

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

120

RSA-146-2020 (O&M)

Date of Decision: 20.11.2023

Hardeep Singh and another

...Appellants

Versus

Kuldeep Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. P.S. Chahal, Advocate for
Mr. G.S. Nagra, Advocate for the appellant.

HARKESH MANUJA, J. (oral)

1. By way of present appeal, challenge has been made to the judgments and decrees dated 17.11.2018 and 28.08.2019 passed by the Courts below, whereby suit for declaration and permanent injunction, filed at the instance of respondent No.1-plaintiff, claiming herself to be owner in joint possession of the suit property to the extent of 1/5th share, stands decreed.

2. Briefly stating, respondent No.1-plaintiff filed a suit for declaration and permanent injunction, being widow and one of the natural heirs of deceased-Pritam Singh, claiming herself to be owner in joint possession of the agricultural land left by him, in village Tussa, Tehsil Raikot and District Ludhiana, to the extent of 1/5th share, based on natural inheritance. It was pleaded that mutation No.16490 entered

in the name of appellant-defendant No.1, based on a Will dated 09.04.2007 was wholly illegal, as no notice qua the same was ever served upon her.

3. Upon notice, appellant-defendant Nos.1 and 3 appeared and filed their separate written statements and opposed the relief claimed in the suit by relying upon the Will dated 09.04.2007 allegedly executed by deceased-Pritam Singh in favour of appellant-defendant No.1, followed by mutation entered thereupon.

4. The trial Court vide judgment and decree dated 17.11.2018 decreed the suit filed at instance of respondent No.1-plaintiff. Aggrieved thereof, first appeal was filed at the instance of appellant-defendant Nos.1 and 3, however, the same came to be dismissed vide judgment and decree dated 28.08.2019.

5. Impugning the aforementioned judgments and decrees, passed by the Courts below, learned counsel for the appellant-defendant Nos.1 and 3 submits that there being no challenge to the Will dated 09.04.2007, executed by deceased-Pritam Singh in favour of appellant-defendant No.1, the suit for declaration filed at the instance of respondent No.1-plaintiff could not have been decreed. He further submits that mutation No.16490 was never challenged by respondent No.1-plaintiff before the revenue authorities, thus the suit was liable to be dismissed.

6. I have heard the learned counsel for the parties and gone through the paper-book. I am unable to find substance in the submissions made on behalf of the appellant-defendant No.1 and 3.

7. In the present case, neither the appellants, ever disputed their relationship with respondent No.1-plaintiff, being her sons, nor even the suit property being owned by deceased-Pritam Singh was ever denied. In the absence thereof, so as to seek diversion qua the line of natural succession and for claiming exclusive ownership over the suit property, the entire burden was upon appellant-defendant No.1 to prove the valid execution of Will dated 09.04.2007 by deceased-Pritam Singh, qua the suit land in his favour being the beneficiary.

8. Admittedly, the Will dated 09.04.2007 was never produced on record either in original or a copy thereof, by way of secondary evidence. In the absence thereof and especially there being no dispute qua the relationship between the parties, the suit property being previously owned by deceased-Pritam Singh, the suit for joint possession and permanent injunction, filed at the instance of respondent No.1-plaintiff being his widow was rightly decreed in her favour to the extent of 1/5th share. Moreover, once the Will dated 09.04.2007 was never proved on record and respondent No.1-plaintiff was held owner to the extent of 1/5th share in the suit property being in joint possession, no fault could be found with the setting aside of mutation No.16490, which was based on the Will dated 09.04.2007 only.

9. Resultantly finding no merits in the present appeal, there being no illegality and perversity with findings recorded by the Courts below in the judgments dated 17.11.2018 and 28.08.2019, the present appeal is hereby dismissed.

10. Pending application(s), if any, shall stand(s) disposed off.

20.11.2023

Mangal Singh

(HARKESH MANUJA)
JUDGE

Whether Speaking / Reasoned :	Yes	No
Whether Reportable :	Yes	No