

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Regular Second Appeal No.2259 of 2014 (O & M)

Date of Decision: *December 17, 2015*

Sudagar Singh

..... APPELLANT

VERSUS

Balwinder Singh

..... RESPONDENT

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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PRESENT: - Mr. Narinder S. Lucky, Advocate, for the appellant.

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Jaspal Singh, J

CM No.5467-C of 2014

For reasons given in the application, delay of 91 days in filing the appeal is condoned.

CM stands allowed.

RSA No.2259 of 2014 (O & M)

1. The instant appeal has been preferred by plaintiff – Sudagar Singh, challenging judgment and decree dated June 08, 2012 passed by the trial court as well as judgment & decree dated September 20, 2013 by passed by the lower appellate court whereby the findings recorded by the trial court have been upheld and appeal filed by the plaintiff against the judgment &

decree passed by the trial court has been dismissed. Accordingly, the suit filed by plaintiff for declaration has been dismissed.

2. While assailing the findings returned by the trial court on all the issues and affirmed by the lower appellate court, it has been ebulliently argued by learned counsel for the appellants that same are against the evidence available on file and settled canons of law. Mis-appreciation of evidence adduced by the plaintiff has resulted into mis-carriage of justice. Learned counsel has contended that Kartar Kaur widow of Lahora Singh was owner of property, as elucidated in head note of the plaint, and after her death, plaintiff being the only legal heir became owner in possession of the property in suit. Plaintiff has alleged that Will dated November 11, 2001 is a forged and fabricated document, as such, mutation No.1704 dated April 15, 2002 sanctioned on the basis of aforesaid Will is liable to be set aside.

3. Learned counsel for the appellant has contended that Lahora son of Ajaib Singh was owner in possession over the property in dispute. He was married to Kartar Kaur, real aunt of plaintiff. Lahora Singh and Kartar Kaur died issueless. During his life time, Lahora Singh did not execute any will. He died on November 13, 2001 and after his death, Kartar Kaur being his widow became owner over the suit property. However, defendant, in order to grab the suit property, on the basis of forged and fabricated Will dated November 11, 2001, got mutation sanctioned in his name. In this regard, FIR No.55 dated August 6, 2002 under Sections 420, 467, 468, 471, 120-B IPC was got registered at Police Station, Mehal Kalan, against the defendant. Plaintiff challenged the aforesaid mutation before the revenue authorities and it was cancelled vide Rapat No.455 dated April 10, 2003, against which, appeal is pending before the FCR Chandigarh.

4. Learned counsel has further contended that Kartar Kaur died on March 17, 2006 and due to the services rendered by plaintiff, she executed a Will No.616 dated March 27, 2003 in favour of plaintiff. So, on the basis of Will dated March 27, 2003, plaintiff became owner in possession over the property in dispute.

5. Learned counsel for the appellant has further contended that both the courts below have wrongly placed reliance upon Will dated November 11, 2001 (Ex.D1) which is surrounded by suspicious circumstances as Lohara Singh, before his death, remained ill and was not in fit disposing mind. He died just two days after executing unregistered Will dated November 11, 2001. Both the courts below have erred in observing that Will (Ex.D1) was not challenged by the plaintiff during the life time of Kartar Kaur. Courts below have wrongly placed reliance upon the evidence of DW-4 Rana Bansal, Document & Handwriting Expert, when execution of the Will executed by Kartar Kaur in favour of plaintiff has been proved as per law by leading cogent and convincing evidence. He stated that Will dated March 27, 2003 is a registered Will as it was registered by Sub Registrar and it was thumb marked in his presence but the courts below have ignored this fact.

6. This court has given a deep thought to the aforesaid submissions made by learned counsel for the appellant and has scrutinized the record available on file.

7. Case of the plaintiff is that Lahora Singh and Kartar Kaur had no issue and plaintiff used to render his services to them. The onus to prove this fact heavily lies on the plaintiff. The trial court has observed that plaintiff has not disclosed the fact that Lahora Singh and Kartar Kaur had

Though, plaintiff is alleged to have been living with Lahora Singh and Kartar Singh, their being issueless and had been looking after them, so he must have been aware about the family of Kartar Kaur and Lahora Singh. However, he has not produced any documentary evidence regarding the same. He has not produced on record any ration card or voter list etc., in order to prove that he was living with Lahora Singh and Kartar Kaur. Even, plaintiff has claimed that during the life time of Lahora Singh and Kartar Kaur, he was in cultivating possession over the suit property, but no such revenue record has been produced on record by the plaintiff. So, the courts below have rightly concluded that plaintiff has failed to establish on record that he was residing with Lahora Singh and Kartar Kaur during their life time or he remained in cultivating possession over the suit property. Similarly, plaintiff has also failed to prove that he was rendering services to Lahora Singh and Kartar Kaur during their life time and was looking after them. Thus, plaintiff has not led any cogent evidence in order to prove his relationship with Lahora Singh and Kartar Kaur.

8. From the evidence led by respondent-defendant, it has been proved that infact, defendant was living with Lahora Singh and used to render his services as he was his uncle. Will dated November 11, 2001 (Ex.D1) has been duly proved on record by DW-1 Resham Singh and DW-2 Sukhdev Singh, who are attesting witnesses of this Will. Both the courts below have observed that vide Will Ex.D1, Lahora Singh bequeathed his 10 acres of land alongwith electric connection, movable and immovable property in favour of respondent – Balwinder Singh and remaining 2 acres of land of village Chuhanke Kalan.

9. As per Death Certificate of Kartar Kaur, she died on March 17, 2006 and present suit was filed by the plaintiff on July 05, 2006 i.e. after

three months from the death of Kartar Kaur. During the life time of Kartar Kaur, plaintiff never challenged Will dated November 11, 2001 (Ex.D1). It does not appeal to the reason that plaintiff came to know about Will Ex.D1 after the death of Kartar Kaur. Defendant has produced on record certified copy of order dated February 20, 2004 (Ex.D3) showing that proceedings under Section 145 Cr.P.C. were decided in his favour. Copy of judgment Ex.D2 shows that defendant was acquitted in case bearing FIR No.55 dated August 06, 2002, referred to above. Perusal of Ex.D12 in civil suit bearing No.305 dated August 06, 2002 shows that it was decided on December 23, 2006 in favour of Balwinder Singh, vide which, Kartar Kaur was restrained from alienating the property owned and possessed by Balwinder Singh on the basis of Will dated November 11, 2001.

10. DW-4, Rana Bansal, Documents & Handwriting Expert, compared the disputed signatures of Lahora Singh on Ex.D1 with the admitted signatures on partition deed dated May 17, 2000 (Ex.DPW4/A) and photo copy of agreement dated July 12, 2004, and opined that disputed signatures marked as D1 tallies with the standard signatures of Lahora Singh marked as S1 and S2. He also compared the disputed thumb impressions of Kartar Kaur on Will dated March 27, 2003 with admitted thumb impressions on the written statement dated November 09, 2003 and Vakalatnama in favour of Mr. Anshuman Bawa, Advocate in aforesaid civil suit No.305 dated August 06, 2002, captioned as 'Balwinder Singh vs. Kartar Kaur' and opined that thumb impressions of Kartar Kaur marked as S1 to S3 do not tally with her standard thumb impressions and these thumb impressions have been affixed by two different persons. No rebuttal has been produced by plaintiff to the testimony of DW-4 Rana Bansal as neither he examined any

DW-4 Rana Bansal. Otherwise also, testimony of DW-4 Rana Bansal is corroborated by other evidence that has been adduced by the defendant. As such, appellant – plaintiff has miserably failed to prove that Will dated November 11, 2001 (Ex.D1) is a forged and fabricated document.

11. Moreover, threat if any, to possession of plaintiff over the suit property came in existence when Mutation No.1704 dated April 15, 2002 was sanctioned on the basis of Will dated November 11, 2001 (Ex.D1). Therefore, cause of action arose when the mutation was sanctioned but as present suit was filed on July 05, 2006. So, the suit of the plaintiff is barred by limitation.

12. Thus, from the oral as well as documentary evidence produced on record, it has been proved that plaintiff is not in possession over the property in dispute, rather, respondent – defendant is in possession over the same which fact is evident from Jamabandi for the year 2005-06 (Ex.D-16).

13. In the light of what has been discussed above, there is no infirmity, illegality and impropriety in the findings returned by the courts below. Consequently, impugned judgments & decrees passed by both the courts are upheld. Accordingly, the appeal is dismissed. However, the parties are left to bear their own costs.

December 17, 2015
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(Jaspal Singh)
Judge