

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

RSA 3582/2015

Date of decision:06.11.2017

Jarnail Singh and another

.....Appellants

v.

Harkishan Singh and another

.....Respondents

Coram: Hon'ble Mr.Justice Jaswant Singh

Present:- Mr.JS Toor,Advocate for the appellants.

Jaswant Singh,J,(Oral).

Plaintiffs/appellants are in second appeal against concurrent findings recorded by both the Courts below whereby their suit for declaration and permanent injunction was dismissed by learned Civil Judge (Junior Division) Phagwara vide judgment and decree dated 28.7.2008 and findings affirmed in appeal by learned Additional District Judge, Kapurthala vide judgment and decree dated 7.10.2014.

Briefly noticed, the facts of the present case are that plaintiffs/appellants filed a suit for declaration and permanent injunction with the averments that deceased Rattan Kaur was their real *Mami* (maternal aunt). They were owners in possession of the suit properties,detailed in the head note of the plaint, situated at Village Panchhat. It was alleged that Rattan Kaur had inherited the suit property from her husband Kanshi Ram. She died intestate on 3.6.1998 at Village Panchhat and was residing with the plaintiffs and that after the death of Rattan Kaur, plaintiffs inherited the suit properties and have become full owners of the property. It was further alleged that deceased Rattan Kaur had executed a valid Will dated 5.4.1988 in favour of plaintiffs bequeathing all properties in their favour. The said Will was produced in the Court of AC Ist Grade,Phagwara but the same was not accepted by the Revenue Court. Thus, the plaintiffs were claiming their right on the basis of inheritance. It was further alleged that defendants started claiming themselves to be owners of the properties left behind by

Rattan Kaur on the basis of some forged Will dated 2.8.1997 allegedly executed by Rattan Kaur in favour of defendants. It was alleged that Rattan Kaur used to live at Village Panchhat with plaintiffs, whereas defendants lived at Village Rampur, PS Banga, Distt. Nawanshahar and they never looked after her. It was further alleged that Rattan Kaur was not of sound mind when the alleged Will in favour of defendants was executed. The defendants 1 and 2 had played a fraud with the Revenue Authorities and got mutation entered in their favour on the basis of said forged and fabricated Will. It was thus alleged that Mutation No.5626 dated 9.12.1998 was illegal, null and void and had no effect on the rights of plaintiffs. It was further alleged that after the death of Rattan Kaur, it were plaintiffs who performed her last rites. Since the defendants were allegedly threatening to dispossess the plaintiffs forcibly and interfere into their possession, hence prayer for declaration and permanent injunction was made.

Upon notice, defendants filed written statement with the averments that defendants were not in physical possession of the suit property but it were defendants Harkishan Singh and Harbhajan Singh who were in physical and cultivating possession of the suit property, which they had inherited after the death of Rattan Kaur, on the basis of a legal and valid Will dated 2.8.1997 executed by Rattan Kaur in their favour and mutation of inheritance was duly sanctioned by the A.C. Ist Grade, Phagwara vide order dated 20.2.2001 in favour of defendants. It was also averred that the appeals against said order dated 20.2.2001 filed by plaintiffs were dismissed by the Collector, Kapurthala and Commissioner, Jalandhar Division. It was alleged that plaintiffs never resided in Village Panchhat rather they were residents of Village Bahadurgarh, District Fatehgarh Sahib. It was further alleged that defendants used to look after deceased Rattan Kaur as they were sons of brother of Rattan Kaur and it is for this reasons that she executed Will dated 2.8.1997 in favour of defendants out of love and affection.

On the pleadings of the parties, issues were framed. Both sides led evidence in support of their respective pleas.

Both the Courts below, on the basis of oral as well as documentary evidence have found that that DW5 Gurbachan Singh and DW6 Chain Singh deposed in unambiguous terms that the Will dated 2.8.1997 was executed by Rattan Kaur with her free consent in their

presence and she had thumb marked in their presence and thereafter they put their respective signatures on the same. It has also come in the evidence that Rattan Kaur herself had gone to call both the marginal witnesses from their houses and similarly the scribe was also called by her. It has also come on record that at the time of execution of the said will both the defendants, who were serving in Army, were posted at Assam and Jammu respectively and thus arose no question of any undue influence upon Rattan Kaur. It was also found that marginal witnesses were neither related to defendants nor were interested ones rather they were independent witnesses having no relationship with the defendants. The minor contradiction in their cross examination, as to who put the thumb impression or signatures first was rightly ignored by the Courts below, as both the witness were rustic and were deposing after considerable lapse of time from the date of execution of the Will in question. It was further noticed that as per deposition of PW1 Jarnail Singh, he admitted in his cross examination that he and Nirmal Singh, plaintiff no.2, were born in Bahadurgarh in Distt.Fatehgarh Sahib and had got prepared their ration card in Village Panchhat only 4/5 years ago which meant that ration cards had been prepared during the pendency of the suit. Even the ration card Ex.DW3/1 did not show name of the plaintiffs. Moreover, they were not found to have been named as nominees of Rattan Kaur in her bank/post office saving passbook. Plaintiff Jarnail Singh, while appearing as PW1 had also admitted that cremation of Rattan Kaur, *Bhua* ((paternal aunt) took in Village Rampur, Tehsil Banga i.e. the residential village of defendants. It was thus, rightly held that it stood duly proved that Rattan Kaur was a close relative of defendants. On the other hand, plaintiff Jarnail Singh could not produce any medical bill regarding expenses incurred on the treatment of Rattan Kaur. It has thus, been rightly held by the Courts below that defendants had failed to prove that the Will set up by defendants was surrounded by any suspicious circumstances and rather it was executed by Rattan Kaur with a sound disposing mind.

At the time of hearing, learned counsel for the appellants has not been able to point out any illegality or irregularity in the findings recorded by the Courts below.

In view of the above, no question of law much less substantial

question of law arises for consideration in this appeal and the same is hereby dismissed.

06.11.2017
joshi

(Jaswant Singh)
Judge

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No