

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

RSA-6284-2018(O&M)

Date of decision:-1.12.2022

Navneet Singh(since deceased) through LRs

...Appellant

Versus

Dalwinder Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Jyoti Choudhary, Advocate
for the appellant.

H.S. MADAAN, J.

CM-17591-C of 2018

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For the reasons mentioned in the applications, the same are allowed and delay of 22 days in re-filing of the appeal and delay of 23 days in filing of the appeal stand condoned.

RSA-6284-2018(O&M)

1. In nutshell, the facts of the case are that plaintiff Dalwinder Singh son of late Sh.Bawa Singh, resident of Kalanaur Road, Kalanaur Chowk, Qadri Mohalla, Gurdaspur had brought a suit against Sh.Navneet Singh son of late Sh.Surjit Singh (since deceased) represented by LRs Rupinder Kaur (wife), Sharleen Kaur (minor daughter) and Manpreet Singh (minor son), Sharleen Kaur

and Manpreet Singh being minors represented by their mother Rupinder Kaur as well as Sukhdev Singh, Manpreet Kaur @ Seema and Gurmeet Kaur @ Varsha, seeking possession of $2/3^{\text{rd}}$ share by way of partition by metes and bounds with regard to the property fully detailed in the head note of the plaint and site plan attached therewith situated at Kalanaur Road, Gurdaspur within Municipal Committee, Gurdaspur limits.

2. As per the version of the plaintiff late Sh.Bawa Singh, father of the plaintiff and grandfather of defendants was earlier owner in possession of the suit property. Bawa Singh had expired leaving behind the plaintiff, Surjit Singh, father of the defendants as sons and Smt.Ajit Kaur daughter as his LRs and all three of them had inherited his estate in equal shares i.e. $1/3^{\text{rd}}$ share each and they became joint owners in possession of the said property; Smt.Ajit Kaur, sister of the plaintiff had sold her share in the suit property to the plaintiff vide sale deed dated 5.4.2011 for total consideration of Rs.13,50,000/- delivering possession of her share to him, in that way the plaintiff became co-owner in possession to the extent of $2/3^{\text{rd}}$ share in the suit property, whereas remaining $1/3^{\text{rd}}$ share went to Surjit Singh, late father of the defendants; after death of Surjit Singh, the defendants stepped into his shoes; the plaintiff claimed that on account of bickering between the parties, he wanted to get his share separated; he has also spent huge amount in construction giving the

shops on rent; when defendants refused to admit his claim, he brought the suit in question.

3. On notice, the defendants appeared and filed written statement contesting the suit raising various legal objections, to wit that suit was not maintainable; that no cause of action arose to the plaintiff to file the suit; the suit was bad for non-joinder of the necessary parties; ad veloram Court fee was required to be affixed on the plaint, which had not been done; the plaintiff had not approached the Court with clean hands and had suppressed the material facts; the site plan attached with the plaint was not correct as per spot.

On merits, the defendants admitted that Sh.Bawa Singh was owner of the suit property, however they denied that after death of Bawa Singh, the property was inherited by the plaintiff, Smt.Ajit Kaur and Surjit Singh in equal shares. As per version put forward by the defendants, their father Surjit Singh was owner of the suit property and after his death, the defendants had become absolute owners in possession of the property in question; since Smt.Ajit Kaur had not acquired any interest in the suit property at any stage, she could not make any alienation in favour of the plaintiff qua any part of the suit property; the sale deed dated 5.4.2011 set up by the plaintiff was not binding upon the defendants.

According to defendants, since Smt.Ajit Kaur never came in possession of any part of the suit property, she could not possibly

deliver possession thereof to the plaintiff; as a matter of fact the plaintiff is residing in Germany for last more than 30-35 years; as a matter of fact Bawa Singh had executed an unregistered will dated 12.11.1995 in favour of Surjit Singh deceased father of the defendants bequeathing his moveable and immovable properties to him on account of services rendered by Surjit Singh to his father Bawa Singh; Will has been acted upon in the revenue record and mutation No.14785 had been sanctioned in the name of Surjit Singh, which fact was well within the knowledge of the plaintiff, therefore after death of Bawa Singh, Surjit Singh became absolute owner in possession of the suit property on the basis of Will dated 12.11.1995. The plaintiff had no share in the suit property at all. Refuting the remaining assertions, the defendants prayed for dismissal of the suit.

4. The plaintiff had filed replication to the written statement controverting the allegations in the written statement whereas reiterating the averments in the plaint.

5. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to possession of 2/3rd share out of total land by way of partition? OPP.

1(A) Whether Will dated 12.11.1995 is genuine? OPD.

2. Whether suit of the plaintiff is not maintainable in the present form? OPD.

3. Whether the suit of the plaintiff is bad for non-joinder of the necessary parties? OPD.

4. Relief.

6. Both the parties were afforded adequate opportunities to lead their evidence.

7. After hearing the learned counsel for the parties, the trial Court decided issue No.1 against the plaintiff and in favour of the defendants, issues No.1(A) and 2 were decided against the defendants and in favour of the plaintiff and issue No.3 was decided against the plaintiff. Resultantly vide judgment and decree dated 14.3.2017 the suit of the plaintiff was dismissed with costs by the trial Court.

8. Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Gurdaspur, which was assigned to Additional District Judge, Gurdaspur, who vide judgment and decree dated 28.5.2018 accepted the appeal, reversed the findings recorded by the trial Court on issues No.1 and 3, whereas affirming the verdict given on the other issues. As a result the suit of the plaintiff was decreed with cost by passing a preliminary decree that plaintiff is entitled to $\frac{2}{3}^{\text{rd}}$ share and defendants are entitled to $\frac{1}{3}^{\text{rd}}$ share in the suit property as per site plan Ex.P1.

9. Being dissatisfied with the judgment and decree passed

by Additional District Judge, Gurdaspur, the defendant No.1 (through his LRs) have filed the present regular second appeal before this Court.

10. I have heard learned counsel for the appellant besides going through the record and I find that there is absolutely no merit in the present appeal.

11. The parties are not at variance that the suit property was originally owned and possessed by Bawa Singh father of the plaintiff and grandfather of the defendants. The relationship of the parties inter se and with Bawa Singh is not disputed so is the fact that Bawa Singh had since expired and at the time of his death, he was survived by two sons i.e. plaintiff, Surjit Singh father of defendants and a daughter by name of Ajit Kaur. The plaintiff claims share in the suit property by natural succession, whereas according to the defendants, Bawa Singh had executed an unregistered will dated 12.11.1995 in favour of Surjit Singh being pleased with the services rendered by him and mutation with regard to the suit property has been sanctioned in favour of Surjit Singh on the basis of that unregistered will. In that way, the plaintiff is basing his claim on natural succession, whereas defendants by way of testamentary succession. Testamentary succession is deviation from natural succession and the propounder of the will is required to prove its execution dispelling all the suspicious circumstances and satisfying the judicious

conscious of the Court. If it is taken that Bawa Singh had not left behind any will, then after his death his two sons and daughter inherited the suit property in equal shares i.e. 1/3rd share each. It was for the defendants to prove that Bawa Singh while being possessed of sound disposing mind had executed unregistered will dated 12.11.1995 in favour of Surjit Singh. Although they did make an attempt to prove the will in their favour but they remained unsuccessful. They had examined attesting witnesses Jagdev Singh as DW7 as well as Nirmal Singh as DW9 to prove the will, but those DWs had not supported the case of defendants. DW7 Jagdev Singh in his examination-in-chief itself had stated that he had not witnessed the will dated 12.11.1995 allegedly executed by Bawa Singh although he was declared a hostile witness at the request of counsel for the defendants and an opportunity was given to him to put questions to him in the form of cross-examination but nothing favourable to the defendants could be elicited from his mouth. Rather during his cross-examination by the plaintiff, he stated that his signatures at 'Point A' were forged. The trial Court on analysis of the evidence has observed that Jagdev Singh appends his signatures in English whereas on will Ex.DW5/A, his signatures were in Punjabi. With regard to other attesting witness DW9 Nirmal Singh, he also stated that Bawa Singh had not executed any will on 12.11.1995 in his presence and he had not identified his signatures on the will. With

such state of affairs, the will set up by the defendants was not proved much less in accordance with law, rather it comes out to be a suspicious document, which cannot be given effect to. Merely because mutation was sanctioned on the basis thereof does not help the defendants in any manner because as per the settled law mutation does not confer any title. With defendants having failed to prove the will in their favour, the property in question is to devolve upon all the three legal heirs of Bawa Singh in equal shares. The plaintiff claims to have purchased the share of his sister Smt. Ajit Kaur, in that way, he has become co-owner to the extent of $2/3^{\text{rd}}$ share. Although as per the case of defendants, the plaintiff has been residing abroad for the last 30-35 years but then as per the settled law the inheritance does not remain in abeyance. After death of last son Bawa Singh, the suit property devolved upon all three children being his LRs in equal shares. Even if one of the co-owner had been in actual possession of the property that is to be taken on behalf of the other co-owners and he cannot claim to be in exclusive possession of the suit property having ousted other co-owners therefrom. These are the concurrent findings recorded by both the Courts below although with which I do not see any reason to differ. Although the trial Court had non-suited the plaintiff for the reason of non-joinder of other co-sharers in khasra No.1467/1. However, in appeal, Additional District Judge, Gurdaspur in view of the legal and factual position has dealt with this

aspect in para No.35 of the judgment, which for ready reference is being reproduced as under:

35. With the aforesaid observations though the learned trial court has rightly decided issue no.1-A and 2 against the defendants and in favour of the plaintiff that the defendants have failed to prove the genuineness of Will dated 12.11.1995 and the suit of the plaintiffs has been found well maintainable. Therefore, the findings of the learned trial court to decide issue nos. 1-A and 2 against the defendants and in favour of the plaintiff are hereby affirmed, but the learned trial court has wrongly non-suited the plaintiff that his suit is bad for non-joinder of necessary parties. In view of aforesaid findings and observations, the suit of the plaintiff has not been found bad for non-joinder of other co-sharers of that khasra numbers especially by the reasons that the suit property has been found residential and commercial building in the urban area and admittedly, owned and exclusively possessed by said Bawa Singh predecessor-in-interest of the parties in lis. Accordingly, it does not warrant to implead other co-sharers in that khasra numbers as the suit of the plaintiff is limited to that building of Bawa Singh for its partition by metes and bounds. Therefore, the findings of the learned trial court qua issue no.3 are hereby set aside and the same is hereby decided against the defendants and in favour of the plaintiff. Accordingly, it is obvious for the entitlement of the plaintiff to 2/3rd share of the suit property and 1/3rd shares of successors of Surjit Singh i.e. defendants. Therefore, issue nos. 1

and 3 are hereby decided in favour of the plaintiff and against the defendants.

12. No reason is found to differ with such observations made by the First Appellate Court and to take a contrary view in light of the facts and circumstances of the case.

13. No substantial question of law or fact arises in this appeal.

14. Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgment passed by the Additional District Judge, Gurdaspur.

15. The appeal stands dismissed accordingly.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

1.12.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No