

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

RSA No.845 of 2016 (O&M)

Date of decision:30.09.2016

Veeran Bai alias Santosh Rani

... Appellant

Vs.

Maya Bai alias Maya Devi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rajesh Narang, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.2332-C of 2016

For the reasons stated in the application, duly supported by an affidavit, delay of 36 days in filing the appeal is condoned.

C.M. stands disposed of.

RSA No.845 of 2016 (O&M)

The appellant-plaintiff is aggrieved of the concurrent findings of facts and law, whereby, suit filed in the year 1999 challenging the judgment and decree dated 19.08.1988 executed by Manga Singh in favour of the defendants and as well as, Will dated 03.02.1997 though registered later on, has been dismissed by both the Courts below.

Mr. Rajesh Narang, learned counsel appearing on behalf of the appellant-plaintiff submits that Manga Singh son of Machhian Singh was married to one Khushian Bai and out of their loin, appellant-plaintiff,

Veeran Bai was born. Manga Singh was not keeping good health as he died on 06.02.1997 and therefore, the Will dated 03.02.1997 bequeathing the part of property in favour of the defendants was suffering from suspicious circumstances. The judgment and decree aforementioned pertains to the other part of the property, of which, no Will was executed. Defendants No.2 to 7 allege themselves to be the children born from the loins of Manga Singh and Maya Bai - defendant No.1. According to the defendants, Maya Bai was earlier wife of Arjan Singh, brother of Manga Singh, who died on 28.01.1955 but the defendants have failed to prove the krevā marriage. The judgment and decree was suffering from the fraud and misrepresentation having been played upon Manga Singh.

As regards the Will, the plaintiff had examined doctor PW9 who had brought on record the certificate dated 14.08.1999 Ex.P-13 which shows that Manga Singh was admitted in the CT Scan and Heart Centre. Ashok Garg, doctor is the alleged owner of the aforementioned Institute situated at Ganga Nagar. Even the doctor from DMC where Manga Singh was referred was also examined and found that he was suffering from fever and cold, died on 06.02.1997. Both the Courts below have abdicated in not referring the statement, rather giving erroneous finding, that no evidence has been led, thus, there is illegality and perversity in the findings rendered by both the Courts below and the Courts below ought to have considered the statement of aforementioned witnesses. He further submits that he examined the expert for comparison of the signatures of Manga Singh from the mortgaged deed 1980 (Ex.DW7/24).

I have heard learned counsel for the appellant-plaintiff and appraised the judgments and decrees of both the Courts below.

As regards the challenge to the judgment and decree, aforementioned, I am of the view that suit filed in the year 1999, was not maintainable in view of the provisions of Order 23 Rule 3A of the Code of Civil Procedure (hereinafter referred to as “CPC”) as the ingredients of Order 12 Rule 6 and Order 23 Rule 3A CPC came to be pondered upon by the Hon'ble Supreme Court in **Daljit Kaur and another vs. Muktar Steels Pvt. Ltd. and another 2014(1) RCR (Civil) 625**, wherein, it has been held that independent suit challenging the aforementioned judgment and decree is not maintainable. At the best, the appellant-plaintiff could have gone to the same very Court for recalling of the order as the ingredients of fraud and misrepresentation alleged to have been played upon Manga Singh, was not pleaded, much less, proved.

This Court had come across many cases where after the demise of deceased, who had executed a Will, remained alive 10 years and none of the legal heirs challenges the same but litigation is initiated after the demise, despite that fact, decree had been acted upon. In my view, attempt is nothing but an act of aggrandizement.

As regards the property mentioned in the Will, I am of the view that the respondents have examined both the attesting witness and Scribe, who have been subjected to detailed cross-examination but nothing surfaced. Ex.P13 alleged certificate is not on the letter head of the hospital.

Neither designation or specialization of the doctor Ashok Garg has been mentioned. Perhaps, he may be a Pathologist as name of the hospital is mentioned as CT Scan and Heart Centre. Even in examination-in-chief, he appeared as PW5, but did not disclose the designation and qualification rather stated that he had destroyed the record.

As regards the statement of PW9 Dr. Sandhu, who appeared on behalf of DMC Ludhiana and submitted that Manga Singh was suffering from high fever and cold and died on 06.02.1997. The report of the expert cannot be looked into, for, the mortgage deed is of 1980, whereas, the signatures on the Will are of 1997. Over a period of time, signature of person keep on changing owing to the old age. The appellant-plaintiff has failed to examine the signatures of closely related period, i.e., when the Will was executed. The aforementioned Will has been registered after the demise of deceased. Dr. Ashok Garg, PW5 in reply to the specific question in cross examination stated that he did not enquire from a person who had come to obtain a certificate and purpose for which it was required for.

All these factors, in my view, have created suspicion in the mind of the Court to get favourable order. In my view, the appellant-plaintiff has miserably failed to prove the ingredients of fraud, much less, suspicious circumstances.

For the reasons aforementioned, 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 question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 30, 2016
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No