

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

RSA-1474 of 2015 (O&M)

Date of decision: 28.04.2016

Surinder Singh

...Appellant

Versus

Manjinder Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Sherry K. Singla, Advocate
for the appellant.

Jitendra Chauhan, J. (Oral)

Plaintiff, Surinder Singh has filed this second appeal
having been non-suited by both the Courts below.

2. Original plaintiff, Harbhajan Kaur @ Pritam Kaur
(since deceased and now represented by her legal representative
Surinder Singh), filed suit for declaration to the effect that she
was owner in possession of land measuring 6 kanals 9 marlas to
the extent of 1/3rd share out of land measuring 19 kanals 8
marlas, situated in village Mughalwala, Tehsil Patti, District
Amritsar and to the extent of 1/3rd share in one house constructed

over area of land measuring 13 marlas 177 feet. Plaintiff Harbhajan Kaur was entitled to get entire produce and mesne profits on the basis of registered Will dated 17.06.1983, executed by Gurdeep Singh. Said Harbhajan Kaur @ Pritam Kaur died during the pendency of the suit. Gurdeep Singh had expired on 24.06.2005, however, defendant No.1 had been alleging that another Will was executed by Gurdeep Singh in his favour; the execution, validity and existence of the said Will was denied and asserted to be result of fraud and impersonation. Defendant No.2, namely, Harjinder Singh had also been alleging that Gurdeep Singh had executed some sale deeds regarding the house in his favour but the said sale deeds were also result of fraud and impersonation.

3. Defendant Nos. 4 & 5, namely, Balwinder Kaur and Rajinder Kaur did not appear despite service and were proceeded against exparte, whereas, defendant Nos. 1 to 3, namely, Manjinder Singh, Harjinder Singh and Jaswinder Singh contested the suit and submitted that Gurdeep Singh executed a valid Will dated 07.12.1987, in favour of defendant No.1 in his sound disposing mind. It was admitted that Will dated 17.06.1983, was executed by Gurdeep Singh but that Will was

revoked by the subsequent Will. Gurdeep Singh also executed sale deed of the house in dispute in favour of defendant No.2 and defendant No.2 had spent a sum of Rs.10 lacs for construction of the house to which was never objected to by the plaintiffs .

4. After considering the rival contentions of the parties and evaluating the material on record, the learned trial Court non-suited the appellant, vide judgment and decree dated 25.04.2011.

5. Aggrieved from the judgment and decree, plaintiff filed first appeal before Addl. District Judge, Tarn Taran which was also met with same fate, vide judgment and decree dated 12.12.2014.

6. Still dissatisfied, the plaintiff has approached this Court.

7. The learned counsel has argued that both the Courts below have committed grave error in law by holding that the appellant has not been able to prove the due execution of the registered Will dated 17.06.1983 by deceased, Gurdeep Singh in favour of plaintiff and defendant Nos. 2 & 3, whereas defendants themselves admitted the execution of Will dated 17.06.1983. He

further submits that Will dated 17.12.1987, Ex.D2 is surrounded by suspicious circumstances. There is no reference made in the Will, Ex.D2 as to why the plaintiff, widow and other sons have been disinherited by the deceased while executing the Will dated 17.12.1987. There is also difference in the signatures of the deceased which is visible to the naked eye. Defendant No.1, Manjinder Singh is grandson of deceased Gurdeep Singh and as per the alleged Will, Ex.D2, the property would devolve upon him.

8. I have heard the learned counsel for the appellant and perused the record.

9. Defendants have set up Will dated 07.12.1987, Ex.D2, the due execution of which has been established by its attesting witness, namely, Harcharan Singh, DW-4 and scribe Charan Singh. This Will is a registered document. Gurdeep Singh had revoked previous Will dated 17.06.1983. The argument of learned counsel that Will dated 07.12.1987 was shrouded by any of the suspicious circumstances is not tenable as no such document has been produced on record to justify his assertion. The existence of such Will can only be discarded if the same is surrounded by any suspicious circumstance. Further, the

next contention of learned counsel that nothing special has been mentioned in the impugned Will, Ex.D2 disinheriting the wife, and sons, is devoid of merits. It has come in evidence that plaintiff No.2/appellant had been residing separately from defendant Nos. 1 & 2 as well as Gurdeep Singh. The defendants have been able to prove the execution of registered Will dated 17.12.1987 by Gurdeep Singh in sound disposing mind. Consequently, Will dated 17.06.1983 (relied upon by the appellant) does not bind and override the Will dated 17.12.1987, Ex.D2.

10. Thus, the findings of both the Courts below on the issues under adjudication cannot be said to be perverse, are fully justified by the evidence on record and cannot be said to be based on misreading or mis-appreciation of evidence. Consequently, the said findings do not call for interference in exercise of second appellate jurisdiction. These are pure findings of fact. No question of law, much less the substantial question of law arises in the present appeal. The appeal is merit less and, is therefore, dismissed in limine.

28.04.2016

sumit.k

(JITENDRA CHAUHAN)
JUDGE