

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4636 of 2015 (O&M)
Date of decision: 07.09.2017

Ram Dei (deceased) through LRs

... Appellants

Vs.

Balwan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. B.K. Bagri, Advocate
for the appellants.

RAMESHWAR SINGH MALIK, J. (ORAL)

Instant regular second appeal, at the hands of legal representatives of the plaintiff, is directed against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for declaration with possession and consequential relief of permanent injunction filed by the plaintiff challenging the validity of Will dated 01.06.2001 and mutation No.2429 dated 06.12.2001 as null and void, was dismissed by the learned trial Court vide its impugned judgment and decree dated 17.09.2010 and first appeal was also dismissed by the learned Additional District Judge vide his impugned judgment and decree dated 07.05.2015, upholding the judgment and decree of the learned trial Court.

Brief facts of the case, as noticed by learned first appellate Court in paras 2 and 3 of the impugned judgment, are that the plaintiff/appellant Ramdei

filed the suit for seeking declaration that registered Will dated 01.06.2001 executed by Bhagwana in favour of defendants No.1 to 3 and mutation No.2429 dated 06.12.2001 regarding the suit land situated in Village Barot, Tehsil Ganaur, District Sonapat was illegal, null and void and plaintiff was entitled to inherit the property of Bhagwana.

It had been pleaded that plaintiff Ramdei and defendant No.4 were real sister and brother of deceased Bhagwana son of Hari Kishan. Defendants No.1 to 3 were sons of defendant No.4. It had been claimed that Bhagwana died intestate on 01.12.2001 in Village Kundli, Tehsil and District Sonapat and he left behind several movable and immovable properties fully mentioned in para No.2 of the plaint. It had been pleaded that agricultural land mentioned in para No.2(i) situated in Village Barot, Tehsil Ganaur, District Sonapat was purchased by deceased vide registered sale deed dated 07.03.2000 from Bhim Singh son of Chandu Lal for a sale consideration of Rs.11,80,000/-. Deceased Bhagwana was also having 1/3rd share in the agricultural land situated in Village Kundli fully mentioned in para No.2(ii) of the plaint. It had been pleaded that deceased Bhagwana was also having bank account in Central Bank of India at Village Rasoi and he was also having bank account in State Bank of Patiala and UCO Bank. It had been further claimed that Bhagwana never executed any Will during his life time regarding his movable or immovable properties and plaintiff and defendant No.4 being real brother and sister of deceased Bhagwana, were entitled to inherit the properties of Bhagwana. It had been pleaded that defendants No.1 to 3 were clever and mischievous persons and they got prepared forged Will of Bhagwana in collusion with petition writer and the witnesses of Ganaur regarding his entire movable and immovable properties. It

had been pleaded that said Will was fraudulently got registered at Sub Registrar Officer, Ganaur, District Sonapat. Defendants No.1 to 3 got sanctioned mutation No.2429 on 06.12.2001 regarding property situated in Village Barot. It had been pleaded that defendants No.1 to 3 illegally and forcibly taken the possession of all the properties of deceased Bhagwana under the guise of forged and fabricated Will dated 01.06.2001. It had been pleaded that during his last 08 months prior to his death, Bhagwana was seriously ill due to cancer, which was a chronic disease and he was not able to move from his bed. He was aged about 85 years and his senses had lost and he could not understand his right or wrong. It had been pleaded that if Bhagwana had been in senses and executed the alleged Will on 01.06.2001 in favour of defendants No.1 to 3, he must have mentioned the reasons for exclusion of names and disinheriting the plaintiffs and defendant No.4, who were his natural legal heirs. It had been pleaded that Bhagwana was living separately from defendants till his death and defendants No.1 to 3 never served Bhagwana during his life time. It had been pleaded that plaintiff lived with Bhagwana during his last days and served him upto his death. All funeral ceremonies of Bhagwana were performed by the plaintiff. It had also been pleaded that during his life time, Bhagwana used to live with Mahabir son of Duli Chand. It had been claimed that Bhagwana never executed the Will in favour of defendants No.1 to 3 in his sound disposing state of mind and he never marked his thumb impression on the alleged Will in the presence of witnesses. It had been further pleaded that if thumb impression of Bhagwana were proved, which was impossible, in that case, it might have been obtained by defendants No.1 to 3 on some blank papers, when Bhagwana was seriously ill and defendants No.1 to 3 got executed and registered the Will on those blank

papers in collusion with petition writer and witnesses and registration authorities. It had been further pleaded that Bhagwana was resident of Village Kundli but the Will was procured at Tehsil Ganaur, District Sonapat and the witnesses of the Will were also not of his native village i.e. Kundli, Tehsil and District Sonapat. It had also been pleaded that if Bhagwana had executed a Will in favour of defendants No.1 to 3, he might have executed the Will in Tehsil and District Sonapat. The plaintiff asked the defendants to get the Will and mutation cancelled but of no use.

Defendants were put to notice. They appeared and filed their contesting written statement, raising more than one preliminary objections. Plaintiff filed the replication. On completion of pleadings of the parties, the learned trial Court framed the following issues: -

1. Whether the Will dated 1.6.2001 purported to have been executed by Bhagwana is forged? OPP.
2. If issue No.1 is proved, whether the plaintiff is entitled for a decree of possession? OPP
3. Whether the plaintiff and defendant No.4 are real sister and brothers respectively? OPP
4. Whether the plaintiff has no locus standi to file the present suit? OPD
5. Whether the suit is not maintainable in the present form? OPD
6. Whether the plaintiff is estopped by her own act and conduct to file the present suit? OPD.
7. Whether the plaintiff is not the legal heir of deceased Bhagwana? OPD.

8. Relief.

In order to prove their respective stands taken in their pleadings, both the parties brought on record 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 the plaintiff has miserably failed to prove the pleaded case for want of cogent and sufficient evidence. Accordingly, suit for declaration with possession and consequential relief of permanent injunction was dismissed by the learned trial Court vide its impugned judgment and decree dated 17.09.2010. Feeling aggrieved, plaintiff filed the first appeal, which also came to be dismissed by the learned first appellate Court vide its impugned judgment and decree dated 07.05.2015. Hence this regular second appeal at the hands of legal representatives of the plaintiff.

Heard learned counsel for the appellants.

Challenging the validity of registered Will dated 01.06.2001 and mutation No.2429 dated 06.12.2001, plaintiff filed the suit for declaration with possession and consequential relief of permanent injunction. Plaintiff also raised the plea of fraud against the defendants, so as to contend that the Will in question was result of fraud and misrepresentation. However, plaintiff failed to prove her pleaded case. Admittedly, defendants No.1 to 3 were the nephews of late Sh. Bhagwana and defendant No.4 was his brother. It is also not in dispute that Sh. Bhagwana son of Sh. Hari Kishan was unmarried and issueless. In his old age, he was living with his nephews and brother-defendants, respondents herein.

It is only the defendants-respondents who were taking care about

the daily needs of the testator late Sh. Bhagwana son of Sh. Hari Kishan. Under these peculiar circumstances, Sh. Bhagwana executed the Will Ex.PW10/1 dated 01.06.2001 bequeathing his entire moveable and immoveable property in favour of his three nephews in equal shares, which was very natural in the given fact situation of the case in hand. Since the plaintiff could not bring on record any cogent and convincing evidence to establish on record that the Will Ex.PW10/1 was suffering from any patent illegality or it was surrounded by any suspicious circumstance, suit was rightly dismissed by the learned trial Court. Similarly, the learned first appellate Court recorded its own cogent findings rightly upholding the findings recorded by the learned trial Court. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Before arriving at its judicious conclusion, learned first appellate Court rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. The relevant and cogent findings recorded by the learned Additional District Judge in paras 22 to 24 of the impugned judgment, which deserve to be noticed here, read as under: -

“..... The Will was executed by Bhagwana who was residing with Hari Parkash defendant No.2. Merely because some criminal case was registered against defendant No.1 Balwan regarding forgery etc., it cannot be said that Will in question is also based on fraud. The plaintiff is required to lead convincing and cogent evidence that Will in question is based on fraud. Registration of criminal

case against Balwan is immaterial.

Sh. P.N. Relan Adv for the appellant also argued that conduct of Bhim singh, who appeared in the witness box as DW4 is also questionable and FIR has been registered against him regarding forgery of Will of his deceased father Chandu Lal. Bhim Singh is resident of Village Barot where the property of Bhagwana is situated. FIR against Balwan was registered after registration of Will on 01.06.2001. Bhim Singh is attesting witness of the Will Ex.DW3/1. Merely because a criminal case was registered against Bhim Singh regarding forgery of the Will of his deceased father Chandu Lal is not itself sufficient to discard the evidence of Bhim Singh regarding execution and registration of the Will Ex.DW3/1. The Will in question is registered Will which was drafted by DW3 Ram Parshad. The thumb impression of deceased Bhagwana are on each page of the Will and on the register of the deed writer and thumb impression of Bhagwana are also on the back of the Will when the said Will was got registered. In these circumstances, merely because a criminal case was registered against the attesting witness Bhim Singh is not sufficient to discard the Will on the ground of suspicious circumstances. It has been held in the authority Sadhu Singh Vs. Jagir Singh 2006 (2) RCR 533, that mere fact that witness scribed Will at different places or was disbelieved in one or two cases will not render his testimony inadmissible in evidence. In view of the authority titled as Mahender Singh Vs. Lachman Singh and others 2014 (1) CCC

296, there is no need that the attesting witness should be from the same village where the testator resides or where the subject matter of the Will is situated.

Sh. P.N. Relan, ld. counsel for the appellant relied upon authority **titled Pehalwan Vs. Lddo Bibi 2001 (2) PLJ 54.** But this authority is not applicable to the facts of the present case because in the present case will was scribed by professional scribe and Will was registered by Bhagwana on the date of its execution and immediately after the death of Bhagwana, mutation was got sanctioned in favour of defendants No.1 to 3. Sh. P.N. Relan ld. counsel for the appellants has also relied upon authority titled as **Babu Singh Vs. Ram Sahai AIR 2008 SC 2485.** There is no doubt that the propounder is required to explain the suspicious circumstance. In the present case defendants have explained all the suspicious circumstance pointed by the counsel for the appellants.

In view of the above discussion, it is clear that Bhagwana executed and registered a Will Ex.DW3/1 on 1.6.2001 and there is no suspicious circumstance and in these circumstances defendants have proved execution and registration of the Will dated 1.6.2001. On the other hand, plaintiff failed to prove that there is any fraud or forgery in the execution and registration of the Will.”

A bare joint reading of both the impugned judgments and decrees passed by the learned Courts below will make it crystal clear that each and every relevant aspect of the matter was rightly examined, considered and

appreciated by the learned Courts below in correct perspective. The Will in question was not found suffering from any patent illegality and it was also not found surrounded by any suspicious circumstance. The Will Ex.PW10/1 was a genuine document. Due execution of the Will as well as registration thereof has been established on record by the defendants. Under these undisputed circumstances of the case, it can be safely concluded 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.

Although the plaintiff raised the plea of fraud against the defendants, so as to point out that the Will was result of fraud and misrepresentation, played at the hands of the defendants, yet there was hardly any evidence brought on record to prove the plea of fraud. It goes without saying that the plea of fraud is to be proved by the person who asserts it and it is to be proved like a criminal charge. It is also true that it is very easy to raise the plea of fraud but it is equally difficult to prove the same. That is what has happened in the present case as well.

Entire case of the plaintiff-appellant was based on the plea of fraud but no cogent evidence was brought on record, so as to prove this plea of fraud. The Will in question was not found surrounded by any suspicious circumstance. In such a situation, there was no scope at the hands of both the learned Courts below to decree the suit of the plaintiff. In fact, in the peculiar facts and circumstances of the case noticed hereinabove, plaintiff had no case right from day one either on facts or in law. In this view of the matter, no fault can be found with the concurrent findings of facts recorded by both the learned Courts below and the impugned judgments and decrees deserve to be upheld, for this

reason as well.

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

1. *Sri Gangai Vinayagar Temple and another Vs. Meenakshi Ammal and others, 2015 (2) SCC (Civil) 350 (SC).*
2. *Punjab Urban Planning and Dev. Authority Vs. M/s Shiv Saraswati Iron and Steel Re-Rolling Mills, 1998 AIR (SC) 2352.*
3. *Zarina Siddiqui Vs. A. Ramalingam alias R. Amarnathan, 2015 (1) SCC 705 (SC).*
4. *Swarn Singh Vs. Swarn Kaur and others, 2004 (2) RCR (Civil) 505 (P&H).*
5. *Santa Singh Vs. Tarsem Singh, 2010 (67) RCR (Civil) 520 (P&H).*
6. *M/s Machhi Ram Kishan Singh Sidhana Rice Mills Vs. Sham Singh and others, 2015 (9) RCR (Civil) 506 (P&H).*
7. *Sudarshan Kumar and others Vs. Dilbagh Rai and others (RSA No.5599 of 2016) decided on 05.04.2017.*

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He also failed to raise any question of law, much less substantial question of law, which is sine qua non for entertaining any 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 law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs.**

Lekshmy Sarojini and others, 2009 (5) SCC 264.

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 since no illegality has been found in either of the impugned judgments and decrees passed by the learned Courts below, the same deserve to be upheld. Present regular second appeal having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground 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

07.09.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No