

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

RSA-1401-2018(O&M)

Reserved on:-19.4.2023

Date of Pronouncement:-25.4.2023

Amarjit Singh

...Appellant

Versus

Amrik Singh

...Respondent

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

Present: Mr.Sunil Agnihotri, Advocate
for the appellant.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Amarjit Singh had brought a suit against his real brother Amrik Singh, seeking a declaration that he is owner in possession of the suit land and revenue entries be corrected by deleting name of the defendant qua the suit land besides craving for a decree for permanent injunction restraining the defendant from interfering in cultivating possession of the plaintiff over the suit land.

2. As per the version of the plaintiff, the suit land happened to be self acquired property of Kartar Singh (since dead), father of the parties; during his life time Kartar Singh was being looked after and maintained by the plaintiff and after his death on 22.2.2007, his last rites

were also performed by the plaintiff, however, the suit land was mutated by the revenue authorities in the name of the plaintiff and the defendant in equal shares, which was wrong because defendant had been disinherited by Kartar Singh father of the parties by inserting a notice in daily Newspaper Des Sewak on 17.12.2006 and the plaintiff alone had been cultivating the suit land during the life time of Kartar Singh; the defendant being a head strong person threatened to occupy the suit land. Feeling aggrieved, the plaintiff had brought the suit in question.

3. On notice the defendant appeared and filed a written statement contesting the suit raising various legal objections, on merits contending that Kartar Singh father of the parties vide a registered Will dated 9.10.2002 had bequeathed the suit land in favour of the plaintiff and defendant in equal shares and after his death, it was rightly mutated in favour of the parties on the basis of the Will. Refuting the other assertions, the defendant prayed for dismissal of the suit.

4. The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is owner in possession of property in dispute?
OPP.
2. Whether defendant is trying to occupy the suit land by illegal and forceful means? OPP.
3. Whether suit of the plaintiff is maintainable? OPP.
4. Whether the plaintiff has valid cause of action? OPP.
5. Whether plaintiff has concealed material facts? OPD.

6. Whether defendant is entitled to special costs of Rs.15,000/- under Section 35-A CPC? OPD.

7. Whether deceased Kartar Singh executed Will dated 9.10.2002 during his life time in favour of plaintiff as well as defendant regarding entire property in equal share to the extent of ½ share each.? OPD.

8. Relief.

5. The parties led evidence in support of their respective claims.

During the course of his evidence, the plaintiff got his statement recorded as PW1 besides examining Shiv Dayal Singh as PW2, Rajesh Kumar, Stamp Vendor as PW3, Karam Kaur as PW4, Mrs. Santosh Subharwal, Notary Public, Hoshiarpur as PW5 and Malkiat Singh and PW6.

With that the evidence of the plaintiff stood closed.

In rebuttal, the defendant examined Kuldeep Singh, Registration Clerk as DW1, Dharminder Pal Singh as DW2 and defendant himself stepped into the witness box as DW3.

With that the evidence of the defendant got concluded.

6. After hearing learned counsel for the parties, the trial Court of Addl Civil Judge(Sr.Divn.), Dasuya decided issues No.1 and 2 against the plaintiff and in favour of the defendant, issues No.3 and 4 were also decided against the plaintiff and in favour of the defendant; issues No.5 to 7 were decided against the defendant and in favour of the plaintiff. As a result of findings on issues, the suit of the plaintiff was dismissed. This was so done vide judgment and decree dated 4.7.2013.

7. Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Hoshiarpur, who vide judgment and decree dated 24.12.2015 dismissed the same upholding the judgment and decree passed by the trial Court..

8. Still feeling dissatisfied, the plaintiff has knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and his suit be decreed.

9. I have heard learned counsel for the appellant besides going through the record.

10. In this case both the Courts below on proper appraisal and appreciation of evidence and correct interpretation of law have reached a firm conclusion that Kartar Singh father of the parties had executed a registered Will dated 9.10.2002 vide which he had bequeathed his property to his two sons i.e. plaintiff Amarjit Singh and defendant Amrik Singh in equal shares, whereas not giving any share in his estate to third son Amritpal Singh and further mutation on the basis of that Will Ex.D1 has been entered and sanctioned and that mutation order has been upheld at the level of Commissioner, Jalandhar Division. The Will in question was duly proved by the defendant by examining DW1 Kuldeep Singh, Registration Clerk and DW2 Dharminder Pal Singh son of Piara Singh (since dead), who was one of the attesting witnesses of the Will. DW2 Dharminder Pal Singh had identified signatures of his father Piara Singh on the Will. The Courts below have considered the assertions of the plaintiff that defendant has no share in the property in dispute since he had

been disinherited by father Kartar Singh by getting a notice published in the Newspaper 'Des Sewak' in December, 2006. However, it was found that such notice was not sufficient to disinherit defendant Amrik Singh from the property belonging to his deceased father Kartar Singh. The Will Ex.D1, which was duly executed by the testator Kartar Singh was not revoked by him during his life time. This fact has been admitted by PW4 Karam Kaur widow of Kartar Singh as well as PW2 Shiv Dayal Singh. The trial Court was justified in dismissing the suit of the plaintiff.

11. Learned District Judge, Hoshiarpur had also reached the similar conclusion affirming the findings recorded by the trial Court and dismissed the appeal.

12. I find that the findings given by the Courts below are based upon proper appreciation and correct interpretation of law. Both the Courts had rejected the claim of the plaintiffs. I do not see any reason to disagree with the Courts below and take a different view and further to interfere with the impugned judgments and decrees. Those judgments and decrees are upheld.

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

14. The appeal stands dismissed accordingly.

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

25.4.2023

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : **Yes/No**

Whether reportable : **Yes/No**