



RSA No.2512 of 2023 (O&M)

S. No.114

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2512 of 2023 (O&M)

Date of Decision: 21.10.2024

Nand Lal and another

.....Appellants

Vs.

Tarsem Lal and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Ms. Mehar Bedi, Advocate for Mr. Vivek Thakur,
Advocate for the appellants.

DEEPAK GUPTA, J.

Suit for declaration, permanent injunction and possession regarding property in dispute filed by the plaintiffs (*appellants herein*) was dismissed by the trial Court on 19.12.2019. Appeal filed by the plaintiffs has been dismissed by the First Appellate Court of learned District Judge, Kapurthala on 23.02.2023. Against these concurrent findings recorded by the Courts below, the present Regular Second Appeal has been filed by the plaintiffs.

2. The contention raised by learned counsel for the appellants is that evidence on record has not been properly appreciated.

3. On perusal of the paper book, it emerges that dispute pertains to the estate of one Amar Nath. Appellants, respondents No.1 and respondents No.2 to 7 are the natural legal heirs of said Amarnath. Plaintiffs claimed 1/8th share in the suit property on the basis of natural succession;

**RSA No.2512 of 2023 (O&M)**

whereas, defendant No.1 – Tarsem Lal relied upon a Will dated 23.7.1980, regarding which Mutation No.917 dated 30.09.1996 was sanctioned.

Defendant also referred about a compromise decree dated 21.02.2012.

4. Both the Courts below found merit in the stand taken by the defendants. It has been found by the Courts below that though plaintiffs sought declaration to the effect that compromise decree dated 21.02.2012 was not binding upon them but had failed to discharge onus in this regard. It was noticed further that though they also alleged that Amar Nath never executed any Will dated 23.07.1980 but no relief was claimed regarding that Will or in respect of Mutation No.917 sanctioned on the basis of that Will. Learned First Appellate Court also observed that though objection had been raised that no specific issue was framed regarding the validity of the Will dated 23.07.1980 but both the parties were well aware about their pleadings and had led the evidence accordingly. It was found further that the Will propounded by defendant No.1 was more than 40 years old document and had been duly proved on record. It will be relevant to reproduce the observations made by the Appellate Court in this regard:-

“28) Further as discussed above, the compromise dated 21.02.2012 was never proved before the learned lower court and further even the will dated 23.07.1980 and mutation No.917 were never challenged but the parties have led the evidence on the will. As discussed above though the learned counsels for the appellants have raised much hue and cry before this court that the will dated 23.07.1980 was never proved as per the requirement under law but this court is of the view that in this regard, the present respondents before the learned lower court had got examined

DW4 Jagtar Singh, Registration Clerk in the Tehsil office, Kapurthala, who

**RSA No.2512 of 2023 (O&M)**

produced the second original will dated 23.07.1980 and this witness had categorically stated that this will bears Wasika No.67 and was executed by Amar Nath son of Ralla Ram, resident of village Wadala Kalan, Tehsil and District Kapurthala and further proved the certified copy of the will dated 23.07.1980 as Ex.DW4/1 on the record. This will dated 23.07.1980 is more than 40 years old document. Admittedly all the witnesses of the will and the Deed Writer namely Malkiat Singh had expired and in this regard as discussed above, the present respondents had got examined DW5 Narinderpal Singh Deed Writer, who had categorically stated that will dated 23.07.1980 was scribed by his father Malkiat Singh, who had died on 21.04.2008 and further this witness proved the signatures of his father on this will as Ex.DW5/1 and also proved the entry at serial No.837 dated 23.07.1980 made by his father in his original register and further proved the copy of the same as Ex.DW5/2. Admittedly Bikram (present respondent No.3) brother of the present appellants and respondents No.4 to 7 had filed one suit for joint possession to the extent of 1/8th share and for permanent injunction against present respondent No.1 and present appellants were also made party and in that suit, one Panchayati compromise was effected in which and as discussed earlier, it was mentioned that present respondent No.1 Tarsem Lal is residing in England for the last 42/43 years and he has been sending money from England and out of the those funds, 05 acres of land was purchased and earlier the said land was in the name of his father Amar Nath and after his death, Amar Nath had executed the will in favour of his elder son Tarsem Lal regarding the said land and Tarsem Lal is the owner of the same. The present respondents then placed this document Ex.R1 before the learned lower court and then had put his document at the time of cross-examination of

**RSA No.2512 of 2023 (O&M)**

the present appellant Nand Lal (PW2) and then the present appellant Nand Lal had admitted his signatures on this compromise as Ex.R1. Thus, this document Ex.R1 which bears the signatures of present appellant Nand Lal clinches the matter regarding the admission of the will executed by Amar Nath in favour of respondent No.1. So once appellant No.1 Nand Lal had admitted his signatures on document Ex.R1 in which it stands categorically mentioned that will was executed by Amar Nath in favour of his elder son Tarsem Lal and Tarsem Lal is the owner of the suit property, as such, it does not lie in the mouth of appellants that they are entitled to 1/8th share each in the suit property after death of Amar Nath. The Hon'ble High Court of Punjab and Haryana High Court, Chandigarh in the authority "2016(2) PLR at page 701 in the case titled as Ashok Kumar Vs. 2016(2) PLR at page 701 in the case titled as Ashok Kumar Vs. Surinder Kumar and others" Surinder Kumar and others", had held that where there is a claim of , had

held that where there is a claim of the share in the suit property suit property on the basis of natural succession and challenged validity of will, it was held that where appellant admitted the correctness of the will in the mutation proceedings, he cannot be allowed to blow both hot and cold in the same breath and open challenge to the will in dispute. The supra authority is clearly applicable in the case in hand because as discussed above, the present appellant Nand Lal while stepping into the witness box as PW2 had admitted the document Ex.R1 which bears his signatures and in which the present appellant and the other legal heirs of Amar Nath had admitted that Amar Nath had executed the will in favour of present respondent No.1 Tarsem Lal and he is owner of the suit property.

**RSA No.2512 of 2023 (O&M)**

29) Further admittedly Amar Nath who was earlier owner of the suit property died in the year 1988. Thereafter on the basis of the will dated 23.07.1980, the mutation No.917 dated 30.09.1996 was sanctioned in favour of present respondent No.1 and the document of the same is Ex.DW1/1 and the same was got proved by the present respondents by examining DW1 Rajiv Khosla, Naib Kanungo in the office of Deputy Commissioner, Kapurthala. Going through this mutation No.917 Ex.DW1/1 again it was admitted that all the legal heirs of Amar Nath had no objection regarding sanctioning of mutation in favour of Tarsem Lal. Even Paramjit Singh the then Nambardar of the village attested the same and then mutation No.917 was sanctioned in favour of Tarsem Lal. The present suit was filed by the present appellants before the learned lower court on 12.09.2012 i.e. after 32 years of the execution of the will and after 16 years of the sanctioning of the mutation No.917. It cannot be expected from prudent men like appellants that they never knew the sanctioning of the mutation No.917 dated 30.09.1996 in favour of respondent No.1. Further the present respondent before the learned lower court had got examined DW2 Sh. Rajesh Kumar, Patwari who proved the jamabandis of the year 1980-1981, 1985-1986, 1990-1991, 1995-1996, 2000-2001, 2005-2006, 2010-2011 as Ex.DW2/1 to Ex.DW2/7. In the jamabandi of the years 1990-1991 Ex.DW2/3 and 1995-1996 Ex.DW2/4, it stands clearly mentioned that mutation No.917 has been sanctioned in the name of present respondent No.1. Tarsem Lal. Admittedly then after sanctioning of the mutation No.917 in favour of present respondent No.1 Tarsem Lal, he then sold part of the suit property to present respondent No.2 M/s Excellence Builders, Kapurthala vide sale deed dated 29.02.2012 and thereafter mutation was

**RSA No.2512 of 2023 (O&M)**

also sanctioned in their favour. Thereafter Tarsem Lal being owner of the suit property sold the entire suit property to different persons through registered sale deeds and the same stands reflected in the jamabandi of the year 2005-2006 Ex.DW2/6 and in the jamabandi of the year 2010-2011 Ex.DW2/7 on the record.”

5. Not only above, learned First Appellate Court further observed that though the suit had been filed in September, 2012, but the appellants had simply placed on record copy of Jamabandi for the year 2000-2001 and intentionally concealed the later jamabandis for the years 2005-2006 and 2010-2011 because in case they had produced the later jamabandis, the same would have revealed that suit property had already exchanged hands between different persons. In this regard, it will be relevant to reproduce the observations and findings made by the First Appellate Court in para No.30 which reads as under:-

“30) As discussed above, the suit was filed by the present appellants on 12.09.2012 and at the time of filing of the suit, the present appellants then simply placed on record the copy of the jamabandi of the year 2000-2001 and never placed the latest jamabandis of the year 2005-2006 and 2010-2011. Had the present appellants placed the above jamabandis of the year 2005-2006 and 2010-2011, names of the vendees would have been reflected there but it apparently shows that appellants wanted to conceal regarding the selling of the property by Tarsem Lal to different persons. Further the matter do not end up here only. Thereafter the entire property was purchased by present respondent No.2 M/s Excellence Builders, Kapurthala from the different vendees and then they sold the same to

**RSA No.2512 of 2023 (O&M)**

different persons vide different sale deeds and even the mutations were also sanctioned in the names of different persons regarding the suit property after carving out the colony. This fact has also been deposed by DW8 Sahil Kaura being one of the partner of the present respondent No.2.

Rather this witness has categorically deposed that after purchasing the property from different persons, their firm applied for CLU which was granted and regarding this, this witness proved document Annexure-14 on the record and thereafter setting up the residential colony and the documents of the same is Annexure15 on the record. Further this witness proved the drafts giving license as Annexure-17 to Annexure-21 and also proved the certificate given by Punjab Pollution Control Board as Annexure-22 and receipt issued by PUDA as Annexure-23 and certificate of registration issued by PUDA as Annexure-24. Further this witness also proved the certified copies of the sale deeds executed by the partners of present respondent No.2 in favour of different purchasers of the plots and further proved the same as Annexure-25 to Annexure-38 on the record. Even this witness proved the Annexure-39 i.e. copy of jamabandi showing the mutations and the ownership in the revenue record.”

6. It is, thus, evident that apart from the fact that Will relied by respondent No.1 was duly proved, appellants were guilty of concealment of material facts and the suit was also bad for non-joinder of the necessary parties.

RSA No.2512 of 2023 (O&M)

7. In view of the afore-said facts and circumstances, this Court does not find any substance so as to interfere in the well – reasoned concurrent findings of facts as recorded by the Courts below. No substantial question of law is found to be involved.

Dismissed.

October 21, 2024

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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No