



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA-3730-2019 (O&M)
Reserved on : 05.02.2025
Pronounced on : 11.02.2025**

Neelam Khanna & Anr.Appellants

VERSUS

Naresh Khosla & Ors.Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sandeep Arora, Advocate for the appellants.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellants challenging the judgments and decrees dated 25.05.2015 and 11.04.2019 passed by the Trial Court and the First Appellate Court, respectively, dismissing the suit filed by them.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellants herein filed a suit for joint possession and permanent injunction. The parties are the sons and daughters of Girdhari Lal. As per the plaintiff-appellants the land and houses subject matter of the suit were ancestral properties. Nihal Singh was the owner and after him the same were inherited by Piare Lal and then by Girdhari Lal. According to the plaintiff-appellants on the death of Girdhari Lal on 29.12.2005, the suit properties should have gone to his sons and daughters as per their shares, but the defendant-respondents got the suit properties recorded in their names on the basis of a Will dated 14.01.1992 purportedly executed by Girdhari Lal. It was their stand that Girdhari Lal could execute the Will only qua his own share in the

ancestral suit properties and not the entire suit properties. Since Girdhari Lal had 9 children and every child had a share in the ancestral suit properties, Girdhari Lal's Will could be only for his 1/10 share. Hence, the suit. Defendant-respondent Nos.1 and 2 filed a written statement and took the stand that the suit properties were not ancestral or joint Hindu family properties, but the self acquired properties of Girdhari Lal. Since Girdhari Lal was the sole owner of the suit properties he had executed a registered Will dated 14.01.1992. After the death of Girdhari Lal the mutation was sanctioned in favour of the beneficiaries on the basis of the said registered Will. The other defendant-respondents filed replies on the same lines as taken by defendant-respondent Nos.1 and 2.

3. On the basis of the pleadings of the parties the following issues were framed :

1. Whether plaintiff is entitled to joint possession of land measuring 26 Kanal 12 Marlas as prayed for ? OPP
2. Whether plaintiff is entitled to permanent injunction as prayed for ? OPD
3. Whether present suit is not maintainable in its present form ? OPD
4. Whether suit is bad for non-joinder and mis-joinder of necessary parties ? OPD
5. Whether plaintiff has not come to the court with clean hands and is estopped by his own act and conduct to file the present suit ? OPD

6. Whether site plan is not correct produced by plaintiff

? OPD

7. Whether suit is barred by the limitation ? OPD

8. Relief.

4. The Trial Court vide judgment and decree dated 25.05.2015 dismissed the suit. Aggrieved by the same an appeal was preferred by the plaintiff-appellants which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 11.04.2019. Hence, the present regular second appeal by the plaintiff-appellants.

5. The learned counsel for the plaintiff-appellants would contend that both the Courts have erred in dismissing the suit. It is urged that the suit properties were ancestral joint Hindu family properties and thus the plaintiff-appellants had a share in them by birth and thus Girdhari Lal could not have bequeathed the entire suit properties. It is contended that even if the Will is to be taken into consideration the same could only be qua the 1/10 share of Girdhari Lal in the suit properties.

6. Heard.

7. In the present case both the Courts have found that the plaintiff-appellants have not been able to prove that the suit properties were ancestral property. Apart from the oral testimonies, the plaintiff-appellants could not establish from any cogent documentary evidence that the suit properties were ancestral property. No documentary evidence has been pointed out to show that the suit properties were coming through four male lineal descendants. The counsel for the plaintiff-appellants has not been able to show how the khasra

numbers shown in the revenue record tally with the khasra numbers mentioned in the plaint. Learned counsel submitted that excerpts had been produced by the plaintiff-appellants which proved the ancestral nature of the suit properties. However, it is settled law the revenue excerpt is no part of the record of rights and does not carry any presumption of correctness. It is an extract or synopsis of entries collected from diverse places and its value depends on how truly it has reproduced the original entries.

8. Coming to the Will of Girdhari Lal, the said Will was attested by two attesting witnesses who had died when the suit was tried. The signatures of the two attesting witnesses were proved by their sons DW-1 and DW-2. The scribe also deposed as DW-3. The said Will of Girdhari Lal is a registered Will. No suspicious circumstances surrounding the Will have been made out for this Court to discard the same. There is no material available on the record to make out a case for decreeing the suit of the plaintiff-appellants. No other point has been argued.

9. In view of the above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

11.02.2025

Ankur

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No