

In the High Court of Punjab and Haryana at Chandigarh

Regular Second Appeal No. 3556 of 2013 (O&M)
Date of Decision: 06.2.2017

Ram Singh

.....Appellant

Versus

Ram Swarup and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. S.K.Yadav, Advocate
for the appellant.

ANITA CHAUDHRY, J

This is the plaintiff's second appeal assailing the judgments of both the Courts below.

It is necessary to notice the facts first. The plaintiff filed a suit for declaration on a plea that Ram Devi (his father's sister) had executed a Will on 5.3.1984 bequeathing the moveable and immovable property upon him. An entry was made in the *bahi* and she had put her thumb impressions. The plaintiff claimed that the defendants who were the son and daughter of Ram Devi had got a mutation entered in the revenue record but it did not affect his right. It was pleaded that Ram Devi had taken a loan of Rs. 4500/- from his father Hardev on 18.5.1977. It was agreed that she would repay the same with interest @ 2% per month which was never paid and she executed a Will giving the entire property to him.

The suit was contested by the defendants and it was pleaded

that the plaintiff had never come into the possession of the property and

Ram Devi had never executed a Will and the entry in the *bahi* was based on fraud and misrepresentation. The thumb impressions on the Will were also disputed. Plea of limitation and maintainability were also raised.

On the pleadings of the parties, following issues were framed by the trial Court:-

1. *Whether the plaintiff is owner in possession of the suit property ? OPP*
2. *Whether mutation no. 975 dated 31.5.2004 in favour of Ram Devi is wrong, illegal, null and void and not binding on the rights of the plaintiffs ? OPP*
3. *If issues No. 1 and 2 are to be proved, whether the plaintiffs are entitled to get decree of declaration as prayed for with consequential relief of permanent injunction ? OPP*
4. *Whether the suit of the plaintiff is not maintainable in the present form ?OPD*
5. *Whether the plaintiff has filed false and frivolous suit? OPD*
6. *Relief.*

The lower Court noticed that though the Will was stated to have been executed on 5.3.1984 but the document never came to light for over two decades and the mutation had been incorporated in the revenue record in 2004 and the plaintiff had been sitting over the Will and did not claim any right. It noted that the alleged Will was not scribed by a regular Deed Writer and was not presented before any authority for a long time and was shrouded by suspicion. The thumb impressions were also

disputed. The suit was dismissed.

An appeal was preferred by the plaintiff. The Appellate Court held that the execution of the Will had not been proved and the findings of the lower Court were affirmed. Para 16 and 17 of the Appellate Court's judgment read as under:-

“16. Now, the plaintiffs in order to prove the due attestation and execution of Will have produced in evidence Pawan Kumar, the scribe of the Will as PW4 and a perusal of his statement shows that he has simply deposed that he himself had written the Will in the Bahi. He has then deposed that the writing which was written by him on 5.3.1984 in village Beri bears his signature. Now by above statement of Pawan Kumar it is not proved that the Will was attested by two witnesses namely Leela Ram and Mukhtiar Singh. He has nowhere stated that Ram Devi had put her thumb impression upon the Will in his presence and in the presence of Leela Ram and Mukhtiar Singh who are shown as attesting witnesses and Leela Ram and Mukhtiar Singh have put their signatures in presence of Ram Devi. Thus, by the statement of Pawan Kumar, the execution of the Will is not proved at all.

17. Now, the plaintiff in order to prove the execution of the Will has produced Mukhtiar Singh who is attesting witness of the Will. Now, said Mukhtiar Singh has deposed that Ram Devi executed a Will in favour of plaintiffs regarding her share of land. He has then deposed that this Will was written by Pawan Kumar in the Bahi. He has then deposed that Pawan

Kumar had written the Will in his presence which bears the signatures. However, this witness Mukhtiar Singh has nowhere stated that Ram Devi had put her thumb impressions on the document Ex. P1 in his presence and in presence of other witness Leela Ram and that they have signed the Will in presence of Ram Devi.

I have gone through the records and have heard the counsel at length and I find no reason to upset the findings recorded by the Courts below. The plaintiff had miserably failed to prove the execution of the Will. There is no merit in the appeal.

The appeal is dismissed in limine.

(ANITA CHAUDHRY)
JUDGE

February 06, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No