(1990) 02 P&H CK 0008

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1731 of 1978

Gurbaksh Singh		APPELLANT
	Vs	
Jagat Singh and Others		RESPONDENT

Date of Decision: Feb. 16, 1990

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 25

Hon'ble Judges: G.C. Mittal, J

Bench: Single Bench

Judgement

G.C. Mittal, J.

In order to appreciate the controversy, the following pedigree table would be useful to keep in mind.

Chanan Singh		Smt. Bholi
Gurbaksh Singh	Jagat Singh	Smt. Prito

Chanan Singh owned 29 Kanals 4 Marias of agricultural land and after his death Smt. Bholi, Gurbaksh Singh and Smt. Prito filed a civil suit for declaration aginst Jagat Singh and his two sons to the effect that the Plaintiffs are owners in possession of 3/4th of the estate left by Chanan Singh by way of inheritance and for permanent injunction not to interfere in their peaceful possession. In the alternative, it was prayed that in case the Plaintiffs are not found to be in possession, they be granted a decree for joint possession of their share.

2. In the written statement, the sons of Jagat Singh set up a will dated 20-2-1972 in their favour arid pleaded that they had inherited the entire estate left by their grand-father under the will. In replication, the Plaintiffs denied the execution, genuineness and validity of the will.

3. On the contest of the Parties, the following crucial issue was framed regarding the will:

Whether Chanan Singh, deceased, executed a valid will, according to law in favour of Defendants No. 2 and 3 on 20-2-1972? O.P.D.

4. There were other issues also framed in the case and of all those issues, the burden of proof was placed on the Plaintiffs. The Plaintiffs in affirmative closed their evidence on 11-6-1975 and 5-11-1976 was the date given for the Defendants'' evidence and for rebuttal. The next date was 11-6-1976 on which date the Defendants made the statements and closed the evidence. The trial Court proceeded to hear the arguments on the same day and decided the crucial issue on Will against the Plaintiffs and dismissed the suit. The Plaintiffs remained unsuccessful before the district Court and this is their second appeal.

5. The learned Counsel for the Plaintiffs-Appellants has urged that serious prejudice has been caused to his clients inasmuch as no reasonable opportunity was granted to his clients for leading evidence in rebuttal. Unless they had known as to what evidence is led by the Defendants, who had set up the Will, no evidence in rebuttal could be produced and as. opportunity was granted to the Defendants, after the Plaintiffs had closed their evidence in affirmative, similarly on the issue of Will it was the duty of the Defendants to lead evidence in affirmative and roasonable opportunity had to be granted to the Plaintiffs to lead evidence in rebuttal which was denied as is evident from the facts enumerated above.

6. On a consideration of this matter, I am of the view that the Plaintiffs did not have reasonable opportunity to produce evidence in rebuttal to the evidence led by the Defendants about the Will set up by them.

7. The facts of the case are such in which the main-issue was regarding the Will and it were the Defendants who were to lead evidence first and thereafter reasonable opportunity had to be granted to the Plaintiffs to lead evidence in rebuttal. On 5-11-1976, the Defendants did not lead any evidence and short adjournment was granted for 11-11-1976 on which date the statements of the Defendants were recorded and after closing their evidence, the Plaintiffs were not given any date for leading their evidence and the Court proceeded to hear the argument''s and decided the case. This has clearly prejudiced the case of the Plaintiffs.

8. It cannot be disputed that in the estate of Chanan Singh, Smt. Bholi would have claim for maintenance as his wife and after his death as his widow and such a claim cannot be denied even by willing away the property. In the Will no provision was

made for her maintenance. Therefore, it was a fit case in. which opportunity deserved to be granted to the Plaintiffs to lead evidence in rebuttal.

9. Since the appeal has already remained pending in this Court for a long time, complete remand of the case will further delay the matter. Accordingly, the case is remmitted under Order 41, Rule 25 of the Code of Civil Procedure, to the trial Court to give opportunity to the Plaintiffs to lead evidence in rebuttal on issue of Will. After the Plaintiffs have led their evidence, the trial Court will hear arguments of the parties on the evidence already led and to be led now and give its report on the issue of Will. The report would be submitted by the trial Court to the District Judge, Jalandhar, who will hear the parties on the issue of Will and give his report.

10. The trial Judge will complete his part of the job within six months from the date of appearance of the parties before him and the learned District Judge shall complete his job within two months from the receipt of the file by him. The learned District Judge shall submit the entire record alongwith both the reports of the Court for disposal of the appeal.

11. The parties, through their counsel, are directed to appear before the trial Court on 9-4-1990. The Registry is directed to remit the records to the trial Court so as to reach there positively before 9-4-1990.