

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 1391 OF 2003

HARBANS KAUR (DEAD) THROUGH LRS.

Appellant (s)

VERSUS

DALJINDER SINGH @ LAKHVINDER SINGH & ORS

Respondent(s)

(With office report)

Date: 22/07/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU
HON'BLE MR. JUSTICE T.S. THAKUR

For Appellant(s) Mr. Amit Yadav, Adv.
Mr. Shishir Deshpande, Adv. for
Ms. Sujata Kurdukar, Adv.

For Respondent(s) Mr. Neeraj Kr. Jain, Sr. Adv.
Ms. Neelam Kalsi, Adv. for
Mr. Vimal Chandra S. Dave, Adv.

UPON hearing counsel the Court made the following
O R D E R

The Appeal is allowed. No costs.

(Rajesh Dham)
Court Master

(Indu Satija)
Court Master

(signed order is placed on the file)
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

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O R D E R

Heard the learned counsel for the parties.

This Appeal, by special leave, has been filed against
the impugned judgment of the High Court of Punjab & Haryana

dated 04.01.2001.

The facts of the cases have already been set out in detail in the impugned judgment of the High Court and hence we are not repeating them here.

The owner of the property in dispute was said to be one Khazan Singh. The trial court on the basis of the pleadings of the parties framed the following issues :-

- "1. Whether Khazan Singh executed a valid will dated 13.05.1968 in favour of defendant No. 1? If so its effect.
2. Whether the plaintiff is in possession of the suit land?
3. Whether Khazan Singh executed a valid will dated 17.12.1970 in favour of defendant Nos.2 to 6?
4. If issue Nos. 1, 2 and 3 are not proved, whether the plaintiff is entitled to the possession of the suit land?
5. Relief."

On the basis of evidence, the trial court recorded a finding of fact that the said will of Khazan Singh was not genuine. That finding of fact was confirmed by the lower appellate court by its order dated 20.01.1981, copy of which is Annexure P-3 to this appeal. The lower appellate court also held that the plaintiff is not in possession of the land but she is the sole lawful heir of Khazan Singh, deceased, and hence, she is entitled to recover possession of land from the defendant-Daljinder Singh, and that Wills Ex. DW8/A and Ex. D1 had not been proved to be genuine ones. Hence, the lower appellate court had held that defendants had no right, title or interest in the land.

These are findings of fact, but surprisingly enough, in second appeal the High Court has reversed these findings. It is well settled that in second appeal the High Court

cannot reverse findings of fact unless they are based on no evidence or perverse. In the instant case, we cannot say that there is no evidence so as to reverse the findings of fact as is evident from the two judgments nor can it be said that these findings of fact are perverse.

Hence, we set aside the impugned judgment of the High Court and restore that of the lower appellate court.

The Appeal is allowed accordingly. No costs.

.....J.
(MARKANDEY KATJU)

.....J.
(T.S. THAKUR)

NEW DELHI
JULY 22, 2010.