

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

RSA-9670-2018 (O&M)
Date of decision: 12.01.2023

Mithu Singh	...Appellant
	V/S
Bholi and another	...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ashok Kumar Verma, Advocate,
For the appellant.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are described as per recitals before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, the plaintiff is in second appeal before this Court assailing the trial Court judgment and decree dated 31.03.2016, as upheld by learned First Appellate Court vide its judgment and decree dated 02.07.2018 dismissing the suit for declaration and permanent injunction.

3. Briefly stated, facts as noticed by Courts below.

3.1 Plaintiff is permanent resident of village Baragudha, Tehsil and District Sirsa. Bhagwan Kaur was owner in possession of land measuring 83 Kanals 11 Marlas situated in village Baragudha, Tehsil and District Sirsa. She inherited the land from her father Kehar Singh (grandfather of plaintiff) vide civil Court decree. Bhagwan Kaur had three sons Rajender Singh, Iqbal Singh and Mahender Singh. Rajender Singh and Iqbal Singh were married, whereas Mahender Singh was unmarried.

3.2 Bhagwan Kaur was living with plaintiff as she was his aunt (Bua). Mahender Singh, who was a habitual drunkard, was also living with plaintiff. Bhagwan Kaur executed Will dated 19.11.1990 in favour of plaintiff thereby bequeathing 1/3rd share of suit land to him. This Will was scribed by Nand Lal Sarpanch of village Dhaban Wala. Shivji Ram thumb marked it as an attesting witness. It was also thumb marked by Bhagwan Kaur. Mahender Singh died on 16.12.1991 whereas his mother Bhagwan Kaur pre-deceased him on 03.07.1991.

3.3 Plaintiff thus inherited 1/3rd share on the basis of this Will. Remaining 2/3 share was inherited by two sons of Bhagwan Kaur. However mutation No.3869 of succession was sanctioned in favour of Rajender Singh, Iqbal Singh and one Bholi (defendant No.1) deceptively showing her as widow of Mahender Singh.

3.4 It is pleaded that Mahender Singh was unmarried and Bholi was not his widow. It is further pleaded that Bholi was already married to a person, who is resident of village Akkanwali, Tehsil Tohana, District Fatehabad. Her ration card and voter card have been issued on that address. She cannot, therefore, inherit anything as widow of Mahender Singh, who died unmarried/single.

3.5 It is pleaded that Smt. Bholi taking advantage of illegal mutation in her favour sold land to defendant No.2. Plaintiff came to know of this fact when defendant No.2 tried to take possession of land. Plaintiff is in its cultivating possession and paying *Abeyana* to the Canal department. The land in question was ancestral and coparcenary undivided Joint Hindu Family property in the hands of deceased Bhagwan Kaur and her son Mahender Singh.

3.6 Mutation No.3869 of inheritance of Bhagwan Kaur and subsequent sale deed No.12137 dated 19.07.2011 executed by defendant No.1 in favour of defendant No.2 is thus sought to be set aside by the plaintiff by declaring it null and void.

4. Upon notice, defendant No.1 raised preliminary objections on the ground that suit is time barred. It was filed after a lapse of 20 years. Mutation No.3869 of inheritance of Bhagwan Kaur was sanctioned on 24.12.1991. It was sanctioned on the basis of rapat No.138 in the presence of villagers and Lamberdar in Jalse-e-aam by Tehsildar/A.C. 2nd Grade, Sirsa. Further objections were that suit is not maintainable; suit is bad for want of jurisdiction; plaintiff has concealed true and material facts from Court; Plaintiff has no cause of action and locus standi to file present suit.

4.1 On merits, it is pleaded in the written statement that admittedly Bhagwan Kaur was owner in possession of suit land. She had three sons. Defendant No.1 was legally wedded wife of Mahender Singh. All sons of Bhagwan Kaur were married. She had been living with defendant No.1 and her husband in village Baragudha. Plaintiff has thus played a fraud by setting up a Will in his favour. Bhagwan Kaur had not executed any Will in his favour. Alleged Will dated 19.11.1990 is fabricated and forged document. It is further pleaded that defendant No.1 sold land to defendant No.2 vide registered sale deed No.12137 dated 19.07.2011 for a valuable sale consideration. In these circumstances, suit may be dismissed with costs.

4.2 It is pleaded by defendant No.2 that he had purchased land from defendant No.1 vide registered sale deed. It is further pleaded that mutation No.3869 in favour of defendant No.1 was sanctioned on the basis of rapat No.138 in the presence of villagers. Defendant No.2 is thus owner in possession of land being a *bonafide* purchaser and has prayed for dismissal of the suit.

5. Based on the rival pleadings, following issues were framed:

“1. Whether plaintiff is entitled to decree of declaration that he is owner in possession as per his respective 1/3rd share out of total land in question, as prayed for? OPP

2. *Whether mutation No.3869 and sale deed No.12137 dated 19.07.2011 are wrong, null and void and are liable to be set aside, as prayed for? OPP*
3. *If issues No.1 & 2 are proved, whether plaintiff is entitled to the consequential relief of permanent injunction, as prayed for? OPP*
4. *Whether present suit is not maintainable in the present form? OPD*
5. *Whether suit of the plaintiff is hopelessly time barred? OPD*
6. *Whether present suit has not been properly valued for the purpose of court fee and jurisdiction? OPD*
7. *Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD*
8. *Whether plaintiff has concealed the true and material facts from the Court? OPD*
9. *Relief.”*

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, issues No.1 to 3 were decided against the plaintiff and in favour of the defendants. Issues No.4 to 8 were disposed of as not being pressed. Consequently, the suit of plaintiff was dismissed. However, it was made clear that the plaintiff shall not be evicted from the suit land without following due course of law.

8. First Appellate Court below dismissed the appeal, resulting in Regular Second Appeal by plaintiff before this Court.

9. In its judgment, the learned First Appellate Court, *inter alia*, observed as below:

XXX

XXX

“22. It is admitted case that Bhagwan Kaur was owner in possession of suit land. Mutation Ex.PX shows it. It is also admitted fact that she had three sons Rajender Singh, Iqbal Singh and Mahender Singh. Bhagwan Kaur died on 03.07.1991. Her son Mahender Singh died on 16.12.1991.

Mutation Ex.P1 was sanctioned on 24.12.1991. When this mutation was sanctioned, Mahender Singh was not alive. So, when it was sanctioned, a rapat Ex.DW5/A was recorded. In that rapat, Rajender Singh stated that Bhagwan Kaur had three heirs Rajender Singh, Iqbal Singh and Bholi widow of Mahender Singh. So, it was sanctioned in their favour.

23. According to plaintiff, before her death, Bhagwan Kaur had executed a Will Mark-A in his favour in a bahi. This Will was scribed by Nand Lal Sarpanch and attested by Shivji Ram. A Will is required to be attested by two witnesses as provided under Section 63 of Indian Evidence Act. But present appeal does not fulfill this mandatory requirement. So, it is not a validly executed Will. To prove a Will, examination of one of the attesting witnesses is mandatory. In this case, it is claimed that scribe as well as attesting witness both have died. But no other witness to identify signatures/thumb impressions of attesting witness or executant has been examined. In these circumstances, plaintiff cannot take advantage of this Will. In absence of Will, he cannot question mutation in favour of defendant No.1 and subsequent sale deed executed by her in favour of defendant No.2.

24. In view of above discussion, there is no merit in appeal and same is dismissed with costs.”

10. I have heard the learned counsel and perused the judgments of both the Courts below.

11. On perusal of the impugned judgments, my considered opinion is that the submissions made before the Courts below were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law, with which I am inclined to agree. I also find no substance in the submissions that the impugned judgments are based on conjectures and surmises.

12. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

13. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

14. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

15. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

16. The Courts below have not recorded any firm finding on appellant's claim that he is in possession of suit land. However, since the appellant claims that he has been in possession of the land in question for the past 30 years, dismissal of the appeal and upholding of the judgments below would not be construed to mean that the appellant if he is in possession of land is to be dispossessed without following due procedure in accordance with law. Needless to say that defendants having established their right and title *qua* the land in question will be entitled to possession as and when they choose to do so by filing appropriate proceedings, as may be advised.

17. Pending application/s, if any, shall also stand disposed of.

18. No order as to costs.

(ARUN MONGA)
JUDGE

January 12, 2023

Vandana

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No