
(2016) 03 P&H CK 0313
In the Punjab And Haryana At Chandigarh
Case No : RSA-1786-2010 (O&M)

Baljinder Kaur and others

APPELLANT

Vs

Paramjit Kaur and others

RESPONDENT

Date of Decision : 15-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Evidence Act, 1872 — Section 68
Succession Act, 1925 — Section 63C

Citation : (2016) 1 LAR 694

Hon'ble Judges : Mr. Amit Rawal, J.

Bench : Single Bench

Advocate : Mr. Mohammed Yousuf, Advocate, for Mr. M.S. Sindhu, Advocate and Mr. R.L. Batta, Senior Advocate with Mr. J.S. Saggi, Advocate, for the Appellant; Mr. Aman Pal, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Amit Rawal, J. (Oral) - CM-1501-C-2011

1. In view of reasons assigned in the main order, the application filed under Order 1, Rule 10 of the Civil Procedure Code is allowed as they have right, title and interest in the property by virtue of the sale deed after verifying the revenue record and they are bona fide purchasers as per the provisions of Section 41 of the Transfer of Property Act.

2. CM stands disposed of.

RSA-1786-2010

3. The appellants-defendants are aggrieved of the judgment and decree of the lower Appellate Court, whereby the suit of the respondents plaintiffs claiming succession to the estate of Wadhawa Singh, father of the plaintiff(s), has been decreed.

4. The respondent(s)-plaintiff(s) instituted a suit bearing No.42 of 1999 claiming declaration and permanent injunction on the ground that the sale deed bearing No.1250 dated 14.07.1998 executed by Ram Singh-defendant No.1. in favour of the defendant Nos.2 to 5 being illegal, fictitious and fraudulent without consideration, much less, mutation bearing No.1313 being illegal and the sale deed executed by Ram Singh-defendant No.1 in favour of the defendant Nos.6 to 7 in respect of land measuring 14 kanals and mutation No.1308 sanctioned on the basis of the said sale deed being illegal, null and void and claimed 7th share out of land measuring 192 kanals situated in Village Haryau Kalan, on the ground that Wadhawa Singh son of Mara Singh was the owner in possession of the suit land as he died 20 years back intestate, leaving behind widow Darshan Kaur, daughter Surjit Kaur, son Ram Singh and daughter Paramjit Kaur-plaintiff. Ram Singh-defendant No.1, in connivance with Lambardar Mela Singh got entered and sanctioned mutation No.1047 regarding inheritance of Wadhawa Singh in his favour on the basis of the unregistered Will dated 15.09.1981, the alleged Will being fabricated, fictitious and forged document. An application was filed for declaring the mutation of inheritance being illegal and thus being contested was referred to Assistant Collector Grade-I, Samana, but the same was sanctioned on 29.09.1988. Though the mutation is not a document of title and does not confer any right, realising the factum of sale deed dated 14.07.1998, the suit aforementioned was filed. The aforementioned suit was contested by the defendants on the ground that the suit was barred by law of limitation, much less, estoppel on the ground that on mutation Ex.D-12, the respondent-plaintiff appended the signatures, viz-a-viz the inheritance of Wadhawa Singh, in favour of the defendant No.1- Ram Singh. Even otherwise, they were aware of the factum of mutation in view of the pleadings in the plaint, no explanation has come forth in filing the suit in the year 1999. The cause of action allegedly accrued in the year 1999 on the basis of the sale deed as challenged is nothing, but an act of greed. The trial Court on the basis of the pleadings of the parties framed the additional issues and on the basis of the documentary evidence brought on record, observed that the order dated 29.09.1988, passed by the Revenue Authorities, Surjit Kaur daughter of Wadhawa Singh, and his widow Jasbir Kaur, affixed their thumb impressions, and accordingly, dismissed the suit. However, the lower Appellate Court on the basis of oral and documentary evidence, found there were seven suspicious circumstances in the Will. The Will has not been proved and thus, held deceased Wadhawa Singh died intestate, therefore, the respondent(s)-plaintiff(s) is entitled 7th share of the property, in these circumstances, the appeal has been filed.

5. Mr. Mohammed Yousuf, Advocate for Mr. M.S. Sindhu, Advocate, learned counsel appearing on behalf of the appellants-defendants submits that the Will has been proved through the testimony of the attesting witness, namely, DW-6 Mohinder Singh, who deposed the execution of the Will, much less, appending of his thumb impressions/signatures on the instructions of Wadhawa Singh-testator and to prove the contents of the Will, made all the formalities in the same

manner. Revenue record has been proved through the testimony of the DW-3 Chotta Singh. The lower Appellate Court has committed illegality and perversity in not accepting the document Ex.D-12, for the reason, that DW-3 Chotta Singh, Assistant Kanungo did not support the case of the defendants, viz-a-viz the mutation, and appending of thumb impressions/signatures on the back of the mutation (Ex.D-12), whereas the appellants-defendants have failed to lead any evidence. PW-3-Lal Singh, Handwriting and Finger Prints Expert, who, in his cross-examination, admitted that he did not inspect the original Will and took the signatures disputed, from the photocopy. No explanation has come forth in challenging the mutation of 1988 in the year 1999 and thus, urges to this Court to formulate the following substantial questions of law for determination:-

1. Whether the unregistered Will dated 15.09.1981 has been proved in accordance with the provisions of Section 68 of the Indian Evidence Act and Section 63-C of the Indian Succession Act.

2. Whether the judgment of the lower Appellate Court suffers from illegality and perversity which is based upon the misreading and mis-appreciation of the documentary evidence.

6. Mr. Aman Pal, learned counsel appearing on behalf of the respondent(s)-plaintiff(s) has heavily relied upon the findings of the lower Appellate Court by submitting, that the Will did not contain the correct particulars of the widow of the deceased Wadhawa Singh, her name was Jasbir Kaur, whereas as per the Voter Card, her name was Darshan Kaur. No evidence had come on record that sufficient amount has been given to his widow, much less, no reasons have given excluding her. The respondent(s)-plaintiff(s) were minor at the time of the mutation and therefore, on attaining the majority, filed the suit in the year 1999. This fact was categorically stated in her statement, which has been approved by the lower Appellate Court. The reasons assigned by the lower Appellate Court are based upon the appreciation of oral and documentary evidence being the last Court of fact, rightly so, the judgment and decree of the trial Court has been set aside and thus, prays that there is no merit in the appeal, much less, no substantial question of law arises for determination.

7. Mr. R.L. Batta, learned Senior Counsel assisted by Mr. J.S. Saggi, learned counsel appearing on behalf of the applicant(s) submits that the applicant(s) in the application bearing No.1501-C of 2011, sought to be impleaded as respondent Nos.6 and 7 under the provisions of Order 1, Rule 10 CPC, are essential and necessary party as they have right, title and interest by virtue of the sale deed challenging in the suit being a bona fide purchaser for the valuable consideration. At the time of the purchase of the property, neither suit was pending nor title of the property was reflected in the name of the beneficiaries of the Will.

8. I have heard the learned counsel for the parties and appraised the paper book and seen the record of the lower Appellate Court, which has been referred to

during the course of the argument and of the view that there is a merit in the appeal, for, the reasoning assigned by the lower Appellate Court in not relying upon the document Ex.D-12 is based upon the conjectures inasmuch as that DW-3 Chotta Singh, categorically mentioned that mutation was sanctioned in his presence. He had brought the record of the mutation proceedings. No suggestions or questions was put to him, viz-a-viz, non- appending of the thumb impressions on the back of the mutation. The respondent(s)-plaintiff(s) have failed to lead any evidence to belie the signatures on the back of the mutation (Ex.D-12), vide which mutation was effected in the name of the Ram Singh, who is none-else, but the son of Wadhawa Singh since deceased. The Handwriting Expert did not examine original Will and therefore, his report/statement could not be taken into consideration. The respondent(s)-plaintiff(s) failed to prove that she was minor at the time of the mutation, except her self-serving statement. There is no corroborative evidence which has been brought on record, much less, even any relative or villager or Chowkidar has been examined to prove the date of birth. The lower Appellate Court has tread on arena of the surmises and conjectures by not appreciating the aforementioned facts. On the contrary, the Will has been proved through the testimony of the DW-6 Mohinder Singh, Lumberdar, his statement is as per the provisions of Section 63-C of the Indian Succession Act. One attesting witness of the Will, is sufficient to prove the ingredients of Section 68 of the Indian Evidence Act. In my view, the respondent(s)- plaintiff(s) failed to discharge the onus as enshrined under Section 101 of the Indian Evidence Act. No explanation has come forth in not challenging the mutation, having acquired the notice of the same, for a period of 10 years.

Probably under the guidance of the legal person chosen to file the suit in the year 1999, when the property exchanged in hand vide sale deed dated 14.07.1998.

9. The aforementioned reasoning of mine is sufficient to belie the claim of the respondent(s)-plaintiff(s), accordingly, the judgment and decree of the lower Appellate Court is hereby set aside and that of trial Court is restored. The suit stands dismissed. Substantial questions of law noticed above are answered in favour of the appellants-defendants and against the respondent(s)- plaintiff(s).

10. With the aforesaid observations, the appeal stands allowed.