

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

RSA-3578-2018

Date of Decision: July 18, 2023

PARAMJIT KAUR @ KARAMJIT KAUR Appellant
Versus
NARINDER SINGH @ MOHINDER PAL & ORS Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Vivek Suri, Advocate for the appellant.

HARKESH MANUJA, J. (ORAL)

1. By way of present appeal, challenge has been laid to the judgment and decree dated 27.02.2015 passed by the Civil Judge, Junior Division, Patiala as well as the judgment and decree dated 03.11.2017 passed by Ld. Addl. District Judge, Patiala whereby a suit for declaration qua ownership to the extent of 2/7th share out of the estate left by Bachan Singh, filed at the instance of appellant-plaintiff being her daughter has been dismissed.

2. In the present case, the dispute pertains to the estate of Bachan Singh, the appellant-plaintiff being her daughter filed a suit for declaration, claiming herself to be owner in joint possession of its 2/7th share. It was pleaded in the plaint that the suit land in the hands of Bachan Singh was ancestral in nature and thus he had no right to deal with the same as regards the share of the appellant-plaintiff. It was further pleaded that respondents No.1 and 2 herein who happened to be brothers of the appellant-plaintiff got a transfer deed dated 25.08.2007 executed from Bachan Singh qua the suit property which was result of a fraud. The appellant-plaintiff also set up a Will dated

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11.03.2010 executed by her father qua his 1/7th share thereby claiming herself to be owner to the extent of 2/7th share.

3. Upon notice, the defendants appeared and filed their written statement. Defendant No.1 i.e. the father of the appellant appeared before the trial Court and admitted the factum of suit land being ancestral, further stating that the defendants No.2-6 took advantage of his old age besides weak mental condition and got the transfer deed executed from him under the pretext of getting a general power of attorney. On the other hand defendants No.2-6 filed a separate written statement questioning the maintainability of the suit as well as denying the nature of the suit property being ancestral. The trial Court vide its judgment and decree dated 27.02.2015 dismissed the suit filed by the appellant-plaintiff while recording that the nature of the suit property being ancestral was never proved. It was also recorded that the father of the appellant-plaintiff never challenged the transfer deed during his lifetime and moreover the suit filed by the appellant-plaintiff qua Bachan Singh was got dismissed as withdrawn and thus the appellant-plaintiff was not entitled for grant of any relief in the suit by claiming it to be ancestral property. Even the Will set up by appellant-plaintiff was also discarded.

4. Aggrieved of the judgment and decree dated 03.11.2017, the appellant-plaintiff filed First Appeal. The same also got dismissed vide judgment and decree dated 03.11.2017.

5. While assailing the aforementioned judgments and decrees passed by Courts below, learned counsel for the appellant vehemently submits that Courts below went wrong while ignoring the statement

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made by father of appellant/plaintiff-Bachan Singh who appeared in the Court and categorically stated that execution of transfer deed dated 25.05.2007 in favour of defendants No.2 and 3 was a result of fraud as he only intended to suffer a General Power of Attorney in their favour, whereas under the garb of it, the transfer deed was got executed. Learned counsel for the appellant also submits that the First Appellate Court being the final Court of fact and law was required to record issue-wise finding which is missing therein. No other substantial argument has been raised at the instance of appellant-plaintiff.

6. I have heard learned counsel for the appellant-plaintiff and gone through the paper-book. I am unable to find any substance in the submissions made on behalf of the appellant.

7. No doubt, Bachan Singh who happened to be father of appellant-plaintiff whose estate was in dispute appeared before the trial Court and got recorded his statement that a transfer deed dated 25.05.2007 was got executed from him by his sons i.e. defendants No.2 and 3 by playing fraud upon him, however, more importantly, the aforesaid statement was never allowed to be subjected to cross-examination of Bachan Singh by affording any chance to defendants No.2 and 3 and thus the same was rightly not treated as a piece of evidence by the Courts below. Moreover, Bachan Singh died in the year 2011, however, during his lifetime he never assailed the transfer deed dated 25.05.2007 by filing any suit for declaration meaning thereby, he impliedly accepted the valid execution of the said transfer deed.

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8. Though, there appears to be some substance in the submission made by the learned counsel for the appellant that the First Appellate Court failed to record issue-wise finding while disposing the First Appeal which it was legally obliged to do, being the final Court of fact and law, however, in the present facts and circumstances, wherein the appellant-plaintiff failed to prove her case even qua nature of the suit property to be ancestral in nature, it may not be appropriate to set aside the judgment and decree passed by First Appellate Court merely on account of issue-wise finding having not been recorded by it.

9. In view of the discussion made, no question of law, much less a substantial question of law is involved in the present case.

10. Resultantly, finding no illegality or perversity in the judgments and decrees passed by the Courts below, the present appeal is dismissed.

18.07.2023
tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>

