

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

**RSA No. 591 of 2011 (O & M)
Date of decision : 5.9.2016**

Lakhbir Singh

.....Appellant

v.

Kulwinder Kaur and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present : Mr. R.S. Ahluwalia, Advocate, for the appellant

Mr. A.S. Shergill, Advocate, for respondent No.5

Amit Rawal, J. (Oral) :

The appellant/plaintiff is in regular second appeal against the concurrent finding of the fact and law whereby suit for declaration to the effect that the plaintiff and defendant No.6 are exclusive owners in possession of land mentioned in the head note of the plaint, on the basis of Will dated 7.8.1984 propounded by Swaran Singh in their favour and also challenging the sale deed executed by defendant No.2 in favour of defendant No.1 and subsequent sale deed executed by defendant No.1 in favour of defendant No.5 being illegal, null and void and not binding on the rights of the plaintiff and defendant No. 6 and for permanent injunction, has been dismissed by both the Courts below.

Learned counsel appearing on behalf of the appellant submits that deceased Swaran Singh had executed an unregistered Will dated 7.8.1984 in favour of the plaintiff and defendant No.6 being his nephews to the exclusion of

defendant No. 3 - Inderjit Kaur and respondent No.4 - Harkuldip Singh, who are daughter and son of deceased Swaran Singh. After the death of Swaran Singh, plaintiff and defendant No.6 inherited the suit land and became owners in possession. Defendant No. 2-Amar Singh allegedly obtained power of attorney from defendant No. 3 to deal with the affairs of suit land for which defendant No.3 was not competent to give any power of attorney. Thereafter, defendant No.2 got registered a sale deed bearing No. 13098 dated 15.1.1998 in favour of his wife Kulwinder Kaur – defendant No.1. In this context suit was filed on 17.1.2000. He further submits that no doubt the Will is unregistered but attesting witnesses namely Atma Singh and Vijay Kumar could not be produced in the Court as Atma Singh-marginal witness had already died and Vijay Kumar, the other marginal witness colluded with the defendants. Inderjit Kaur, real daughter of deceased Swaran Singh appeared as PW-2 and admitted the execution of Will of her late father, in favour of the appellant/plaintiff and defendant No. 6. However, during the pendency of this appeal, affidavits of Kuldeep Singh son of Atma Singh and Vijay Kumar were sought to be placed on record by way of additional evidence.

He further submits that the learned Courts below have wrongly concluded that execution of Will was surrounded by suspicious circumstances as the only surviving Class I heir of the deceased would succeed specifically admitted the execution of the Will. The plaintiff failed to produce alleged general power of attorney dated 8.12.1997 in favour of Amar Singh- defendant No.2 being forged, fabricated document, as neither defendant No.3 nor defendant No. 4 contested the suit of the plaintiff nor they have come forward to challenge the same. In support of his contentions, he submitted

following substantial questions arises for determination:

- (i) Whether the decision of the learned Courts below is the result of misreading of the evidence and documents on the record?
- (ii) Whether the Will is surrounded by suspicious circumstances?
- (iii) Whether the impugned judgment and decree of both the Courts below suffers from illegality and perversity?

Learned counsel appearing on behalf of respondent No.5 bona fide purchaser submits that, if at all, Swaran Singh executed the Will in favour of the appellant and defendant No.6, then they could have got the property mutated in their names on the basis of the said Will by bring it out from his custody. Having failed to do so, the Will apparently is surrounded by suspicious circumstances. Even the daughter of Swaran Singh was not present when the sale deed aforementioned was effected.

There is no compliance of Section 68 & 69 of the Indian Evidence Act and the affidavits sought to be placed on record by way of additional evidence does not comply the provision of the Indian Evidence Act, therefore, prays for affirming the findings under challenge.

I have heard learned counsel for the parties and perused the impugned judgments of both the Courts below.

In the Will dated 7.8.1984 Ex.P3, there is no mention of the scribe. On the lower side, there is lot of space lying vacant with no justification to it. None of the attesting witnesses of the Will have been examined. One of the attesting witnesses said to be dead and second joined hands with the respondents. The plaintiff/appellant could have summoned the second witness and confronted him qua his signatures. The only witness examined by the plaintiff/appellant to prove the execution of the Will was Paramjit Kaur, attorney

of the plaintiff, but during her cross examination she specifically stated that she had not seen deceased Swaran Singh writing and signing the Will, thus, there was no compliance of Section 63(C) of the Indian Succession Act.

In my view, the Will was/is surrounded by suspicious circumstances. Moreover, testator Swaran Singh has two unmarried children i.e. defendants No.3 and 4 and Will does not itself give any explanation regarding exclusion of daughter and son though Will intends to deviate them from line of succession and bequeathing property in favour of nephews i.e. the appellant and defendant No.6.

No explanation has come forth as to why the plaintiff/appellant had after the death of its testator not propounded the Will for such a long period of 16 years. Had it be done before, the plaintiff/appellant could have easily get the mutation entered in his name.

In my view, the Will was/is surrounded by suspicious circumstances and no independent proof had been brought on record that the property rightly been devolved upon the appellant/plaintiff and defendant No.6.

I do not intend to differ with the findings rendered by both the Courts below. Much less no substantial question, above, arises for determination.

Accordingly, the appeal as well as application for additional evidence stands dismissed.

(AMIT RAWAL)
JUDGE

5.9.2016
Ashwani

Speaking/Reasoned
Reportable

Yes/No
Yes/No