

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

**RSA No. 4855 of 2015
Date of decision : 18.09.2017**

Paramjit Singh and anr.

...Appellants

versus

Mohinder Singh and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Gulzar Mohd, Advocate
for the appellants.

RITU BAHRI, J.

This regular second appeal is directed against the judgment dated 20.05.2015 passed by learned Addl. District Judge, Jalandhar whereby the appeal filed by the plaintiffs-appellants against the judgment dated 16.07.2014 filed by Narinder Singh (father of Paramjit Singh) has been dismissed.

Narinder Singh (since deceased) filed a suit for declaration to the effect that he is the joint owner/co-owner in possession of the Leo Fortune Hotel and Restaurant to the extent of 1/6th share being the share of Gian Kaur on the basis of bequeath made in his favour on the basis of will dated 05.04.1989 in his favour contending that after the death of Gian Kaur on 22.02.1999, he acquired rights of the property on the basis of said will and become co-owner in joint possession of the property. It is further claimed that the defendants-respondents claim right over the property on the basis of sale deed dated 11.02.1981 said to have been executed by Gian

Kaur in favour of Mohinder Singh, whereas Gian Kaur never used to thumb mark the document and she used to append her signatures in Punjabi language and the sale deed dated 11.02.1981 alleged to have been executed by Gian Kaur in favour of Mohinder Singh is null and void being result of fraud and does not binding upon the rights of the plaintiff. Further sale deeds dated 16.07.1986 registered on 17.07.1986 before Sub Registrar executed by Mohinder Singh-defendant in favour of other defendants Leo Inn Private Ltd vide sale deed dated 20.03.1997 registered on 21.03.1997 before Sub Registrar are also null and void and not binding upon the rights of the plaintiff. The plaintiff came to know about the alleged sale deed in the month of March, 2009 after which he approached the Halqa Patwari and inquired about the share of her mother for sanctioning mutation in his favour of the basis of will and came to know about the above said alleged sale deeds.

The suit of the plaintiff was dismissed by the learned trial Court on the ground that the plaintiff has miserably failed to prove the factum of fraud having been committed. Further plaintiff had not moved appropriate authority for sanction of mutation within reasonable time and it only goes to show that he was in knowledge of the fact that Gian Kaur was not holding any alieable right in the suit property. The plaintiff has not come forward with any explanation as to when he stumbled upon the said will Ex PW2/B. It would have been very different matter if any of beneficiaries of the same presented the same or if any order of probate has been produced to show that on the basis of said will by Bhagwan Singh, the property has been

mutated in the name of his daughters. Thus, the very origin of the will dated 12.04.1978 comes under suspicion. P.W.2 admitted that Gian Kaur was holding a passport and the plaintiff could have easily proved on record the fact that Gian Kaur used to append her signatures by summoning the record from the appropriate authority and proved the fact that Gian Kaur had indeed put her signatures on the document and that she did not thumb mark the passport application form. The plaintiff had failed to prove that Gian Kaur never put her thumb mark on the document executed by her and that she always used to put her signatures on the document.

Feeling aggrieved against the above judgment, the present appellant i.e son and widow of late Narinder Singh preferred appeal and the lower Appellate Court upheld the judgment of the trial Court on the ground that P.W.1 Pal Singh in his cross examination has stated that the will regarding which he has come to make a statement in the Court was hand written and in English language, whereas the same is typed document in Punjabi. He did not know the month, date and year when the said will was executed. This witness is a cousin of Paramjit Singh. Further P.W.1 admitted that Gian Kaur used to reside in Jalandhar only and she had never lived in Delhi or outside Jalandhar. P.W.2 deposed in similar lines meaning thereby Gian Kaur lived near the property in dispute and thus, it cannot be said that she was not aware about the alleged sale for about 18 years (11.2.1981 date of sale deed, 22.2.1999 date of death). Further no explanation has been given by the appellants explaining the huge delay in filing of the suit.

Accordingly, the concurrent findings of facts recorded by both the Courts below does not require any interference by this Court.

No substantial question of law arises for adjudication by this Court.

The appeal is dismissed.

18.09.2017
G Arora

(RITU BAHRI)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>