

(2011) 05 P&H CK 0315

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2070 of 2011 (O and M)

Gurnaib Kaur

APPELLANT

Vs

Achhra Singh and Others

RESPONDENT

Date of Decision: May 11, 2011

Citation: (2011) 163 PLR 389

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

CM No. 5786.C of 2011

1. For the reasons mentioned in the application which is accompanied by affidavit, delay of 15 days in refilling the appeal is condoned.

RSA No. 7070 of 2011

Plaintiff Gurnaib Kaur alias Naib Kaur having been unsuccessful in both the courts below has come up by way of instant second appeal.

2. Plaintiff alleged that she is daughter of Jeet Singh alias Surjit Singh. Defendants No. 2 and 3 are also daughter and son respectively of Jeet Singh whereas defendant No. is son of defendant No. 3. The plaintiff alleged that Jeet Singh was owner in possession of 1/10 share in the land measuring 214 bighas 16 biswas as mentioned in the plaint and on his death the same was inherited by plaintiff and defendants No. 2 and 3 in equal shares i.e. 1/3rd share each. However, inheritance mutation of Jeet Singh had been sanctioned in favour of defendant No. 1 only whereas defendant No. 1 had no right, title or interest in the suit land. The plaintiff accordingly sought declaration that she is owner in possession to the extent of 1/3rd share of 1/40 share of 214 bighas 16 biswas land in question and the revenue entries in favour of defendant No. I are liable to be corrected. The plaintiff also

sought decree for joint possession of the suit land along with permanent injunction.

3. Defendant No. 2 admitted that suit land was owned and possessed by Jeet Singh. It was, however, pleaded that Jeet Singh had only one son i.e. defendant No. 3 and only one daughter i.e. defendant No. 2. It was denied that plaintiff is daughter of Jeet Singh. It was pleaded that inheritance mutation of Jeet Singh has been rightly sanctioned in favour of defendant No. 1 who has become owner in possession of the suit land because Jeet Singh executed registered Will dated 1.12.1998 in favour of defendant No. 1. Plaintiff has thus no right, title or interest in the suit land. Various other pleas were also raised.

4. Defendant nos. 1 and 3 also pleaded similar version.

5. Learned Civil Judge (Junior Division), Rajpura vide judgment and decree dated 30.11.2009 dismissed plaintiff's suit First appeal preferred by plaintiff has been dismissed by learned Additional District Judge, Patiala vide judgment and decree dated 29.11.2010. Feeling aggrieved, the plaintiff has filed the instant second appeal.

6. I have heard learned counsel for the appellant and perused the case file.

7. In order to prove Will in question, defendants examined Bhag Singh Numbardar DW2 who is marginal witness of the Will. He has stated about due execution of the Will by Jeet Singh in favour of defendant No. 1 Achhra Singh and attestation thereof by two witnesses i.e. Bhag Singh and Sant Singh. Defendants have also examined Darshan Kumar, Deed Writer who scribed the aforesaid Will. He has also supported defendant's version regarding due execution of the Will by Jeet Singh. Bhagwan Singh Registry Clerk DW4 has also been examined to prove registration of the Will. The aforesaid evidence is sufficient to prove due execution of the Will by Jeet Singh in favour of defendant No. 1. The said evidence is very cogent and reliable and has not been shaken in any manner. Unimpeached evidence of attesting witness and scribe of the Will has been rightly found by the courts below to be sufficient to prove due execution of the Will. Concurrent finding recorded by the courts below in this regard is fully justified by the evidence on record and is supported by reasons. Registration of the Will further adds to its authenticity. Finding of the courts below regarding the Will is not shown to be illegal or perverse in any manner or based on misreading or mis-appreciation of evidence. Consequently, the said finding does not warrant interference in exercise of second appellate jurisdiction.

8. Learned counsel for the appellant vehemently contended that defendant No. 1 who is proponent of the Will has not stepped into witness box for which adverse inference should be drawn against him. The contention appears to be forceful on first blush but the contention has no merit. Defendant No. 1 himself was not present when the Will was executed and therefore, he could not make any statement from his own knowledge regarding the Will in question. Consequently, non-appearance of defendant No. 1 in the witness box does not give rise to any adverse inference

against him. In addition to it, defendant No. 3 who is none else but father of defendant No. 1 has stepped into witness box as DW1, It is not necessary that all the defendants should step into-witness box.

9. Learned counsel for the appellant also contended that in the Will there is no reference to the plaintiff. The Will cannot be discarded merely on this ground. It has come in evidence that Jeet Singh had two wives. Defendants No. 2 and 3 are issues from his first wife Bant Kaur whereas plaintiff is daughter of Jeet Singh from his second wife Dev Kaur. It has also come in evidence that marriage of Jeet Singh with Dev Kaur was performed during the life time of his first wife Bant Kaur and therefore, marriage of Jeet Singh with Dev Kaur was null and void. In these circumstances, non mentioning of the plaintiff in the Will is not sufficient to discard the Will.

10. For the reasons aforesaid, I find no merit in the instant second appeal. No question of law much less substantial question of law arises for adjudication in the instant second appeal. Accordingly, the appeal is dismissed in limine.