

Before Rakesh Kumar Jain, J.

GURMEL SINGH,—Appellant

versus

HARNEK SINGH AND OTHERS,—Respondents

R.S.A. No. 1537 of 1985

27th February, 2008

Code of Civil Procedure, 1908—Execution of will held to be not valid—Whether suit for possession on the basis of inheritance could have been dismissed by Courts below when Will set up by defendants to exclude plaintiff from natural succession held to be not valid—Held, no—Suit should have been decreed for possession on the basis of succession as property would revert back to owner after declaration of Will to be invalid enabling heirs to succeed—Appeal allowed.

Held, that once the Will has been held to be not validly executed by Ghamand Singh in favour of defendants No. 1 and 2, the suit of the plaintiff should have been decreed for possession on the basis of succession as the property of Ghamand Singh would revert back to him after the declaration of Will to be invalid enabling the heirs to succeed.

(Para 15)

H. S. Gill, Sr. Advocate with R. K. Dhiman, Advocate for the appellant.

Jaspal Singh, Advocate for Hemant Sarin, Advocate for respondents.

RAKESH KUMAR JAIN, J

(1) Plaintiff is the appellant in a suit for possession.

(2) In brief, the facts of the case are that one Ghamand Singh son of Deep Singh was the owner of the land in dispute. He had three sons, namely, Inder Singh, Joginder Singh and Karam Singh whereas defendants No. 1 and 2 are the sons of Inder Singh and defendants

No. 3 and 4 are sons of Joginder Singh, Defendants No. 5 and 6 Sher Singh and Kishan Singh are the vendees of land measuring 32 kanal 18 marlas by Gurcharan Singh son of Inder Singh (defendant No. 2),— *vide* sale deed Ex.D2 for a consideration of Rs. 46,000/-. The plaintiff brought the suit that he along with defendants No. 1 to 4 constituted a Joint Hindu Family of which Ghamand Singh was the Karta. All his three sons had died during his life time. Since the land in question was co-parcenary property, therefore, after the death of Ghamand Singh, plaintiff became entitled to 1/3rd share and the sale deed of the suit land in favour of defendants No. 5 and 6 by defendant No. 2, is illegal and not binding upon his rights.

(3) Defendants contested the suit and raised preliminary objections that the suit is bad for non joinder of necessary parties and it is barred by principles of *res judicata*. It was denied that Gurmel Singh was son of Karam Singh and there was any Joint Hindu Family. It was also denied that suit land was co-parcenary property. It was claimed that defendants No. 5 and 6 have purchased the land after due enquiries, therefore, they are *bona fide* purchasers. It was also asserted that Harnek Singh and Gurcharan Singh have become the owners of the land through a Will. The entire claim of the plaintiff was denied.

(4) On the pleadings of the parties, the trial Court framed the following issues :—

- “(1) Whether the plaintiff is the son of Karam Singh son of Ghamand Singh ? OPP.
- (2) Whether the suit is bad for non joinder of necessary parties ? OPD.
- (3) Whether the suit is barred by *res judicata* ? OPD.
- (4) Whether the suit is not maintainable in the present form as alleged in para 5 of the preliminary objections of the written statement ? OPD.
- (5) Whether defendants No. 5 and 6 are *bona fide* purchaser ? If so, its effect ? OPD 5 and 6.

(6) Whether Ghamand Singh deceased executed a valid Will dated 20th January, 1968 in favour of defendants No. 1 and 2 ? If so, its effect ? OPD 1 and 2.

(7) Relief.”

(5) Both the parties led oral as well as documentary evidence. The trial Court decided issues No. 1 to 4 in favour of the plaintiff and issues No. 5 and 6 against him.

(6) The first Appellate Court recorded that defendants did not assail the findings of trial Court on issues No. 1 to 4, which were recorded in favour of the plaintiff, therefore, that were affirmed and the whole dispute carved down to the findings on issues No. 5 and 6.

(7) The first Appellate Court, affirmed the findings of trial Court on issue No. 5 and held that the sale of land measuring 32 kanal 18 marlas of Ghamand Singh in favour of defendants No. 5 and 6,— *vide* Ex.D2 for a consideration of Rs. 46,000/- is protected as defendants No. 5 and 6 were held to be the *bona fide* purchasers. However, finding on issue No. 6 pertaining to Will (Ex.D1) was reversed by holding that “*In the light of the above enumerated circumstances, it cannot be stated that Ghamand Singh has executed a valid Will in favour of defendants No. 1 and 2. As such, the findings of the trial Court on issue No. 6 are reversed.*”

(8) In view of reversal of finding on issue No. 6, the appeal was dismissed,—*vide* judgment and decree dated 8th February, 1985.

(9) Aggrieved against the judgment and decree, the plaintiff filed the second appeal before this Court. On 13th August, 1985, this Court passed the following order :—

“Admitted as against respondents No. 1 to 4. The appeal against respondents Nos. 5 and 6 in dismissed in limine.”

(10) From the above order, it clearly transpires that appeal against respondents No. 5 and 6 who were the *bona fide* purchasers, was dismissed and consequently finding on issue No. 5 was also maintained by this Court. Thus, the only dispute is left in respect of issue No. 6 pertaining to Will.

(11) Shri H. S. Gill, Sr. Advocate for the appellant has vehemently argued that since the first Appellate Court has itself reversed the finding on issue No. 6 holding that it cannot be said that Ghamand Singh had executed a Will in favour of respondent-defendants No. 1 and 2, the suit should have been partly decreed in so far as that issue was concerned because the consequence of that finding pertaining to Will would remove eclipse of testamentary disposition of his property by Ghamand Singh and he should have been treated to have died intestate giving right of inheritance to his legal heirs at the time when he died. In such a situation, the suit of the plaintiff should have been decreed to the extent of 1/3rd as claimed.

(12) Learned counsel for the respondents has fairly conceded that no appeal or Cross-objections has been filed against the findings recorded by the first Appellate Court on issue No. 6.

(13) Nothing has been argued even before this Court on behalf of the respondents.

(14) Thus, I find that substantial question of law involved in this appeal is as to “whether the suit for possession on the basis of inheritance could have been dismissed by the Court below when the Will set up by the defendants to exclude the plaintiff from natural succession, was not held to be valid.”

(15) In my opinion, once the Will has been held to be not validly executed by Ghamand Singh in favour of defendants No. 1 and 2, the suit of the plaintiff should have been decreed for possession on the basis of succession as the property of Ghamand Singh would revert back to him after the declaration of Will to be invalid enabling the heirs to succeed.

(16) In view of the aforesaid, the present appeal is allowed. Judgments and decrees of the Courts below are set aside and suit of the plaintiff against defendants No. 1 to 4 is decreed as prayed for. The parties are left to bear their own costs.