

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

**RSA No.3252 of 2015 (O&M)
Date of Decision: 19.08.2016**

Ranjit Singh

.....Appellant

Vs

Paramjit Singh and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. F.S. Virk Advocate
for the appellant.

RAJ MOHAN SINGH, J.

[1]. Defendant No.1 is in second appeal against the concurrent judgments and decrees passed by the Courts below.

[2]. Plaintiff-Paramjit Singh is son of Puran Chand. He filed a suit for possession against his brothers namely Ranjit Singh, Baljit Singh and sister namely Bhagwanti. He filed the suit for possession of five rooms, bath room, court yard shown in red colour which were in possession of defendant No.1. Portion shown in green colour was in possession of defendant No.2 and common court yard in possession of plaintiff and defendants No.2 and 3 situated within *abadi deh* of village Jalbera, Tehsil and District Ambala.

[3]. Brief facts of the case are that father of the plaintiff was owner and in possession of the suit land as his self-acquired property and inducted defendants No.1 and 2 as licensee in the portion of suit land shown by red, green and blue colour in the site plan. Plaintiff and defendant No.2 had common court yard as shown in blue colour. Defendant No.1 was not licensee in that portion. Plaintiff alleged that his father executed a valid Will dated 05.02.2010 in his favour thereby bequeathing his moveable and immoveable property in lieu of services rendered by him.

[4]. Defendants contested the claim of the plaintiff thereby denying the execution of Will dated 05.02.2010. The suit property was claimed to be ancestral property. Defendant No.1 claimed his exclusive ownership and possession over the portion marked by 'ABCD' which was purchased by him vide agreement dated 27.08.2003. He asserted that the plaintiff had no right, title and interest in the said portion of the property. Puran Chand died on 20.04.2010. Will was claimed to be shrouded with suspicious circumstances as the same was executed on 05.02.2010 i.e. soon before the death of Puran Chand.

[5]. After filing replication, both the parties went to trial on the following issues:-

“1. Whether plaintiff is owner in possession of the property in dispute as fully detailed in head note of the plaint? OPP

2. Whether present suit is not maintainable? OPD

3. Relief.”

Additional issues were also framed which are as under:-

“1. Whether the plaintiff is entitled to decree for possession on the grounds mentioned in the plaint, as prayed for? OPP

1 (a) If issue No.1 is proved, whether the plaintiff is entitled to relief of permanent injunction, as prayed for? OPP

2. Whether the suit of the plaintiff is not maintainable in the present form?OPD

3. Relief.”

[6]. Both the parties led their respective evidence to prove their case. Both the Courts below found that the execution of Will was proved on record. The only contention of learned counsel for the appellant was that the Will was shrouded with suspicious circumstances on two counts. Firstly, that the Will was executed soon before the death of Puran Chand. Secondly, Puran Chand was illiterate person and used to affix his thumb impressions. On both the counts, the Courts below have concurrently discarded the stand of defendant No.1-appellant. Puran Chand was found to be fit to execute the Will in question.

The execution of Will was proved with reference to scribe and attesting witnesses.

[7]. Once the execution of Will was proved, the initial onus was satisfied by the plaintiff and thereafter, the person who asserts inaffirmative with regard to Will being shrouded with suspicious circumstances was to prove the infirmity in the Will. No evidence was led by the defendant to uphold the veracity of Will by means of any cogent evidence to show that Puran Chand was not capable of executing Will for any reason on 05.02.2010, nor any fraud could be detected and proved viz-a-viz the thumb impression or signature of the testator.

[8]. From oral and documentary evidence, the execution of Will was proved on record. Defendant No.1-appellant could not prove his view point as per stand taken by him by way of any evidence on record. Defendant No.1 appeared as DW 2 and stated that area marked by 'ABCD' was purchased by him from Bachna Ram son of Babu Ram vide agreement dated 27.08.2003. The site plan Ex.P2 was an admitted site plan as per existing position.

[9]. Defendant No.1 claimed that he remained in possession of red colour area and the area in yellow colour was in possession of Paramjit Singh. Defendant No.1 further claimed that he had taken the suit land partitioned with his

brother which took place 5-6 years ago. Though the partition was not reduced into writing, but he had purchased the land for an amount of Rs.15,000/- from Bachna Ram on 27.08.2003. Bachna Ram was alive and he had constructed the house in 2008 and he had not vacated the house after receiving legal notice (Ex.P3) dated 07.12.2010. Defendant No.1 admitted the possession of Puran Chand and plaintiff-Paramjit Singh being his elder son. He admitted the site plan Ex.P2 which was also admitted by defendant No.2. Defendant No.3 could not tell the dimensions of the suit land, though she had admitted that her father was owner of the suit land.

[10]. Bachna Ram was not examined by defendant No.1 to prove agreement Ex.DW2/1. DW-3 has admitted that suit property was given to defendants for residential purpose as licensee and the licence was terminated by the plaintiff vide legal notice (Ex.P3) dated 07.12.2010. The execution of Will has been proved by PW 1. The attesting witness should put his signature on the Will animo attestandi. The execution of Will was proved in terms of Section 68 of the Evidence Act and Section 63 of the Succession Act. The execution of Will was proved by way of attesting witness who was required to be examined for proving due execution of Will. Will was signed by testator with his free Will and he was in sound disposing mind at

the time of execution of the Will. Testator signed the will in the presence of two witnesses who attested their signatures in his presence and in the presence of each other.

[11]. Plea of suspicious circumstances was required to be established by defendant No.1 as onus was on him to explain the circumstances to the satisfaction of the Court. Puran Chand had executed the Will on 05.02.2010 in favour of the plaintiff on account of services rendered by the plaintiff to him. Other sons of Puran Chand were residing separately. Puran Chand was hale and hearty and was of sound disposing mind at the time of execution of Will. Will was witnessed by Jagmal Numberdar who signed the same as witness. Will was typed by Jarnail Singh. The non-registration of Will in itself is not suspicious circumstance to reject the same. Even the disinheritance of natural heir cannot be held to be suspicious circumstance in execution of Will. The time gap between the execution of Will and death of testator cannot be held to be a ground for discarding the Will in the absence of any material on record to show that the testator was suffering from such an ailment which could have been prevented him from exercising free and voluntary choice in executing the Will in question. The cross examination of the attesting witness could not yield any incriminating material in favour of the defendant.

[12]. Will was found to be free from any suspicious circumstance by the Courts below and the testator was found to be of sound disposing mind at the time of execution of Will. The findings of facts recorded by both the Courts below cannot be found to be the result of misreading of any evidence or having suffered with any perversity. No law point worth consideration could be argued by learned counsel for the appellant.

[13]. In considered opinion of this Court, no interference in Regular Second Appeal can be made. This Regular Second Appeal is accordingly dismissed.

19.08.2016

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No