

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

RSA-1543-2015 (O&M)

Date of decision: 09.06.2022

Jaswinder Singh and others

....Appellants

Versus

Manjit Singh

..Respondent

CORam: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sunil Chadha, Sr. Advocate with
Mr. Akshay Chadha, Advocate for the appellants

Mr. Prateek Pandit, Advocate for the respondent

ANIL KSHETARPAL, J

While assailing the concurrent findings of fact arrived at by the courts below, the plaintiffs have filed the present Regular Second Appeal.

Some peculiar facts required to be noted. The dispute is with regard to inheritance of property left behind by late Sh. Karam Singh who died on 27th August, 1976. As per the case of the plaintiffs, Karam Singh married twice. Firstly with Smt. Kartari @ Kartar Kaur, (plaintiff No.2) but no child was born out of their wedlock. Thereafter, Karam Singh married Smt. Nasib Kaur, (plaintiff No. 3), sister of Kartari @ Kartar Kaur and out of their wedlock, Jaswinder Singh plaintiff No. 1 was born. The plaintiffs claim that Karam Singh executed an unregistered Will dated 18th June, 1976, bequeathing half share of the property in favour of plaintiff is No. 1- Jaswinder Singh whereas remaining half was bequeathed jointly in favour of Smt. Kartari @

Kartar Kaur and Nasib Kaur, plaintiff No. 2 and 3, respectively. The plaintiffs claim that mutation of inheritance sanctioned by including Manjit Singh, defendant on 14th November, 1977 is illegal. While contesting the suit, the defendant contended that late Sh. Karam Singh also married to Smt. Iqbal Dulle Mal and he was born from the loins of Karam Singh. He claims that Karam Singh never executed any Will and plaintiff no.1 Jaswinder Singh and defendant Manjit Singh jointly sold land on 6th April, 1984 and Smt. Jasbir Kaur wife of Jaswinder Singh executed an affidavit admitting him to be her brother-in-law.

By way of amendment the plaintiffs claim that Sh.Narain Singh executed a registered Will dated 29th September, 1969 bequeathing property in favour of Karam Singh to the extent of 1/3rd share whereas Smt. Kartari @ Kartar Kaur and Nasib Kaur to extent of remaining two third share. The plaintiff sought declaration that he is owner to the extent of half share of the property left behind by late Sh.Karam Singh, whereas the remaining half is owned and possessed by Smt. Kartari @ Kartar Kaur and Nasib Kaur. The trial court on appreciation of the pleadings culled out the following issues:-

“1. Whether the entries in the revenue record in the name of defendant Manjit Singh is illegal, null and void and has no binding effect on the rights of the plaintiffs? OPP

2. If issue No.1 is proved, whether the plaintiffs are entitled to declaration as prayed for? OPP

3. Whether the mutation No.926 sanctioned on 14.11.1977 in respect of inheritance of late Karam Singh in favour of defendant is illegal, wrong, null and void and has no binding upon the rights of the plaintiffs? OPP

4. Whether the plaintiffs are also entitled to injunction as prayed for? OPP

5. Whether the suit is within limitation?

OPD

6. Whether the plaintiffs are estopped by their own act and conduct from filing the present suit? OPD

7. Relief”

The plaintiff-Jaswinder Singh appeared as PW 1 whereas PW2-Shiv Darshan Lal s/o Prithvi Chand, scribe of the Will dated 29th September, 1969, allegedly executed by Narain Singh father of Karam Singh, PW 3 Darshan Singh one of the attesting witnesses of the alleged Will dated 29th September, 1969\, PW4 Bawa Singh, one of the attesting witnesses of the Will dated 18th June, 1976 allegedly executed by late Sh. Karam Singh was examined, PW 5 Daljit Kaur, an official from the office of Deputy Commissioner, Kapurthala, appeared whereas PW 6 Nasib Kaur, plaintiff No.3 appeared in evidence.

On the other hand, DW1 Mohan Singh, DW2 Laskar Singh, Nambardar, DW3 Dev Karan, Advocate, DW 4 Asif Mohammad, Record Clerk from the judicial record room Kapurthala, Smt. Vinita Mahajan, Oath Commissioner and DW 5 Manjit Singh defendant, appeared in evidence.

The trial court well as a First Appellate court on appreciation of the evidence, dismissed the suit filed by the plaintiff.

Heard learned counsel representing the parties at length and with their able assistance perused the judgements passed by the courts below as well as the record, which was requisitioned. The learned counsel representing the plaintiffs has also filed his written arguments.

He contents that Smt. Iqbal Dulle Mal was a Christian. She filed a

divorce petition against Karam Singh, which was dismissed on 7th March 1960. He submits that there is no evidence to prove legal and valid marriage between Iqbal Dulle Mal and Karam Singh. While elaborating he submits that Section 16 of the Hindu Marriage Act, 1955, which places illegitimate children from void and voidable marriages on same pedestal as that of legitimate children is not applicable. He further elaborate that the benefit given under amended Section 16 is available only where such marriage is void or voidable in view of the provisions of the Hindu Marriage Act, 1955. He further submits that the matter with regard to rights of illegitimate child in the coparcenary property is still pending before the Supreme Court. While further contending that the findings of the court with regard to unregistered Will dated 18th June 1976, are erroneous. He submits that Karam Singh inherited only 36 kanals of land in Village Khanowal and 10 kanals and 13 marlas of land in Village Passon and defendant is only entitled 1/3rd share in the same.

As regards, the first argument of the learned counsel. it may be noted that Smt. Iqbal Dulle Mal's petition was dismissed on 7th March 1960. It may be noted that late Sh. Karam Singh while filing the written statement has admitted that Smt. Iqbal Dulle Mal was residing with him for the last 10 years. The aforesaid petition was dismissed predominantly on the ground that Smt. Iqbal Dulle Mal failed to prove that there was any marriage between her and Sh. Karam Singh in accordance with the provisions of Hindu Marriage Act, 1955. The court went on to hold that in the absence of evidence the petition under the Hindu Marriage Act, 1955, for grant of divorce is not maintainable. It

may be noted here that the First Appellate court has found that Karam Singh while appearing in the aforesaid divorce petition suffered a statement Ex. D5 wherein he admitted that Iqbal Dulle Mal is residing with him as his wife for the last 8-9 years and Manjit Singh (defendant) was born to Iqbal Dulle Mal from his loins. The correctness of the aforesaid statement has not been challenged before this Court. The defendant has produced his birth certificate Ex. D9 and I card issued by the Election Commission as Ex.D10, which may not prove a valid marriage between Smt. Iqbal Dulle Mal and Karam Singh but in any case these are sufficient evidence to prove that defendant-respondent Manjit Singh is son of late Sh.Karam Singh. On a careful reading of the judgement passed **Revanasiddappa and another vs. Mallikarjun and others, (2012) 4 CCC 279**, the Supreme Court after noticing that even in the absence of amendment in Section 16(3) of Hindu Marriage Act, 1955, held that illegitimate son is entitled to share in the property. The Supreme Court has relied upon various judgement passed by the Privy Council as well as Supreme Court. In this case, the Supreme Court only referred the matter with regard to the entitlement of a illegitimate son with regard to the property owned by person coparcenary property to the Larger Bench, however, the findings of the Court with regard to self acquired property are final. In such circumstances, the argument of the learned counsel that in the absence of provisions of Hindu Marriage Act, 1955, the defendant has no right, does not have substance.

The next argument of the learned counsel representing the appellants is with regard to the alternative plea of the plaintiffs that they

have become owners of the property by way of adverse possession. After the death of Karam Singh, all the Class I heirs became co-owners to the extent of 1/3rd shares each. The two widows of Karam Singh namely Smt. Kartari @ Kartar Kaur and Nasib Kaur would jointly inherit 1/3rd share. Smt. Iqbal Dulle Mal pre-deceased Karam Singh. In such circumstances, the plaintiffs do not deserve decree on the ground that they have perfected their title by way of adverse possession, particularly, when in 1977, the property was mutated in favour of plaintiffs and the defendant. The plaintiff No. 1 and defendant jointly sold some property by way of a sale deed dated 6th April, 1984. Thus, plaintiff no.1 admitted defendant to be co-sharer in the property.

The next argument of the learned counsel representing the appellants is with regard to the correctness of the findings of fact with regard to Will dated 18th June, 1976. Both the courts have found that the Will has been produced after a period of 26 years from the date of death of Karam Singh. PW 4 Bawa Singh failed to disclose about its scribe. Both the courts on comparative analysis of the signatures of late Sh. Karam Singh on the written statement filed in the petition for grant of decree of divorce and the Will found that the alleged signatures of Karam Singh are doubtful. Furthermore, the alleged Will dated 18th June, 1976 does not refer to Manjit Singh, defendant. The court has found it to be a suspicious circumstance.

Keeping in view the aforementioned facts this Court does not find it appropriate to interfere with concurrent findings of fact.

In the alternative, learned counsel representing the

appellants contends that late Sh. Karam Singh inherited only 36 kanals of land in Village Khanowal and 10 kanals and 13 marlas of land in Village Passon. Therefore, at the best the defendant would be entitled to 1/3rd share of the said land. Though, there is no issue on the same, however, by way of amendment the plaintiffs have alleged this fact. The defendant on the other hand while filing the written statement has stated that Will dated 29th September, 1969 was never executed by Narain Singh as his property was inherited by natural succession. A copy of the mutation has been produced. The plaintiffs while filing the suit has claimed a decree of declaration that plaintiff No. 1 Jaswinder Singh is owner in possession of half share of the suit property whereas the plaintiff No. 2 and 3 together are owners of the remaining half. Before the courts below neither any issue was framed on this aspect of the matter nor the attention of the court was drawn to this aspect. For the first time in the Regular Second Appeal, this Court cannot permit the plaintiffs to take up this plea, which is based on appreciation of evidence.

Consequently, finding no merit, the present appeal is dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

09.06.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE