

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

**RSA-2079-2011 (O&M)
Date of decision : 27.09.2016**

Narain Partap Singh

... Appellant

Versus

Rajinder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. A.K. Walia, Advocate
for the appellant.

Mr. N.K. Vadhera, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby the suit seeking declaration by setting aside of the registered transfer deed dated 23.04.2002 registered on 24.04.2002 on the premise that they have become the owner by way of genuine registered Will dated 23.02.2000 registered on 25.02.2000 executed by Amar Singh, has been dismissed by both the Courts below.

Mr. A.K. Walia, learned counsel appearing on behalf of the appellant-plaintiff submits that Amar Singh was the owner of the land and the plaintiffs are none-else, but the grandsons of Amar Singh. Amar Singh during his lifetime had bequeathed the property measuring 8 kanals each to both the plaintiffs and 1/3rd in the remaining property in favour of the defendant only. He unfortunately died on 25.05.2000. Respondent No.1-defendant had played a fraud, rather misrepresented Amar Singh in

obtaining the aforementioned transfer deed as Amar Singh had no intention to transfer the land. He was forcibly taken to the office of the Sub-Registrar for doing the aforementioned act. No doubt, the suit had been filed on 17.05.2004, but the same is within the limitation. The transfer deed is only in respect of land measuring 21 kanals and the declaration for remaining land measuring 12 kanals cannot be granted on the basis of the Will. The said exercise can be done by taking the aid of the provisions of Section 87 of the Indian Succession Act. The appellant-plaintiff had given the blood to the grandfather and out of love and affection, the Will was executed, thus, urges this Court for setting aside the findings under challenge.

Mr. N.K. Vadhera, learned counsel appearing on behalf of the respondent No.1-defendant submits that the appellant-plaintiff has not sought any declaration with regard to the remaining property measuring 12 kanals, therefore, no relief can be granted at this stage, neither any amendment in the plaint was sought. He further submits that the aforementioned transfer deed a registered document and it bears the thumb-impressions of Amar Singh. The appellant-plaintiff has failed to discharge onus with regard to the ingredients of Order 6 Rule 4 CPC, in essence, the thumb-impressions of Amar Singh have been disproved. All these factors have been taken care of by both the Courts below. If a testator during his lifetime had transferred the land, then the beneficiary of the Will cannot take the benefit as he had no title, right and interest in the property as described in the Will, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the

submissions of Mr. A.K. Walia, for, no doubt Amar Singh had executed a Will dated 23.02.2000 by bequeathing the property as indicated therein, but during his lifetime, had executed a registered transfer deed, aforementioned, in favour of defendant No.1 only. No doubt, he died few months thereafter, but during his lifetime, he remained alive and did not challenge the same. The ingredients of Order 6 Rule 4 CPC are conspicuously wanting. The relief qua remaining land cannot be granted in the absence of the relief in the suit. Once, Amar Singh had no title and interest in the property as described in the Will, owing to the transfer deed, the appellant-plaintiff cannot seek the implementation of the Will viz-a-viz the same. Even the provisions of Section 87 of the Indian Succession Act cannot be pressed into service. Nothing prevented the appellant-plaintiff to seek the remedy in accordance with law viz-a-viz the remaining land on the basis of the alleged Will.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial questions of law arises for determination and accordingly, the appeal is dismissed.

27.09.2016
yogesh

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No