

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1745 of 1991 (O&M)

Date of Order:10.10.2023

Gurdev Singh(since deceased) through LRs

.Appellant

Versus

Gurdial Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajan Bansal, Advocate and
Ms. Ritu Punj, Advocate
for the appellant.

Mr. Amar Vivek Aggarwal, Advocate and
Mr. Rohit Gupta, Advocate
for the respondent.

ANIL KSHETARPAL, J**CM-11147-C-2023**

1. For the reasons stated in the application which is supported by an affidavit, the application for bringing on record the legal representatives of deceased late Sh. Gurdev Singh [appellant] mentioned in paragraph 2 of the application, is allowed, subject to all the just exceptions.

2. The amended memo of parties is taken on record.

3. CM stands disposed of.

MAIN

4. This appeal has been filed by the plaintiff to challenge the correctness of the judgment and decree passed by the First Appellate Court while reversing the judgment and decree passed by the trial court.

5. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

6. Late Sh. Dasaunda Singh was the predecessor-in-interest of the

parties. He left behind his widow Smt. Santi, two sons and two daughters.

The appellant-Gurdev Singh and defendant no.1-Gurdial Singh are sons of late Sh. Dasaunda Singh. Smt. Santi during her lifetime executed a Will bequeathing her share in the property in favour of Sh. Gurdial Singh. Subsequently, she suffered a judgment and decree dated 17.08.1985, acknowledging that Sh. Gurdial Singh is the owner of the property. The appellant filed this suit challenging the aforesaid judgment and decree passed by the Court on 17.08.1985, on the ground that such decree is the result of fraud.

7. The trial court decreed the suit on the ground that the consent decree that is worth more than Rs.100/- was required to be registered and therefore, it does not result in transfer of the property. However, the First Appellate Court on re-appreciation of the evidence held that the judgment and decree passed by the court acknowledging *inter-se* family settlement between the members of the family would not require registration as a mandatory requirement. The correctness of the aforesaid judgment has been challenged in this appeal.

8. The learned counsel representing the appellant while drawing the attention of the court to the judgment dated 17.08.1985, submits that Sh. Gurdial Singh filed a suit claiming that his mother Smt. Santi bequeathed the property in his favour. He submits that the Will only comes to the force after the death of the testator (i.e. Smt. Santi) and therefore the whole basis of the suit and the decree passed is without substance.

9. This court has considered the submissions of the learned counsel representing the parties.

10. In this case, the issue is undoubtedly a restricted vocabulary. It

is evident that Sh. Gurdial Singh filed a suit against his mother to the effect that he is owner in possession of 23 kanals and 11 marlas land. She filed the written statement admitting the claim of the plaintiff and thereafter suffered a statement to that effect. In such circumstances, it is not the case of bequest, particularly when the Will was executed by Smt. Santi in favour of Sh. Gurdial Singh in the year 1967.

11. Moreover, in a subsequent suit the court is not expected to go behind the decree in view of the Division Bench judgment passed in ***Gurdev Kaur and another vs. Mehar Singh and others, AIR 1989 Punjab and Haryana 324.*** ***This Division Bench judgment has been approved by the Supreme Court in Bhoop Singh vs. Ram Singh Major and others, (1995) 5 SCC 709.***

12. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

13. Dismissed.

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

October 10, 2023
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO