

283.

2024:PHHC:025449

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

RSA-3786-2019 (O&M)

Date of decision: 13.02.2024

Kanwaljit Singh

... Appellant

Versus

Bhupinder Kaur (since deceased, through her LRs) and another.

... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Vaibhav Sehgal, Advocate, for the appellant.

None for respondent No.1.

Mr. Sukhdeep Singh Bhinder, Advocate,
Mr. Sarabjit Singh, Advocate,
Ms. Indira, Advocate, for respondent No.2.

GURBIR SINGH, J.

1. Present regular second appeal has been filed against the judgment and decree dated 14.02.2019 passed by learned Additional District Judge, Ludhiana, whereby the appeal filed by the appellant-plaintiff against the judgment and decree dated 30.05.2014 passed by learned Civil Judge (Junior Division), Ludhiana, has been dismissed.

2. The parties herein are being addressed as per their status in original plaint.

3. Brief facts of the case are that the plaintiff filed a suit for declaration to the effect that he is the owner in possession as co-sharer to

the extent of ½ share in the suit property, as mentioned in the head note of the plaint, on the basis of registered Will dated 13.03.1984, bearing vasika No.1181, and mutations Nos.10456 and 802 with regard to inheritance of Gurdial Singh are illegal, null and void, and also sought for permanent injunction restraining the defendants from alienating the property, in dispute, by way of sale, exchange, mortgage or otherwise on the basis of oral and documentary evidence.

3.1 The case of the plaintiff is that Gurdial Singh was the owner as co-owner of suit property. He was not having any issue. Plaintiff is the real nephew of Gurdial Singh. Plaintiff used to serve Gurdial Singh and his wife Bhupinder Kaur, defendant No.1. Due to the services rendered by plaintiff, Gurdial Singh executed a registered Will dated 13.03.1984 while in sound disposing mind bequeathing the land measuring 2 ½ acres out of his estate in favour of the plaintiff and the remaining land in favour of his wife Bhupinder Kaur, defendant No.1. Said Gurdial Singh expired on 09.02.2020. Prior to the death of Gurdial Singh also, plaintiff used to help him in cultivation of suit land. In fact, said Gurdial Singh and Bhupinder Kaur never adopted any child at any point of time. During his lifetime, Gurdial Singh always admitted the ownership and possession of Harpal Singh i.e. father of plaintiff, and always treated him as owner in possession of suit property on the basis of oral family settlement/partition. After the death of Harpal Singh, plaintiff became the owner of suit property and is residing there with his family. Plaintiff is in

actual physical cultivating possession of said land. Defendant No.2-Jasjit Kaur, who claims herself the daughter of Gurdial Singh, has no right, title or interest in the estate left by deceased Gurdial Singh. In fact, she is the daughter of Bharpoor Singh son of Hardev Singh. After the death of Gurdial Singh, the defendants in connivance with each other, got the mutations No.10456 and 802 sanctioned qua inheritance of property of Gurdial Singh at the back of plaintiff. No notice was ever served upon him in that regard. The plaintiff challenged mutation No.10456 before the Collector, Ludhiana, but the Sub Divisional Magistrate, Ludhiana, while exercising the power of the Collector, dismissed his case vide order dated 08.09.2000. The plaintiff came to know about the other mutation No.802 only on 14.09.2020 when he got copy of jamabandi from Halqa Patwari. It was submitted that by virtue of said Will dated 13.03.1984, the plaintiff has become co-sharer along with defendant No.1 in the estate left by Gurdial Singh and defendant No.2 has no right, title or interest in the estate left by Gurdial Singh. The plaintiff requested the defendants to admit him as owner of the estate left by Gurdial Singh in his favour, but they, under the garb of said mutations, flatly refused and threatened to alienate and dispossess him from the suit property.

3.2 Upon notice, defendants appeared, filed written statement and contended that the plaintiff is not the legal and natural heir of deceased Gurdial Singh. Defendant No.2 is living in Village Lalton Kalan with her husband. Her mother Bhupinder Kaur was also residing

there with them. This fact was very much in the knowledge of the plaintiff but he deliberately and with ulterior motive gave a wrong address of defendant No.2. The suit is not properly valued for the purpose of court fee and jurisdiction. Though the defendants admitted Gurdial Singh as co-owner of the property, in dispute, to the extent of $\frac{1}{2}$ share, but it was not disclosed by the plaintiff that with whom Gurdial Singh was co-owner in the suit land. It was further submitted that defendant No.2 was adopted by Gurdial Singh and Bhupinder Kaur as they were issue-less. It was denied that plaintiff rendered any services to Gurdial Singh and Bhupinder Kaur. Since defendant No.2 was adopted when she was $1\frac{1}{4}$ months old and brought up by Gurdial Singh and Bhupinder Kaur, the mutations sanctioned in favour of defendants are legal and valid. Plaintiff was not the legal heir of Gurdial Singh, so, there was no need to issue any notice to him at the time of sanctioning of mutations. The plaintiff challenged the mutations, but failed. Said mutations have attained finality as no appeal was filed against the said order. The Will dated 13.03.1984 has already been cancelled on 26.09.1986 by Gurdial Singh himself in the presence of marginal witnesses, namely, Gurbax Singh, Namberdar and Malkit Singh. The fact of cancellation of said Will was in the knowledge of plaintiff, but even then, he filed suit for declaration on the basis of Will without any basis. Defendant No.2, in her cross-examination, stated that she has not

received any share of property from her natural parents Bharpoor Singh (since deceased) and Amarjit Kaur.

3.3 Replication was also filed by the plaintiff wherein he reiterated the averments made in the plaint.

3.4 From the pleadings of parties, the following issues were framed:-

“1. Whether the Will dated 13.03.1984 executed by deceased Gurdial Singh in favour of the plaintiff and defendant No.1 had been cancelled by deceased Gurdial Singh on 26.09.1986? OPD

2. If issue No.1 is not proved in the affirmative, whether the plaintiff is entitled to declaration prayed for? OPP

3. Whether the plaintiff is entitled to permanent injunction prayed for? OPP

4. Whether the suit is not maintainable as alleged? OPD

5. Whether the plaintiff has no locus standi to file the present suit? OPD

6. Whether the suit has not properly valued for the purposes of court fee and jurisdiction? OPD

7. Relief. As the onus to prove the material issue is on the defendants, therefore, defendants are directed to lead evidence first. Another issue was framed on 09.03.2004 by my predecessor court as I-(a) whether the plaintiff is not in possession of suit land/property? OPD.”

3.5 After appreciating the evidence on record, the trial Court dismissed the suit and the appeal filed was also dismissed. Aggrieved against the judgments and decrees of the courts below, the appellant has approached this Court by way of present appeal.

4. Learned counsel for the appellant has argued that in the Will, Gurdial Singh himself stated that except his nephew, the appellant herein, and his wife Bhupinder Kaur, there was no other legal heir. The appellant is the owner of the estate left behind by deceased Gurdial Singh and respondent No.2 has no right, title and interest on the same. The intention of defendant No.2 is to usurp the valuable property of the appellant. She never became co-sharer in the suit land. She belongs to Village Gurusar Sanewal, District Bathinda and is the daughter of Bharpoor Singh. Even in the ration card and the revenue records, her name is reflected as daughter of Bharpoor Singh. Mutation No.3516 had been sanctioned in favour of respondent No.2 being natural daughter of Bharpoor Singh and mutation No.10456 had also been sanctioned in her favour being natural daughter of Gurdial Singh. It is not possible that mutation in respect of different properties belonging to two different persons is sanctioned in favour of one legal heir because it is a fact that one person cannot be legal heir of two fathers.

5. Learned counsel for the appellant further submits that along with the appeal, the appellant has also filed an application under Order 41 Rule 27 read with Section 151 CPC for leading additional evidence, but without disposing of the same, the appeal was decided. He submits that the appellant wants to prove the documents in support of the fact that respondent No.2 is the daughter of Bharpoor Singh son of Hardev Singh and she is married to Sarabjit Singh, resident of Village Raipur, Tehsil

and District Fazilka. She was born on 16.02.1977 and was got admitted in Government Primary School, Lalton Kalan, District Ludhiana, through her relative/guardian Bhupinder Kaur. The appellant wants to examine the witness from the Education Department and Chowkidar of Village Lalton Kalan, District Ludhiana, along with his register containing the entry of date of birth of Jasjeet Kaur. Apart from said documents and witnesses, he also wants to examine the official witness from the office of Finance Commissioner, Chandigarh along with record bearing memo No.27/33/2012-MB4/5720, dated 09.05.2014 and wants to summon the record of the Court of learned Kuldeep Singh Vaid, Collector-cum-Additional Deputy Commissioner, Ludhiana, to prove on record the order dated 05.10.2015, vide which, mutation in favour of respondents was cancelled.

6. No one put in appearance on behalf of respondent No.1 despite service.

7. Learned counsel for respondent No.2 submits that respondents have proved revocation deed dated 26.09.1986, Ex.D1. Balwinder Singh, Deed Writer of revocation deed, was examined as DW1. Even the Sub-Registrar, who attested the said revocation deed, namely, Surinder Mohan Sharma, was examined as DW6, who deposed that at the relevant time, he was posted as SDM, Pathankot and revocation deed was presented before him by Gurdial Singh, who was in sound disposing mind and signed said deed after admitting the contents

thereof. Learned counsel further submits that since the Will dated 13.03.1984 itself has been cancelled vide revocation deed dated 26.09.1986, he has no claim over the suit property. During the lifetime of Gurdial Singh, the appellant tried to encroach upon the land of Gurdial Singh and the matter was reported to the police. The police warned him not to interfere in the land of Gurdial Singh and that writing is placed as Ex.D24. He further submits that the fact regarding adoption of respondent No.2 was duly proved by Hardev Singh, DW3, natural grandfather; DW4-Surinder Kaur, *bua*, of defendant No.2, who were present at the time of adoption ceremony. DW10-Amarjit Kaur, who is the natural mother of respondent No.2, clearly proved that Gurdial Singh and Bhupinder Kaur adopted her daughter.

8. I have heard the submissions of learned counsel for the appellant and have gone through the file.

9. While deciding the first appeal, the learned Appellate Court failed to take note of the pending application dated 10.07.2014 under Order 41 Rule 27 read with Section 151 CPC and also failed to decide whether additional evidence could be allowed to be led in evidence. Whenever any application under Order 41 Rule 27 CPC is filed, same is required to be decided. Without deciding the same, appeal could not be disposed off. In the instant case, the learned Appellate Court without deciding the application under Order 41 Rule 27 CPC decided the appeal.

Under such circumstances, the judgment passed by the learned appellate Court deserves to be set aside.

10. In case *Jatinder Singh and another Versus Mehar Singh, (2009) 17 Supreme Court Cases 465*, the application for additional evidence under Order 41 Rule 27 CPC was not decided by this Court. The Hon'ble Supreme Court set aside the judgment passed by this Court in Second Appeal and remitted it back to this Court for a decision afresh in the Second Appeal alongwith the application for additional evidence.

11. In view of above discussions but without commenting on the merits of the case, the judgment passed by the learned first Appellate Court is hereby set aside and the case is remanded back to the learned Appellate Court to decide the application filed by the appellant-plaintiff and thereafter, decide the appeal afresh in accordance with law.

12. Present appeal stands allowed accordingly.

13. Parties are directed to appear before the learned Appellate Court i.e. before the court of learned Additional District Judge, Ludhiana on 14.03.2024.

14. Pending application, if any, shall also stand disposed of.

**(GURBIR SINGH)
JUDGE**

February 13, 2024
sanjeev

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No