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

RSA No.9925 of 2018 (O&M)

DATE OF DECISION : 28.03.2022

Harbans Singh and Others

.....Appellants

versus

Gagandeep Singh and Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sherry K. Singla, Advocate for the appellants

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ALKA SARIN, J. (Oral):

CM-5642-C-2021:

For the reasons stated in the application, the same is allowed and the main case is taken up on board today itself with the consent of the learned counsel.

CM-19243-C-2018:

For the reasons stated in the application, the delay of 40 days in re-filing the appeal is condoned.

CM disposed off.

RSA No.9925 of 2018:

This is a defendants' regular second appeal against concurrent findings recorded by the Courts below.

The brief facts relevant to the present *lis* are that the property was originally owned by Amar Singh, who had five children, namely, Harbans Singh (defendant-appellant No.1), Lakhbir Singh (defendant-appellant No.2), Sukhbir Singh (defendant-respondent No.4), Jaswant Kaur (defendant-appellant No.3) and Kulwant Kaur (since deceased) and survived by her son Gagandeep Singh (plaintiff-respondent No.1) and Ramandeep Singh (defendant-respondent No.2).

Gagandeep Singh, son of deceased Kulwant Kaur daughter of Amar Singh, filed the present suit for separate possession and partition by metes and bounds of the property bearing Municipal No.810, Near Aarti Cinema, Ludhiana on the ground that after the death of Amar Singh the property had been inherited by his mother, Kulwant Kaur, and on the death of his mother, Kulwant Kaur, he and defendant-respondent No.2 had inherited her 1/5th share in the property equally.

The suit was contested by the defendants, *inter alia*, raising the plea that the suit is not maintainable and that the plaintiff-respondent No.1 has not approached the Court with clean hands. On merits, it was stated that neither Kulwant Kaur daughter of Amar Singh nor her sons, namely, Gagandeep Singh (plaintiff-respondent No.1) and Ramandeep Singh (defendant-respondent No.2), would be entitled to any share in the property of late Amar Singh. It was claimed that the defendant-appellants were in possession of the suit property.

Ramandeep Singh (defendant-respondent No.2) put in appearance and filed a separate written statement resisting the claim of Gagandeep Singh (plaintiff-respondent No.1). It was stated that he was not residing with defendant Nos.1 to 3 and 5. He further stated that he and Gagandeep Singh (plaintiff-respondent No.1) were entitled to 1/2 share each in the 1/5th share of their mother Kulwant Kaur and were also entitled to claim account of their 1/2 share in the arrears of rent of three shops.

No replication was filed. On the basis of the pleadings of the parties and the evidence on the record, the suit of the plaintiff-respondent No.1 was decreed holding him entitled to the relief of separate possession by way of partition.

Aggrieved against the said judgment and decree dated 18.07.2016 passed by the Trial Court, an appeal was preferred by the defendant-appellants which was unsuccessful and dismissed vide judgment and decree dated 30.01.2018 passed by the lower Appellate Court. Hence, the present regular second appeal challenging the judgments and decrees passed by both the Courts below.

Learned counsel for the appellants would contend that the Kulwant Kaur as well as her sons have no share in the property in as much as after the death of Kulwant Kaur her share was mutated in the names of her brothers, namely, Harbans Singh (defendant-appellant No.1), Lakhbir Singh (defendant-appellant No.2) and Sukhbir Singh (defendant-respondent No.4) on the basis of a Will dated 19.08.2010.

Learned counsel for the defendant-appellants has candidly admitted that though the mutation is alleged to have been entered on the basis of the Will dated 19.08.2010, however, there are no such pleadings in the written statement filed by the defendant-appellants. Much reliance has been placed by the learned counsel for the defendant-appellants on the jamabandi Ex.D1 and mutation Ex.D2 to contend that the property stood mutated in the names of the brothers of Kulwant Kaur (since deceased) and hence Gagandeep Singh (plaintiff-respondent No.1) and Ramandeep Singh (defendant-respondent No.2) had no right, title or interest in the property.

Heard.

In the present case, the admitted facts are that Gagandeep Singh (plaintiff-respondent No.1) and Ramandeep Singh (defendant-respondent No.2) are the sons of Kulwant Kaur who was the daughter of Amar Singh. The sole dispute is qua the inheritance of Kulwant Kaur. The plea as set up by the Gagandeep Singh (plaintiff-respondent No.1) is that he and his brother Ramandeep Singh (defendant-respondent No.2), on the death of their mother, would inherit her 1/5th share of the property as inherited by her from her father Amar Singh. The suit was contested by the defendant-appellants by filing a written statement stating therein that they were exclusive owners and in possession of the property in dispute. There was neither any reference to any Will nor any mutation having been entered qua the inheritance of Kulwant Kaur in favour of the defendant-appellants. Rather, the stand taken was that Kulwant Kaur

had no share in the property of Amar Singh. A diametrically opposite stand was taken by raising a ground at the time of arguments before the Courts below that the defendant-appellants Nos.1 and 2 and defendant-respondent No.4 had a Will dated 19.08.2010 in their favour executed by Kulwant Kaur and after her death mutation qua her share of the land was also sanctioned in their favour.

The Trial Court decreed the suit in favour of Gagandeep Singh (plaintiff-respondent No.1) and the same was affirmed by the lower Appellate Court holding that the plea raised by the defendant-appellants in appeal qua the Will dated 19.08.2010 in favour of the defendant-appellants was totally beyond the pleadings.

A perusal of the record reveals that though an oral plea had been raised before the Court below qua inheritance of property of Kulwant Kaur on the basis of a Will dated 19.08.2010, however, no application for amendment of the written statement nor any application for leading additional evidence was ever filed by the defendant-appellants. The present suit was filed in the year 2012 and the alleged Will dated 19.08.2010 has never been brought on the record in the present case. Even before this Court, there is no application for amendment of the written statement or for leading additional evidence qua the Will dated 19.08.2010. The arguments raised by the learned counsel for the defendant-appellants are totally beyond the pleadings. It is trite that no amount of evidence can be looked into in the absence of pleadings.

In view of the fact that the defendant-appellants have miserably failed to substantiate their claim that they had inherited the share of Kulwant Kaur, I do not find any illegality or infirmity in the judgments and decrees passed by the Courts below. No question of law, much less any substantial question of law, has been raised in the present appeal. The regular second appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

28.03.2022
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NOTE:

Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO