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

**RSA-4217-2014 (O&M)
Date of decision: 10.05.2016**

Bahadur Singh

..... Appellant

VERSUS

Parkash Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Amarjit Markan, Advocate
for the appellant.

JITENDRA CHAUHAN, J.

This regular second appeal has been filed by the plaintiff against the judgment and decree dated 22.04.2014, passed by Additional District Judge, Kapurthala vide which the appeal filed by the plaintiff was dismissed and the judgment and decree dated 03.02.2012, passed by Civil Judge, (Junior Division), Phagwara whereby the suit filed by the plaintiff for declaration and permanent injunction was dismissed, were upheld.

In brief, the plaintiff filed suit for declaration and permanent injunction. The plaintiff pleaded that Malkiat Singh, Bahadur Singh and Mohinder Singh were three brothers and Nirmala Kaur, Ajit Kaur, Gian Kaur and Sukhwinder Kaur were their sisters. They were the children of late Shankar Singh. Mohinder Singh and Malkiat Singh had died. The mutation in

respect of estate left by Malkiat Singh was sanctioned in favour of his wife-Malkiat Kaur on the basis of natural succession. Said Malkiat Kaur wife of Malkiat Singh also died on 17.08.2006 at Jalandhar. After the death of Malkiat Kaur, property left by Malkiat Kaur was to revert back by way of inheritance to her husband's heirs. Plaintiff and defendant Nos.2 to 5 were the legal heirs being brothers and sisters of deceased-Malkiat Singh. Defendant No.1, who was stranger, had forged a Will in her favour. The deceased, Malkiat Kaur was suffering from tuberculosis and was unable to exercise her free will. The Will is surrounded by suspicious circumstances. The suit property was ancestral, therefore, no Will could be executed in respect of suit land. There was no reference in the Will as to why the other relations had been excluded. The deceased was not a permanent resident of Mota Singh Nagar, Jalandhar. In fact, Malkiat Singh had executed a Will on 12.01.2002 in favour of plaintiff-Bahadur Singh and Vipandeep Singh, S/o Mohinder Singh. But after the death of Malkiat Singh, I.P Singh Bains put pressure on the attesting witnesses and got a false case registered against the plaintiff and the said witnesses. The Will allegedly executed by Malkiat Kaur in favour of defendant No.1 was a result of fraud and fabrication.

Upon notice, the contesting defendant, i.e. defendant No.1 appeared and filed written statement. It was the case of the defendant No.1 that originally, the suit property

was owned by Malkiat Singh, who had died on 25.11.2002. Said Malkiat Singh was married to Malkiat Kaur, who also died on 17.08.2006. The couple had no issue. Earlier also, the plaintiff had tried to fabricate a Will, for which criminal case had been registered against the plaintiff and his accomplices. The mutation proceedings were contested and ultimately mutation was sanctioned in favour of Malkiat Kaur on the basis of registered Will dated 29.07.1994 by the A.C. First Grade, Jalandhar vide order dated 12.03.2004. Defendant No.1 was the niece of Malkiat Kaur. She was treated as daughter by Malkiat Kaur. Malkiat Kaur was served and looked after by defendant No.1. Therefore, she had executed a Will dated 15.01.2004 (Ex. D1) in favour of defendant No.1 out of love and affection. Thus, the defendant No.1 had become absolute owner of the property. Since the plaintiff was not in possession, the suit for declaration simpliciter was not maintainable.

After appraisal of the evidence, the learned trial Court found the Will (Ex. D1) to be genuine. Consequently, the suit was dismissed vide judgment and decree dated 03.02.2012.

Feeling aggrieved, the plaintiff filed an appeal before the learned First Appellate Court, which was also dismissed vide judgment and decree dated 22.04.2014.

Still feeling dis-satisfied, the present regular second appeal has been filed by the plaintiff assailing both the aforesaid judgments and decrees.

On behalf of the appellant, it is contended that the Will in question has not been proved as per Section 63 of Indian Succession Act, 1925. The attesting witness, namely, Malak Raj-DW 1 did not depose that the Will had been scribed at the instance of the testator. He further refers to the statement of Malak Raj-DW 1, to state that Malkiat Kaur and her husband were present at the time of execution of the Will. The scribe of the Will has not been produced. Only the deed writer Om Parkash was produced. The Will in question was prepared on 15.01.2004, whereas it was entered in the register on 16.01.2004. Name of Malak Raj is not mentioned in the register as a witness. Malkiat Kaur, the propounder of Will has not been examined as a witness.

I have heard the learned counsel for the appellant and have gone through the case file.

There is a concurrent finding of fact recorded by both the Courts below that the deceased, Malkiat Kaur was in a sound disposing mind at the time of execution of the Will in question. Further, there is a testimony of Om Parkash, DW 2, scribe of the Will that Malkiat Kaur was in a good state of mind at the time of execution of the Will. The due execution of the Will has been proved by its attesting witness Malak Raj-DW 1. The attesting witnesses, namely, Varinder Kumar, Lamberdar and Malak Raj also appeared before the Sub Registrar and put their signatures, which is evident from the endorsement made

by the Sub Registrar on the Will. The omission to put signatures in the register of scribe by Varinder Kumar Lamberdar does not give rise to a suspicion that the Will is forged. When Varinder Kumar Lamberdar appeared before the Sub Registrar and had put his signatures for registration of the Will, the factum of non-signing the register of the scribe becomes inconsequential. The Will has been proved in accordance with law. The fact that the Will was prepared on 15.01.2004 and the same was entered in the register on 16.01.2004 does not affect the validity of the Will. The Will is not required to be proved by its propounder. As per the requirement of law, only one attesting witness needs to be examined to prove the execution of Will. Though, the propounder of the Will has not been examined but here is a case where the attesting witnesses have proved the execution of the Will and Lamberdar also appeared before the Sub Registrar. If the plea of the appellant is accepted, the sanctity of registered Will will be lost. Will, Ex. D1 is indeed a genuine document. Otherwise also, the arguments raised relate to the question of fact only and no substantial question of law is involved in the present regular second appeal.

Consequently, the appeal is dismissed.

(Jitendra Chauhan)
Judge

May 10, 2016
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