

RSA No. 452 of 2016 (O&M)

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

RSA No. 452 of 2016 (O&M)

Date of Decision: 20.3.2017

Nazar Singh and others

.....Appellants

Vs.

Karam Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Anupam Singla, Advocate
for the appellants.

RAMESHWAR SINGH MALIK J. (ORAL)

Plaintiffs are in regular second appeal, against the concurrent findings of facts recorded by both the learned courts below, dismissing their suit for declaration and permanent injunction.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of its impugned judgment, are that the appellants-plaintiffs filed a suit for declaration and permanent injunction against the respondents-defendants, inter-alia, on the grounds that the plaintiffs were owners and in possession of the suit property. Earlier Gurdial Kaur wife of late Sh. Punjab Singh, resident of village Khanoura, was owner and in possession of the suit property. Said Gurdial Kaur died issueless on 27.11.2003. Her husband Punjab Singh died during the life time of Gurdial Kaur and she was residing

RSA No. 452 of 2016 (O&M)

with the plaintiffs. The plaintiffs were looking after and serving her and due to the services rendered by them, Gurdial Kaur executed a valid Will in favour of the plaintiffs and proforma-defendant on 29.11.1997 while in sound disposing mind and on the basis of said Will, plaintiffs became owners and in possession of the suit property. Plaintiffs No. 3 and 4 constructed their residential house in the suit property about 7/8 years ago and were residing in the same. The shares of plaintiffs No.1 and 2 and proforma defendant were vacant and under their cultivation. The defendants had no right, title or concern whatsoever with the suit property and they were not legal heirs of Gurdial Kaur. The mutation qua the inheritance of Gurdial Kaur was wrongly entered in the name of defendants. The defendants by taking benefit of wrong revenue entries, were denying the right and title of the plaintiffs in the suit land and were also threatening and trying to alienate, transfer, mortgage or sell or dispose off the suit land and to dispossess the plaintiffs from the suit land illegally and forcibly to which they had no right to do so.

Having been served in the suit, defendants No.1 to 4 appeared and filed their contesting written statement, raising more than one preliminary objections. Remaining defendants did not prefer to contest the suit and they were proceeded against ex parte. Plaintiffs filed their replication. On completion of pleadings of the parties, learned trial court framed the following issues:-

1. Whether the plaintiffs are entitled for declaration as prayed for?OPP
2. Whether the plaintiffs are entitled for permanent injunction as prayed for?OPP
3. Whether the suit of the plaintiffs is not maintainable

in its present form?OPD

4. Whether the suit is not properly valued for the purpose of court fees and jurisdiction?OPD

5. Whether the suit of the plaintiff is false, frivolous and defendants are entitled to special costs?OPD

6. Whether the plaintiffs have concealed the true and material facts and has not come to the court with clean hands, if so, its effect?OPD

7. Whether the alleged Will is forged and fabricated document?OPD

7A. Whether the plaintiffs and proforma defendants have become the owners and in possession of the suit property by dint of Will dated 29.1.1997 in question, if so, its effect? OPP

8. Relief.

In order to prove their respective stands taken, both the parties produced their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiffs have miserably failed to prove their case. Accordingly, their suit for declaration and permanent injunction was dismissed by the learned trial court, vide impugned judgment and decree dated 15.1.2014. Feeling aggrieved, plaintiffs filed their first appeal which also came to be dismissed by the learned Additional District Judge, vide impugned judgment and decree dated 26.8.2015. Hence this regular second appeal at the hands of unsuccessful plaintiffs.

Heard learned counsel for the appellants.

It is a matter of record that entire case of the plaintiffs-

RSA No. 452 of 2016 (O&M)

appellants was revolving around the Will dated 29.11.1997 (Ex.P1), allegedly executed by Smt. Gurdial Kaur in favour of the plaintiffs. It is also not in dispute that Smt. Gurdial Kaur died on 27.11.2003, i.e. after about six years from execution of alleged Will dated 29.11.1997. After more than two years of the death of Smt. Gurdial Kaur and after about eight years of alleged execution of the Will, it was sought to be registered on 4.1.2006. PW3-Meda Singh was the attesting witness but he did not come into witness box for his cross-examination.

Another witness namely Ranjit Singh-PW4, examined by the plaintiffs-appellants, was not belonging to the village of Smt. Gurdial Kaur. PW4-Ranjit Singh deposed before the court that the Will was scribed by a Deed-Writer and name of scribe was Hardarshan. However, neither this scribe of the Will (Ex P1) was examined, nor the Will was found entered in the register of the scribe. Further, when Ranjit Singh-PW4 was being examined in the court, neither the original Will was shown to him, nor it was produced on record. Having said that, this Court feels no hesitation to conclude that the Will was not only surrounded by suspicious circumstances but it could not be proved by the appellants-plaintiffs on record, by leading cogent and convincing evidence. Since the learned courts below have rightly recorded their concurrent findings of facts in this regard, the impugned judgments and decrees deserve to be upheld.

On the other hand, pleaded and argued case on behalf of the respondents-defendants was that Smt. Gurdial Kaur never executed any Will, as alleged by the plaintiffs-appellants. Case of the plaintiffs was based on falsehood, as they wanted to grab the share of defendants in the suit property. It is pertinent to note here that plaintiffs were to stand on their own

RSA No. 452 of 2016 (O&M)

legs. It is the settled proposition of law that onus to prove the Will would always be on the propounder. It is the duty of the propounder to dispel all the suspicious circumstances surrounding the Will. Registration of the Will alone will not be of any help to the plaintiff to prove its genuineness. However, in the present case, plaintiffs miserably failed to discharge their onus and the Will in question could not be proved. Under these circumstances, it can be safely concluded that learned courts below committed no error of law, while passing the impugned judgments and decrees and the same deserve to be upheld, for this reason also.

The view that has been taken by this Court also finds support from the following judgments of Hon'ble the Supreme Court as well as this Court:-

1. Rani Purnima Debi and another Vs. Kumar Khagendra Naryan Deb and another, 1962 AIR (SC) 567 (SC)
2. Om Parkash and others Vs. Shiv Kumar and others, 2006 (12) SCC 369 (SC)
3. Bharpur Singh and others Vs. Shamsheer Singh, 2009 (1) RCR (civil) 826 (SC)
4. Baltej Singh Vs. Hamir Kaur, 2001 (3) RCR (Civil) 134 (P&H)
5. Mangal Singh and another VS. Kartara and others 2004 (3) RCR (Civil) 524

Before arriving at a just conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Cogent findings recorded by the learned Additional District Judge in para 11 and 12 of his impugned judgment, which deserve to be noticed here, read as under:-

“From the perusal of file I find that the appellants/plaintiffs filed a suit for declaration to the effect that the appellants/plaintiffs no. 2 and 3 and proforma-respondent no. 5 are owners in possession in equal shares of ½ share and appellants/plaintiffs no. 3 and 4 are owners and in possession in equal shares of ½ share of land fully detailed in the head note of the plaint and also filed suit for permanent injunction restraining the respondents/defendants from alienating, transferring, mortgaging and disposing of the land in suit in any manner and further for restraining the respondents/defendants from interfering in peaceful possession of plaintiffs over the land in suit forcibly and illegally. It has been alleged by the appellants/plaintiffs that Gurdial Kaur wife of Punjab Singh was owner in possession of the suit property. She died on 27.11.2003 issueless. Her husband had already died during her life time. She was residing with the appellants/plaintiffs and was being looked after by them and in lieu of the services rendered by the appellants/plaintiffs Gurdial Kaur executed a Will in favour of appellants/plaintiffs and proforma respondents/defendants on 29.11.1997 and accordingly on the basis of Will the appellants/plaintiffs became owners in possession of the suit property. The appellants/plaintiffs no. 3 and 4 constructed their residential house in the suit property about 7/8 years ago and are residing in the same and share of appellants/plaintiffs and proforma-respondents/defendant is vacant and is in their cultivating possession and the respondents/defendants have got no right, title or interest in the suit property and mutation regarding inheritance of Gurdial Kaur is wrongly entered in the name of respondents/defendants. The respondents/defendants no. 1 to 4 contest the suit admitting that

Gurdial Kaur wife of Punjab Singh was owner in possession of the suit property and she died 27.11.2003 issueless. They also admitted that husband of Gurdial Kaur died during her life time. The other facts have been denied by the respondents/defendants. They alleged that Gurdial Kaur never executed any Will as alleged by the appellants/plaintiffs. They also alleged that Gurdial Kaur was never looked after or served by the appellants/plaintiffs as alleged. Rather, Gurdial Kaur died intestate and she never executed any document during her life time. The Will dated 29.11.1997 is a forged and fabricated document.

12. It was upon the appellants/plaintiffs to prove that Gurdial Kaur during her life time and while in sound disposing mind executed a Will in favour of the appellants/plaintiffs and proforma/respondents and in order to prove the Will, the appellants/plaintiffs examined Meda Khan attesting witness of the Will as PW3 and Ranjit Singh another attesting witness as PW4. Meda Khan did not step into the witness box for his cross examination, so his examination-in-chief cannot be taken into consideration. Ranjit Singh attesting witness examined by the appellants/ plaintiffs does not belong to the village of Gurdial Kaur. He has deposed that the Will was scribed by a Deed Writer and from perusal of Will I find that the name of scribe is mentioned as Hardarshan, but I find that if the Will was scribed by a Deed Writer, he should have entered the contents of the Will in his register. Neither Hardarshan said scribe has been

examined by the appellants/plaintiffs and even when Ranjit Singh attesting witness was examined by appellants/plaintiffs, the original Will was not shown to him nor the original Will is available on the file. The appellants/plaintiffs got registered the Will from the Joint Sub Registrar, Bhadson after the death of Gurdial Kaur and if the Will is registered after the death of testator, the registration itself does not make the Will genuine. The appellants/plaintiffs have also failed to produce any evidence to show that she was residing with them or was being served by them and accordingly in these circumstances, I find that the Will is not proved on the file beyond suspicion and I find that if the Will is not proved beyond suspicion, it should not be relied upon. So, I find that the learned Trial Court has rightly dismissed the suit and the mutation has been sanctioned by the revenue authorities in favour of the legal heirs correctly. So, I do not find any ground to interfere in the judgment and decree passed by the learned Trial Court.”

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in either of the impugned judgments and decrees passed by the learned courts below. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on

RSA No. 452 of 2016 (O&M)

the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

20.3.2017
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No