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

RSA No.1833 of 2022 (O&M)

Reserved on : 15.12.2022

Date of Decision : 04.01.2023

Rajbir Singh

....Appellant

VERSUS

Satbir Singh and Anr.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Akshay Jindal, Advocate for the appellant.

ALKA SARIN, J.

The present regular second appeal has been preferred by the defendant No.1-appellant against the judgment and decree dated 16.08.2022 passed by the lower Appellate Court whereby the appeal of the plaintiff-respondent No.1 has been accepted and his suit has been decreed.

The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 filed the present suit for declaration and joint possession with consequential relief of permanent injunction for declaring the alleged Will dated 13.01.1999 bearing Vasika No.143/3 and Mutation No.8067 and all subsequent revenue entries as illegal, null and void, ineffective and not binding on the rights of the plaintiff-respondent No.1 and defendant-respondent No.2. It was averred in the plaint that the father of the plaintiff-

respondent No.1 and defendant-respondent No.2 was the owner of land measuring 15 kanals 16 marlas detailed as under :

(i) Land measuring 8K-5M being $\frac{1}{4}$ share out of total land measuring 33K-0M total kittas 5 comprised in khewat no.656/604 min, khatoni no.876-877.

ii) Land measuring 2K-0M being $\frac{1}{4}$ share out of total land measuring 8K-0M kittas 1 comprised in khewat no.658/605, khatoni no.880.

iii) Land measuring 2K-0M being $\frac{1}{4}$ share out of total land measuring 8K-0M kittas 1 comprised in khewat no.659/606, khatoni no.881

iv) Land measuring 3K-10M being $\frac{280}{3392}$ share out of total land measuring 42K-8M kittas 6 comprised in khewat no.121/105, khatoni no.159

v) Land measuring 0K-1M being $\frac{7}{28}$ share out of total land measuring 0K-7M kitta 1 comprised in khewat no.122/106 khatoni no.160.

It was further averred that the plaintiff-respondent No.1 and his father, deceased Sajjan Singh @ Sajjana, were residing in Village Ballah in 1995 and after 1995 they left Village Ballah and started residing together at Panipat. The suit land was being given on rent/theke through the defendant No.1-appellant since the defendant No.1-appellant was the cousin brother of the plaintiff-respondent No.1 and nephew of the deceased Sajjan Singh @ Sajjana. It was further averred that when the plaintiff-respondent No.1 demanded the rent/theke amount, the defendant No.1-appellant postponed the same and eventually stated that he had become absolute owner of the suit

land in the year 2001 and that he had inherited the said land from Sajjan Singh @ Sajjana by way of a registered Will. It was averred in the plaint that the deceased Sajjan Singh @ Sajjana was an illiterate person and could not read and understand the contents of any document and further that at the time of the alleged execution of the Will, Sajjan Singh @ Sajjana was not capable of executing and getting registered any document as per his free will since he was not in a proper mental state. It was further averred that there has been a deviation from the natural line of succession disinheriting the plaintiff-respondent No.1 and defendant-respondent No.2 herein. It was further averred that Sajjan Singh @ Sajjana at the time of his death was residing with the plaintiff-respondent No.1 and often visited Village Ballah and the defendant No.1-appellant taking advantage of the illiteracy and trust of the deceased Sajjan Singh @ Sajjana got executed the Will. It was further averred that the Will though executed on 15.01.1999 was registered on 13.01.1999. The suit was contested by the defendant No.1-appellant who claimed to be the owner of the suit land on the basis of the Will.

On the basis of the pleadings of the parties, the following issues were framed :

1. Whether plaintiff is entitled for a decree for declaration declaring the Will dated 13.1.1999 bearing no.143/3 and mutation no.8067 and subsequent revenue entries as null and void and not binding on the rights of the plaintiff and performa defendant no.2 along with a decree of joint possession by declaring plaintiff and performa defendant as joint owner in possession of suit land ? OPP

2. If issue no.1 is decided in affirmative whether plaintiff is entitled for a decree for permanent injunction restraining defendant no.1 from alienating, mortgaging etc the suit land ? OPP
3. Whether suit is not legally maintainable in present form ? OPD
4. Whether the suit is time barred and within the limitation ? OPD
5. Relief.

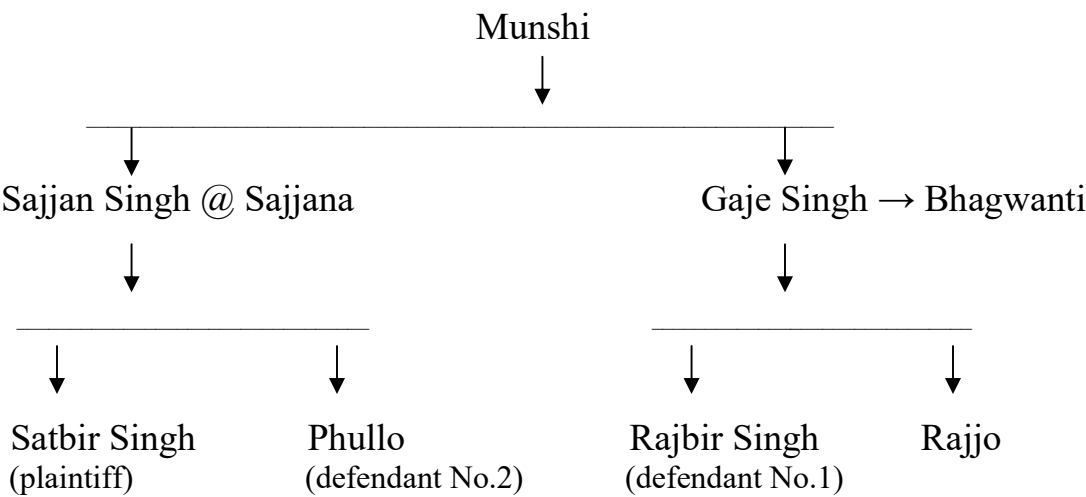
Vide judgment and decree dated 21.11.2016 the Trial Court dismissed the suit of the plaintiff-respondent No.1. Aggrieved by the said decision, an appeal was preferred by the plaintiff-respondent No.1 which was allowed by the lower Appellate Court vide the impugned judgment and decree dated 16.08.2022. Hence, the present regular second appeal.

Learned counsel appearing on behalf of the defendant No.1-appellant has contended that the suit land was jointly owned by both the brothers - Sajjan Singh @ Sajjana and Gaje Singh - and that a portion of the land was sold by Sajjan Singh @ Sajjana when he shifted to Panipat. Though the land belonged to both the brothers, the entire sale consideration was taken by Sajjan Singh @ Sajjana who then utilized the said amount to build his house in Panipat. It is further the contention of learned counsel that the remaining land was therefore willed by Sajjan Singh @ Sajjana in favour of the defendant No.1-appellant. Learned counsel for the defendant No.1-appellant has further contended that DW2 had specifically stated in his testimony that the entire sale consideration for the sale of the land which was sold to a relative of DW2 was taken by Sajjan Singh @ Sajjana and that he

had stated that he would execute a Will qua the remaining land in favour of the defendant No.1-appellant. Learned counsel for the defendant No.1-appellant would further contend that the Will stood duly proved in accordance with law. In support of his contentions, learned counsel has relied upon the judgments in the cases of **Swarnalatha & Ors. Vs. Kalavathy & Ors. [2022 (2) RCR (Civil) 603]**; **Avtar Kaur & Ors. Vs. Sukhbir Kaur & Anr. [2016 (3) RCR (Civil) 901]**; **Kartar Kaur Vs. Bhagwan Kaur [1993 (1) RRR 246]** and **Damandeep Vs. Jaspal Kaur & Ors. [2016 (1) RCR (Civil) 730]**.

Heard.

In the present case, the following pedigree table depicts the relationship between the parties :



It is an undisputed fact that Sajjan Singh @ Sajjana was the owner in possession of the suit land. It is also an admitted case that Sajjan Singh @ Sajjana moved to Panipat along with his son the plaintiff-respondent No.1 and that Sajjan Singh @ Sajjana continued to reside in Panipat with his son from 1995 onwards. The defendant No.1-appellant though had denied the fact that Sajjan Singh @ Sajjana was residing at Panipat, however, in his cross-examination he admitted that at the time of

death the deceased Sajjan Singh @ Sajjana was residing in Panipat. The Will (Ex.P6) states that since the testator was old and in an ailing condition and that he was residing with his nephew, Rajbir Singh (defendant No.1-appellant) and he was being served by the defendant No.1-appellant, hence, in lieu of his services, he executed the Will in favour of the defendant No.1-appellant. The Will (Ex.P6) does not speak of any such arrangement where a part of the land was sold by the parties and the entire sale consideration was taken by Sajjan Singh @ Sajjana alone. The defendant No.1-appellant as well as his witnesses (DW2 and DW3) admitted that Sajjan Singh @ Sajjana shifted to Panipat in the year 1995 and that till his death he was residing at Panipat though the Will states that Sajjan Singh @ Sajjana was residing with his nephew Rajbir Singh (defendant No.1-appellant) who was serving him and in lieu of the services rendered he was executing the Will dated 13.01.1999 (Ex.P6). Though deviation from the natural rule of succession cannot itself be a ground for setting aside a Will, however, if the Will appears to be surrounded by suspicious circumstances it cannot be upheld. In the present case, the suspicious circumstances surrounding the Will are enumerated as under :

- (i) Though admittedly and as has come in the cross-examination of the witnesses of the defendant No.1-appellant, the testator was residing in Panipat since 1995, however, in the Will it has been stated that the testator was residing with his nephew - Rajbir Singh (defendant No.1-appellant) who was serving him.

- (ii) The Will, which is a typed Will, bears the date 15.01.1999, however, the Sub-Registrar has entered the date of registration by hand as 13.01.1999.
- (iii) There is no reason forthcoming from the Will regarding disinheriting the natural successors.
- (iv) Though the story put forth is that the entire consideration received from selling the joint land was kept by Sajjan Singh @ Sajjana and hence the Will was executed by the testator in favour of defendant No.1-appellant, this is not corroborated from the evidence on the record and is not mentioned in the Will.

- (v) DW-3 in his cross-examination stated as under :

“..... The Will was written by Premchand Gupta, Deed writer and sale-deed was also scribed by him. I and Veer Singh, Namberdar were witnesses in the registered sale-deed. It is not in my knowledge whether the deed writer had got affixed our signatures or thumb impression in his register. I do not remember that whether Rajbir had affixed signatures on the Will or not. I do not remember as to who brought the stamp paper of Will and what was the cost of the stamp paper. I also do not remember the number of pages of stamp paper. I do not remember that as to how many thumb impressions were affixed by me whether two or four. Voluntarily said, affixed on Will or Sale-deed. A thumb impression was affixed on Will before Tehsildar. I have seen Ex DR2/ A . I can't say as to my

which thumb impression was affixed before Tehsildar. I have seen Mark 'A'. I can't say that this is my thumb impression. Voluntarily said, now it is not in my knowledge and it was the belated matter. I have seen Mark 'B' and 'C' thumb impression. I can't say that as to whose thumb impressions have been affixed. Tehsildar had not recorded any of our statement only conducted interrogation. Sajjan Singh had also conducted inquiry.”

- (vi) DW-4, Deed Writer Premchand Gupta, states in his examination that the Will is entered in his register at Sr. No.66 dated 15.01.1999, however, in his cross-examination it is admitted that the Will is registered on 13.01.1999.

Learned counsel for the defendant No.1-appellant is unable to dispel the suspicious circumstances surrounding the Will. There is no answer forthcoming as to why when admittedly Sajjan Singh @ Sajjana was residing in Panipat with his son (plaintiff-respondent No.1), it would be stated in the Will that he was residing with defendant No.1-appellant who was serving him. There is further no explanation forthcoming as to how the Will which is stated to have been executed on 15.01.1999 was registered by the Sub-Registrar on 13.01.1999 except for a feeble argument that the same was a typographical mistake. Even DW5 - Balwinder Singh - RC, Sub-Registrar Office, had admitted in his cross-examination that the entry with regard to the Will was made on 15.01.1999 which was a Friday and the Will had been registered in the record on 13.01.1999 i.e. Wednesday. No explanation is forthcoming for the said discrepancy.

Learned counsel for the defendant No.1-appellant is also not in a position to give any cogent reasons for the testator disinheriting his natural heirs as the story put forth by the defendant No.1-appellant does not find mention in the Will. Infact the Will only states that the testator was residing with the defendant No.1-appellant and was being served by him and in lieu of his services the said Will was being executed. The story as set up by the defendant No.1-appellant falls flat on its face. Further, DW2, one of the attesting witnesses, was not even able to identify his thumb-impression on the Will. In view of the suspicious circumstances surrounding the Will, the same has rightly been rejected by the lower Appellate Court.

It is further to be noted that DW2, who is alleged to be an attesting witness of the Will, goes further to testify that at the time when the land was sold by Sajjan Singh @ Sajjana and the family of the defendant No.1-appellant, the vendee who is none other than the aunt of DW2 was informed that the entire sale consideration was being taken by Sajjan Singh @ Sajjana and that a Will would be executed in favour of Rajbir Singh (defendant No.1-appellant) qua the remaining land. It is rather unbelievable that a person would inform the vendee of such an arrangement but would not inform the attesting witness namely, DW3 Bir Singh, who admitted in his cross-examination that no such matter was discussed by Sajjan Singh @ Sajjana that a Will was being executed in lieu of the land sold.

There can be no quarrel with the proposition as laid down in the judgments relied upon by learned counsel for the defendant No.1-appellant, however, when the Will is surrounded by suspicious circumstances the same need to be dispelled. In the present case the propounder of the Will i.e.

defendant No.1-appellant has not been able to dispel the suspicious circumstances surrounding the Will.

In view of the above, I do not find any illegality or infirmity in the judgment and decree passed by the lower Appellate Court. No question of law, much less any substantial question of law, arises for determination in the present case. The present regular second appeal, which is wholly devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

04.01.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO