

RSA No. 6005 of 2016 (O&M)

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

RSA No. 6005 of 2016 (O&M)

Date of Decision: 15.2.2017

Ninder Kaur @ Narinder Kaur

.....Appellant

Vs.

Harjit Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. S.S.Khaira, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Unsuccessful plaintiff is in regular second appeal, against the concurrent findings of facts, recorded by learned courts below, dismissing her suit for declaration.

Brief facts of the case, as noticed by learned first appellate court in para 2 of its impugned judgment, are that appellant-plaintiff was joint owner in possession of the land measuring 16 Kanals 5 Marlas. It was further stated that father of the appellant-plaintiff namely Tarlok Singh was the owner in possession of the suit property who had died after leaving behind his three children i.e. appellant-plaintiff, respondents-defendants No. 1 and 2. It was stated that her father Tarlok Singh had expired on 31-08-2010 and after his death respondent-defendant No. 1 procured a Will dated 19-12-2009 qua the share of deceased Tarlok Singh. It was further stated that her father Tarlok Singh had never executed any Will in favour of respondent-

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defendant No. 1 and he never disclosed the fact of execution of Will by him in favour of respondent-defendant No. 1. It was stated that on the basis of said Will respondent-defendant No. 1 got mutation sanctioned in his favour regarding the share of Tarlok Singh. The said Will alleged by respondent-defendant No. 1 as illegal, null, void, procured at the back of appellant-plaintiff and a forged and fabricated document. In this regard, the appellant-plaintiff requested to respondents-defendants to admit her claim, but all in vain.

Having been served, defendants No.2, 6 and 7 appeared and filed their contesting written statement. However, thereafter, defendants were proceeded against ex parte. Plaintiff produced her ex parte evidence. After hearing learned counsel for the plaintiff and going through the evidence brought on record, learned trial court came to the conclusion that plaintiff has failed to prove her case. Accordingly, her suit was dismissed, vide impugned judgment and decree dated 19.3.2015. Dissatisfied, plaintiff filed her first appeal which also came to be dismissed vide impugned judgment and decree dated 19.7.2016. Hence this regular second appeal at the hands of the plaintiff.

Heard learned counsel for the appellant.

It is a matter of record that entire case of the plaintiff-appellant was based on the plea that the Will executed by Tarlok Singh was based on fraud and misrepresentation. It was further pleaded that the mutation entered and sanctioned on the basis of the Will was also illegal. However, plaintiff-appellant failed to produce the Will and that is how, her suit was rightly dismissed in the absence of sufficient evidence. In fact, appellant being plaintiff, onus was on her to produce the Will and prove that the said

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Will was based on fraud and misrepresentation, however, she failed to discharge her onus on this crucial issue.

During the course of hearing, when confronted with the abovesaid material aspect of the matter, learned counsel for the appellant had no answer and rightly so, it being a matter of record. Neither the appellant could produce the Will before the court, nor she summoned any revenue official to prove that mutation was entered and sanctioned illegally. In such a situation, plaintiff was bound to fail. Having said that, this Court feels no hesitation to conclude that the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Facts of the case as well as evidence brought on record were re-considered and appreciated by learned first appellate court in correct perspective, before recording its own cogent findings. Relevant observations made by learned first appellate court in para 12 to 15 of its impugned judgment, which deserve to be noticed here, read as under:-

“In the absence of respondent/defendant No. 1 in whose favour the Will was executed, the onus to prove the case is upon the appellant/plaintiff that Will, if any executed was the result of fraud. Ld. Counsel for the plaintiff/appellant vehemently argued that, it is duty of respondent/defendant No. 1 to prove the execution of Will. No doubt, execution of Will is to be proved by the person who alleges the same, but in this case, circumstances are otherwise because respondent/defendant No. 1 who is son of Tarlok Singh was proceeded against exparte and did not come to the Court to contest the present case. In these circumstances, duty is casted upon the plaintiff/appellant to prove her

case by way of reliable evidence.

It is not the case of the plaintiff that Tarlok Singh was not having fit state of mind for execution of the Will. The case of the plaintiff is that Tarlok Singh never executed any Will. Plaintiff herself produced the copy of the mutation Ex. P2, in which it has been shown that inheritance of Tarlok Singh has been recorded in favour of respondent/defendant No. 1 on the basis of registered Will, which was registered after the death of Tarlok Singh because Tarlok Singh has died on 31-08-2010 and the Will was registered under Section 40 in the year 2011. If appellant/plaintiff failed to prove her case she could summon the entire record from the Revenue officials and plaintiff could summon the witnesses from the village and it could be proved that Tarlok Singh never executed any Will, but appellant/plaintiff did not try to bring any evidence to prove the fact that Will was not executed by Tarlok Singh.

Dalip Singh, Numberdar of Village was present when the mutation was sanctioned in favour of Harjit Singh and on the back page of the mutation sheet proper pedigree table has been shown in which Ninder Kaur @ Narinder Kaur appellant/plaintiff has also shown as a sister of Harjit Singh and daughter of Tarlok Singh. Ninder Kaur @ Narinder Kaur never challenged the inheritance of her father. In the oral evidence led by the appellant/plaintiff she examined herself and PW-2. Dalip Singh, Numberdar who specifically stated that Tarlok Singh never executed any Will in favour of his son Harjit Singh at the time of sanctioning of mutation Ex. PW2. But when the mutation was sanctioned and he affixed his thumb impression so his oral evidence cannot be accepted in this case. This witness was very much present before the Revenue Authority. Furthermore, when the Will was

got registered by respondent/defendant No. 1 under Section 40, publication to this effect was to be published in the newspaper and at that time objection could be raised, but no objection was ever raised by the appellant/plaintiff or any other person of the Village except filing the suit.

Another arguments raised by the Ld. Counsel for the appellant/plaintiff is that he has moved an application Under Order 11 Rule 14 C.P.C for production of Will during the pendency of the case, but after the filing of application appearing defendants/respondents were absented themselves. He tried to convince this Court that non production of the Will is definitely fatal to the case of the respondent/defendant No. 1, because Will in question was forged and fabricated document. On perusal of the file, it shows that Will in question could be in possession of respondent/defendant No. 1 and it could not be in possession of other respondents/defendants because Will was only executed in favour of respondent/defendant No. 1. Hence, appearing defendants/respondents No. 2,6 and 7 could not produce the Will because the same could not be available with them. Hence, no adverse inference can be drawn against respondent/defendant No. 1 and other respondents/defendants.

A bare reading of the abovesaid findings recorded by learned first appellate court would show that present one was a case of insufficient evidence and learned courts below rightly dismissed the suit as well as first appeal of the plaintiff in the absence of sufficient and cogent evidence. The abovesaid view taken by this Court also finds support from the judgments of this Court in **Santa Singh VS. Tarsem Singh, 2010 (67) RCR (civil) 520, M/s Machhi Ram Kishan Singh Sidana, Rice Mills Vs. Sham Singh and others, 2015 (9) RCR (Civil) 506** and **Usha and others Vs. Subhash**

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Chander and others, 2014 (5) RCR (civil) 813.

Learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments rendered by learned courts below. He also could not point out 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 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

15.2.2017
Ak Sharma

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