

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

RSA No.3750 of 2015.

Decided on: 11.8.2015.

Joginder Singh

... Appellant

Versus

Balbir Kaur and others

... Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Ashwani Arora, Advocate and
Ms. Amandeep Kaur, Advocate,
for the appellant.

K.C.PURI.J.

The defendant appellant has directed this appeal against the judgment and decree dated 13.3.2015 passed by Dr. Rakesh Kumar, Additional District Judge, Ferozepur vide which the appeal preferred by the defendants against the judgment and decree dated 26.8.2013 passed by Sh. Hira Singh Gill, Additional Civil Judge (Senior Division) Ferozepur was dismissed.

Briefly stated, Smt. Balbir Kaur and Gurmej Kaur along with Jarnail Singh filed suit for declaration that plaintiff No. 1 is owner of land measuring 8 kanals 9 marlas fully described in the head note of the plaint on the basis of registered Will dated 5.3.2002 and mandatory injunction directing defendant No.1 to get the land

redeemed from PNB Tibi Khurd after paying the loan amount. The case of the plaintiff is that Sh. Sucha Singh father of the parties was the owner of suit land. Said Sucha Singh during his life time executed a registered Will dated 5.3.2002 in favour of the plaintiff no.1 in respect of the suit land. The said Will was executed by Sucha Singh on account of services rendered by plaintiff no.1 to Sucha Singh. The said Will was duly attested by Gurmej Singh Lamberdar and Joginder Singh defendant and is a legal and valid document. It is also pleaded that said Sucha Singh was in need of money and during his life time, he has sold land comprised in Rectangle no. 72, Killa no.1 (6-14) 2(0-10) western side. Sucha Singh has died about 1-3/4 years ago. After the death of Sucha Singh, plaintiff no.1 had become owner of the land in question in Rectangle no. 72 Killa no. 9 and 13/1/2. After the death of Sucha Singh, plaintiff no.1 gave land in question to the defendants for cultivation as licensee, as the defendants are real brothers of the plaintiffs. The plaintiff no.1 had also approached the Halqa Patwari for sanctioning of mutation on the basis of Will and handed over the Will dated 5.3.2002 to the Halqa Patwari who assured the plaintiff no.1 that the mutation would be sanctioned in favour of the plaintiff in due course of time. Later on, the Halqa Patwari informed the plaintiff no.1 that mutation on the basis of the Will has been sanctioned in favour of the plaintiff no.1. The plaintiff no.1 being a simple lady accepted the version of the Halqa Patwari. Even, the original Will was retained by the Halqa Patwari. A week before the filing of suit, the defendants had

quarreled with the plaintiff no.1 and denied the ownership of the plaintiff no.1 in respect of the suit land. Hence, the suit.

Upon notice, the defendants contested the suit and filed written statement taking preliminary objections that the suit of plaintiffs is false, frivolous and vexatious to their knowledge and there is apparent collusion between the plaintiffs no.1, 2 and 3. According to the plaint, the plaintiffs no.2 and 3 do not claim any right, title or interest in any part of the suit land and the plaint does not disclose as to why they have been impleaded as plaintiffs. The suit is thus, bad for mis-joinder of parties. On merits, ownership of Sucha Singh was admitted. However, execution of Will dated 5.3.2002 in favour of plaintiff was denied. It was pleaded that plaintiff No.1 was residing with her husband Pritam Singh in the Matrimonial home situated at Village Norang Ke Lalley since her marriage while Sucha Singh throughout had been residing in village Bare Ke. Neither Sucha Singh ever resided in village Norang Ke Lalley nor Balbir Kaur ever resided in village Bare Ke and as such, the question of rendering any services by Balbir Kaur plaintiff to Sucha Singh (deceased) did not arise at all. The alleged Will dated 5.3.2002 is the result of fraud or misrepresentation. Sucha Singh had earlier been residing with Karnail Singh for over 12-14 years and then started residing with Joginder Singh, after the year 2000-01. Since, Sucha Singh was residing with Joginder Singh and he was approached by Gurmej Singh, Lamberdar, that he wanted to execute a Will of his estate and desired that Sucha

Singh should attest his Will. As Joginder Singh was a helping hand to Sucha Singh, he also accompanied Sucha Singh to the office of Tehsil Compound at the instance of Gurmej Singh, Lamberdar, where they were asked to attest the Will, which was complete in all respects with the Deed Writer and both Joginder Singh and Sucha Singh had put their thumb impression and when the Will was presented for registration, they were asked as to whether they had attested the Will to which they replied in positive. The said Will is the result of fraud. There was no reason for Sucha Singh to execute any Will of his estate in favour of plaintiff no.1 by excluding his three sons and another daughter. Sucha Singh during his life time, executed a registered Will of his estate on 14.6.2000 duly registered in the office of Sub Registrar Ferozepur vide which he bequeathed his property in favour of his three sons, being male descendants. Subsequently, Sucha Singh executed a sale deed dated 25.6.2001 qua land measuring 31 kanals 6 marlas, situated in village Bare Ke in favour of Joginder Singh, which was duly registered in the office of Sub Registrar , Ferozepur. He also executed another sale deed dated 18.10.2001 qua 15 kanals 10 marlas of land situated in village Bare Ke in favour of his son Karnail Singh. It is denied that Sucha Singh was in need of money or for that reason he sold the land comprised in Rectangle no. 72 Killa no. 1(6-14) 2(0-10) western side.

From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiff is entitled to the relief of declaration as prayed for?OPP
2. Whether the plaintiff is entitled to the relief of possession as prayed for?OPP
3. Whether the plaintiff is entitled to relief of permanent injunction as prayed for?OPP
4. Whether the plaintiff is entitled to relief of mandatory injunction as prayed for?OPP
5. Whether the suit of the plaintiffs is false, frivolous and vexatious to their knowledge?OPD
6. Whether the suit of the plaintiffs is bad for misjoinder of parties?OPD
7. Relief.

Learned trial Court returned finding on issues No.1 to 3 in favour of the plaintiff. Issue No.4 was decided to the effect that plaintiff No.1 being owner may redeem the land. Issues No.5 & 6 were also decided in favour of plaintiffs and against the defendants. Consequently, suit of the plaintiffs for declaration and possession was decreed vide judgment and decree dated 26.8.2013 passed by Sh. Hira Singh Gill, Additional Civil Judge (Senior Division), Ferozepur.

Feeling dis-satisfied with the judgment and decree

dated 26.8.2013 passed by Sh. Hira Singh Gill, Additional Civil Judge

(Senior Division), Ferozepur, the defendants preferred appeal and the same was dismissed by judgment and decree dated 13.3.2015 passed by Dr. Rakesh Kumar, Additional District Judge, Ferozepur.

The defendants appellants have challenged both the aforesaid judgments and decrees dated 26.8.2013 and 13.3.2015 by filing the present regular second appeal.

The appellant in paragraph No.18 of the grounds of appeal has mentioned that following substantial questions of law have arisen:-

(i) Whether the learned Courts below have misread the oral and documentary evidence on record ?

(ii) Whether the findings recorded by both learned Courts below are perverse, per se illegal and against the facts of the case ?

(iii) Whether the learned Courts below have ignored the document Ex.D-1 which is the Will dated 14.6.2000 executed by Sucha Singh in favour of defendant/appellant ?

(iv) Whether the learned Courts below have ignored the material evidence which proved that the Will dated 5.3.2002 executed by Sucha Singh deceased in favour of plaintiff Balbir Kaur is surrounded by suspicion circumstances ?

(v) Whether the learned Courts below have drawn

wrong inference by ignoring the proven facts ?

(vi) Whether the approach of the Courts below is based on no evidence ?

Although, so many questions of law have been mentioned in this appeal but no substantial question of law has arisen in the present case. The only controversy in the present case is whether Sucha Singh executed a valid Will dated 5.3.2002 in favour of plaintiff No.1. The findings returned by both the Courts below are in favour of plaintiffs and against the defendants. The concurrent findings of fact cannot be said to be wrong in any manner. One of the defendants Joginder Singh is himself a witness of the Will. He has not categorically denied his photograph along with Sucha Singh and another attesting witness Gurmail Singh. This witness has stated that Sucha Singh has executed the sale deeds in favour of his descendants during his life time. The trial Court has held that evidence of the plaintiffs regarding execution of the Will goes un-rebutted as no witness has been produced by the defendant to dis-prove the Will. Sucha Singh has made a rational judgment by bequeathing only a small portion of his estate in favour of his daughter. One of the defendants Joginder Singh is attesting witness of the Will. This fact goes a long way to prove that Sucha Singh wanted to give some property to plaintiff No.1 also being his daughter.

So, I have no hesitation in holding that no substantial

question of law has arisen in the present regular second appeal.

Consequently, the appeal is without any merit and the same stands dismissed.

11.8.2015.
SN

(K.C.PURI)
JUDGE