbachan Singh (her real brother) became the owner in possession of the suit property.

5. Based on the rival pleadings, following issues were framed:

- 1. Whether the plaintiff is entitled to the declaration and permanent injunction as prayed for? OPP*
- 2. Whether the suit is not maintainable? OPD*
- 3. Whether the plaintiffs have not come to the Court with clean hands?OPD*
- 4. Whether the plaintiffs have not affixed proper Court fee on the plaint.? OPD*

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus to prove as per the issues, *ibid*.

7. All the issues were decided in favour of the plaintiff by the trial Court.

8. The trial Court held that in an earlier round of litigation, Udham Singh was rightly held as owner of the property and the defendants were held estopped from taking the plea that plaintiff is not son of Udham Singh. It relied on the findings given by the Courts in an earlier round of litigation wherein it was held that plaintiff is the son of Udham Singh. It further held that applying the rules of evidence and the principle of estoppel, the defendants cannot once again take the plea that the plaintiff is not the son of Udham Singh. Reliance was placed by the trial Court on **Gobind**

Mahato Vs. Imran Ansari 2015 (1) CLJ, 470, Ishwar Dutt Vs. Land Acquisition Collector 2005 7 SCC 190, Hope Plantations Ltd. Vs. Taluk Land Board.

9. The trial Court found that the mere rebuttal by the defendants was that they are in possession of the suit property and Janak Singh was not the son of Udham Singh. No evidence had been produced to show if Udham Singh had any other legal heirs. It had been previously established by judgments that Janak Singh is the son of Udham Singh, the evidence adduced by the parties in present case was similar to the previous cases. The electricity and water connection bills are in the name of Jasbir Kaur. PW5 has also admitted that the defendants took possession of the house by breaking open the locks. This established that defendants are in possession of the suit property. However the ownership for the same rests with Janak Singh. Given that the plaintiff (Janak Singh) is the son of Udham Singh and the sole legal heir, he is entitled to take possession of the suit property. Though in the revenue record produced in another case filed by the present defendants, the name of the plaintiff was recorded as the owner for the suit property comprising of the agricultural land, yet the principle of res judicata will not be applicable as the present suit pertains to the residential house. DW6 further admits that the electricity connection is in the name of Udham Singh and Gurbachan Singh never became the owner of the suit property. Furthermore, the defendants have failed to prove their ownership over the suit property.

10. The Appellate Court upheld the aforesaid findings of the trial Court stating that the same have been rightly rendered after appreciation of entire evidence adduced before the trial Court. As regards the reliance placed by the defendants on the voter list, the appellate Court held that it was not the conclusive proof qua the defence of the defendants. Reliance was placed on ***Mohinder Singh Vs. Joginder Singh and others Vold. CLIV-(2009-2) the PLR 388.***

11. I have heard the learned counsel and have perused the judgments and decrees of both the Courts below. To my mind, these judgments have been passed after due and correct appreciation of evidence adduced by the respective parties in support of their pleadings to discharge their onus to prove in terms of the issues, *ibid.*

12. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below by appreciation of evidence. Judgement of the learned First Appellate Court shows that all material questions raised in appeal were duly considered and adjudicated upon. Mere deviation of the learned FAC from procedural requirements under Order 41 Rule 31 PC formally to frame questions for determination in appeal does not call for any interference with the same and to disturb the concurrent findings of facts recorded by the Courts below.

13. Furthermore, neither any question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal before this Court is involved in present appeal, so

as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

14. Apart from there is being no perversity in returning the findings of the Courts below based on the cogent evidence adduced by the plaintiff, the present appeal is also hit by judgment and decision rendered by this Court in RSA No.1836 of 2014 wherein , it has been conclusively held that Janak Singh is indeed a legal representative of deceased Udham Singh being his son.

15. Accordingly, on the death of deceased Udham Singh as per law on succession Janak Singh rightly entitled to the estate of his father late Sh. Udham Singh.

16. No grounds are made out to interfere.

17. In view of my discussion above and the reasons recorded therein, this appeal is dismissed.

18. Pending application, if any, shall also stand disposed of.

23.01.2020

vandana

**(ARUN MONGA)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No