

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

**RSA No.58 of 2019 (O&M)
Reserved on : 13.02.2024
Date of Decision: 20.02.2024**

Anita & Others

....Appellants

VERSUS

Surti @ Sarti Devi & Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vikas Sharma, Advocate for the appellants.

ALKA SARIN, J.

1. This regular second appeal is by the plaintiff-appellants challenging the judgements and decrees dated 10.04.2015 and 07.07.2018 of the Trial Court and the First Appellate Court, respectively, whereby their suit for declaration and permanent injunction has been dismissed.

2. As per the plaintiff-appellants, Banarsi son of Sohan Lal was the owner of certain properties. Banarsi had a wife namely, Lado and two daughters, namely, Surti (defendant-respondent No.1) and Murti (predecessor-in-interest of the plaintiff-appellants). Banarsi died on 12.01.2000 and was survived by his wife Lado (defendant-respondent No.2.), daughter Surti (defendant-respondent No.1) and the plaintiff-appellants being the successors-in-interest of the other daughter Murti Devi who had pre-deceased Banarsi as she had died on 01.04.1999. It was alleged that Banarsi during his lifetime had allegedly executed a registered Will No.98 in favour of his daughter Surti (defendant-respondent No.1) who, during the pendency of the present suit, sold the suit property to defendant-

respondent Nos.3 to 6 by virtue of sale deeds dated 09.02.2011 and 10.05.2011. As per the plaintiff-appellants the suit property was ancestral having been obtained by Banarsi from his father Sohan Lal. The plaintiff-appellants claimed that Banarsi had never executed any Will during his lifetime and had infact orally distributed the entire agricultural property between his daughters Murti and Surti. It was also alleged that the Will had been falsely prepared by taking advantage of the old age and sickness of Banarsi and was a result of fraud and undue influence exercised upon Banarsi. Hence, the present suit for declaration that the Will No.98 dated 10.11.1999 and consequent mutation no.3141 dated 29.03.2000 are null and void and not binding on the rights of the plaintiff-appellants and a further declaration that the plaintiff-appellants are owners in possession of 1/3rd share of the suit property and that the sale deeds dated 09.02.2011 and 10.05.2011 be annulled. A permanent injunction was also sought for restraining the defendant-respondents from dispossessing the plaintiff-appellants from the suit property. In their separate written statements the defendant-respondent Nos.1 and 2 raised preliminary objections and on merits defended the registered Will executed by Banarsi. Defendant-respondent Nos.3 to 6 also filed written statements and contested the suit. No replication was filed by the plaintiff-appellants.

3. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the plaintiffs are owners in possession of the suit property to the extent of 1/3rd share ? OPP

2. Whether the plaintiffs are entitled for injunction ?

OPD

3. Whether the Will dated 10.11.1999 is valid and genuine document voluntarily executed by Banarsi in favour of defendant No.1 ? OPD

4. Whether the plaintiffs have got no cause of action and locus standi to file the present suit ? OPD

5. Whether the suit is not maintainable in the present form ? OPD

6. Whether suit is bad for non-joinder and mis-joinder of necessary parties ? OPD

7. Whether the suit is time barred ? OPD

8. Whether the plaintiffs have concealed the material facts from the court ? OPD

9. Relief.

4. Vide judgement and decree dated 10.04.2015 the Trial Court dismissed the suit of the plaintiff-appellants. Their appeal was also dismissed by the First Appellate Court vide judgement and decree dated 07.07.2018. Hence, the present regular second appeal by the plaintiff-appellants.

5. Learned counsel for the plaintiff-appellants has contended that the impugned judgements and decrees of the Trial Court and the First Appellate Court are illegal and erroneous and based upon conjectures and surmises. It is argued that the excerpts produced on the record prove that the suit property is ancestral and joint Hindu Family coparcenary property and

the plaintiff-appellants being daughters had acquired rights like a son in view of the 2005 amendment to the Hindu Succession Act, 1956. The Will executed by Banarsi was attacked for being surrounded by suspicious circumstances. As per learned counsel for the plaintiff-appellants even the sales made in favour of defendant-respondent Nos.3 to 6 were hit by the doctrine of lis pendens and deserved to be set aside. As per counsel the suit of the plaintiff-appellants ought to have been decreed.

6. Heard learned counsel for the plaintiff-appellants and perused the paperbook.

7. Both the Courts have reached concurrent findings of fact that the suit property was not of ancestral nature. The plaintiff-appellants failed to prove that the suit property came to Banarsi through four male lineal descendants. Since the plaintiff-appellants could not prove the ancestral nature of suit property it cannot be held that Banarsi did not have any right to bequeath the same. In **Banta Singh vs. Phuman Singh [1972 PLR 365]** it was inter-alia held that *“The revenue excerpt is no part of the record of rights and does not carry any presumption of correctness. It has to be formally proved by the examination in the witness box of the person who has prepared it on the basis of the entries in the various Settlement records and jamabandis. It is an extract or synopsis of entries collected from diverse places and its value depends on how truly it has reproduced the original entries”*. This decision has been followed in **Hawa Singh vs. Daya Nand [2010(21) RCR Civil 918]**, **Rajbir vs. Virender Singh [2015 SCC OnLine P&H 17882]** and **Sarabjit Kaur vs. Tarlochan Singh [2018(1) RCR Civil 844]**.

8. Coming to the Will of Banarsi set-up by the defendant-respondents, the said Will Ex.DW5/B was attested by two attesting witnesses one of whom also appeared in the witness box as DW10 (Rulia). The scribe also deposed as DW9 (Vinod Kumar Garg). The said Will of Banarsi is a registered Will. Further, the wife of Banarsi appeared as DW4 (Lado) and in her cross examination stated that had Murti and her children i.e. the plaintiff-appellants taken care of them then they would have given 1/2 share of suit property to them as well, which shows that the suit property was bequeathed by Banarsi in favour of his one daughter Surti (defendant-respondent No.1) on account of the services rendered by her to her parents. The Will in favour of the defendant-respondent No.1 being valid, she had every right to deal with the suit property including selling it to the defendant-respondent Nos.3 to 6. There is no material available on the record to make out a case for decreeing the suit of the plaintiff-appellants. No other point has been argued.

9. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

20.02.2024

Aman Jain

**(ALKA SARIN)
JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO