

RSA No. 5890 of 2015

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

RSA No. 5890 of 2015

Date of Decision: 22.9.2017

Asha Rani

.....Appellant

Vs.

Mukesh Singh and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Deepak Arora, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Present regular second appeal, at the hands of unsuccessful plaintiff, is directed against the concurrent findings of facts recorded by both the learned courts below, whereby her suit for declaration was dismissed by the learned trial court, vide its impugned judgment and decree dated 27.9.2011 and her first appeal was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 14.7.2015 upholding the judgment and decree of the learned trial court.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of the impugned judgment, are that the case of plaintiff was that Basakhi Ram son of late Sham Singh was owner in possession of the property which was devolved to him from his forefather. Suit land was allotted to them in lieu of the property left behind by them in Pakistan. Basakhi Ram died on 18.6.2004. Plaintiff and fathers of defendants No.1 and 2 were legal heirs of deceased Basakhi Ram. After the death of Basakhi

Ram, father of defendants No.1 and 2 as well as the plaintiff were joint owners of the ancestral property on the basis of inheritance but the entries showing defendants Nos. 1 and 2 as exclusive owners of the suit land on the basis of alleged Will were null and void. The Will was forged and fabricated document. Father of the plaintiff had full love and affection with the plaintiff. He had no intention to exclude the plaintiff. Suit property cannot be alienated without legal necessity. Defendants No.1 and 2 were threatening to dispose of the property and also denying the title of the plaintiff over the suit property.

Defendants were put to notice. They appeared and filed their contesting written statement, raising more than one preliminary objections. It was specifically pleaded on behalf of the defendants that Will dated 16.7.2001 was a registered and genuine document. Late Sh. Basakhi Ram-grand-father of defendants executed the Will on his own without there being any kind of pressure from anybody. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether plaintiff is owner over the suit property as prayed for? OPP
2. Whether plaintiff is entitled to relief of permanent Injunction as prayed for? OPP
3. Whether the plaintiff is entitled to joint possession of the suit property?OPP
4. Whether Basakhi Ram had executed a Will dated 16.7.2001 in favour of the defendants, if so its effect? OPD
5. Whether the suit is not maintainable?OPD
6. Whether the plaintiff had no locus standi to file the present suit?OPD
7. Whether the plaintiff has no cause of action to file the

present suit?OPD

8. Whether the suit is time barred?OPD

9. Relief

In order to substantiate 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, the learned trial court came to the conclusion that plaintiff has miserably failed to prove her case. Accordingly, her suit for declaration was dismissed by the learned trial court, vide its impugned judgment and decree dated 27.9.2011. Feeling aggrieved, plaintiff filed her first appeal, which was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 14.7.2015. Hence this regular second appeal at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

A bare perusal of the Will dated 16.7.2001 will make it crystal clear that executant of the Will was very much alive to the fact situation. He specifically mentioned relevant facts about the plaintiff-appellant, who was daughter of the executant of the Will-late Sh. Basakhi Ram. It was pointed out that since the executant of the Will solemnised marriage of his daughter who was happily settled in her matrimonial home, he did not intend to give anything more to his daughter. Further, late Sh.Basakhi Ram bequeathed his property in favour of his two grandsons in equal shares vide his Will in question (Ex.D1). Having said that, this Court feels no hesitation to conclude that the Will in question was a natural and genuine document, which has not been found surrounded by any suspicious circumstances and the impugned judgments and decrees passed by the learned courts below deserve to be upheld.

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 12 to 16 of its impugned judgment, which deserve to be noticed here, read as under:-

“ I have heard ld. Counsel for the parties and gone through the evidence on record and perusal of judicial file of ld. Lower court and impugned judgment under appeal as well as grounds of appeal of the appellant and after re-appreciating and re-viewing the evidence on record, this court found that the suit filed by the plaintiff is for seeking relief of declaration to the effect that the plaintiff is owner of the land to the extent of 1/3rd share of the land left behind by Basakhi Ram, comprising of khewat no.106, khatoni no.127, khasra no.30R/16, 17, 24/2, 25/2, 182R measuring 27 kanals 3 marlas and land bearing khewat No.44, khatoni no.74, khasra no.4R/16, 19, 20/1, 20/2, 21, 22, 23/2, 24, 25, 5R/20, 6R/3, 4,5,6/1,6R, 7 /2/2, 18 measuring 85 kanals 12 marlas, total measuring 112 kanals 15 marlas on the basis of inheritance from his father who expired on 18.6.04 and the will alleged to have been executed is null and void being not genuine and further for permanent injunction restraining the defendants from selling, alienating or changing the nature of the land.

To prove his case, plaintiff examined PW-1 Nek Singh, PW-2 Bimla Devi and thereafter plaintiff Asha Rani herself stepped into the witness box as PW-3. On the other hand, the defendants have examined DW-1 Shyam Parkash, DW-2 Anirudh Singh, DW-3 Gopal Singh and DW- 4 Vijay Kumar and closed their evidence.

The plaintiff has filed suit seeking declaration of the land on the ground that the said land is falling in their share being

ancestral as the same is inherited from his father after his death and accordingly he has proved on file jamabandi for the year 2006-07 as Ex.P.2, death certificate of his father Baskhi Ram as Ex.P.1. On the other hand, the defendants have alleged that the suit property was self acquired property and they have also proved on file will Ex.D.1 and endorsement over the same as Ex.D.2.

It is admitted fact between the parties that Basakhi Ram was owner of the property. Plaintiff Asha Rani while appearing in the witness box as PW-3 has specifically deposed in her cross-examination that she does not have any document regarding the ownership of her father in Pakistan nor she has any allotment slip in respect of the suit land in favour of her father. Further more PW-2 Bimla Devi in her cross-examination has also specifically deposed that she does not know from which place Basakhi Ram had come to their village. Nek Singh examined by the plaintiff as PW-1 has also deposed that he cannot produce any document of title of the land owned by Basakhi Ram in Pakistan and he cannot say if Basakhi Ram had purchased the suit land before gaining consciousness and the same was not purchased in his conscious. On the other hand, defendants have produced and proved on file Will Ex.D.1 and further examined DW-1 Shyam Parkash, deed writer, who has specifically deposed that on 16.7.01 he scribed the will and Basakhi Ram got drafted the will from him and after reading over the contents of the will, Basakhi Ram thumb marked the will which is Ex.D.1 and he also entered the will in his register at Sr. No.211 dt. 16.7.01.

In cross-examination of PW-2 Bimla Devi has admitted that Baisakhi Ram had executed a will infavour of the defendants and the defendants have become owner of the suit land. She has further deposed that she does not know from whom Baisakhi Ram inherited the suit land. He further deposed in his cross-examination that he came to know about the

execution of will by his father after the death of his father. Further more while cross-examining DW-1 Shayam Parkash deed writer by the ld. Counsel for the plaintiff has put one suggestion that it is wrong that Basakhi Ram had executed the will under pressure of his children. Hence, from the entire evidence of the plaintiff and specifically the question put to DW-1 Shayam Parkash by the ld. Counsel for the plaintiff, it is crystal clear that the plaintiff has admitted the will and has full knowledge about the execution of the will executed by Basakhi Ram on 16.7.2001, which has been duly proved on record by the defendants by examining their witnesses, who specifically deposed about the execution of will and attested by attesting witnesses of the will and the witnesses examined by the defendants i.e. DW-3 Gopal Singh, defendant and DW-4 Vijay Kumar, Registration Clerk have fully proved the ingredients for execution of a valid will. I am fully convinced with the findings of ld. Lower court that the plaintiff has miserably failed to prove on record that the property was ancestral property in the hands of Basakhi Ram and the land in dispute is allotted property to Basakhi Ram and the will in question has not been executed by said Basakhi Ram. Ld. Counsel for the appellant/plaintiff has further failed to point out any irregularity and illegality in the judgment passed by the ld. Lower court. Ld. Lower court has totally touched each and every aspect of the case and appreciated the evidence led by both the parties and as such the findings of ld. Lower court on all issues are upheld. Hence, the ld. Lower court has rightly dismissed the suit of the plaintiff.

It is the settled proposition of law that plea of fraud is to be proved like a criminal charge. In fact, it is very easy to raise the plea of fraud but it is equally difficult to prove it. However, in the case in hand, there was hardly any evidence brought on record by the plaintiff-appellant, which

RSA No. 5890 of 2015

might have proved the plea of fraud raised by her. Appellant proceeded on a very casual approach, while raising the plea of fraud and thereafter, made no efforts to prove the same. In such a situation, she was bound to fail. That is what has been held by both the learned courts below, while recording their cogent and convincing findings. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned first appellate court committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason as well.

The view that has been taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in **Gautam Sarup Vs. Leela Jetly and others, 2008 (7) SCC 85** and judgments of this Court in **Santa Singh Vs. Tarsem Singh, 2010 (67) RCR (Civil) 520, Devi Lal Vs. Shekaran and another, 2011 (5) RCR (Civil) 615, Usha and others Vs. Subhash Chander and others, 2014 (5) RCR (Civil) 813, M/s Machhi Ram Kishan Singh Sidana, Rice Mills Vs. Sham Singh and others, 2015 (9) RCR (Civil) 506, RSA No.4070 of 2016 (Chamkur Singh and another Vs. Raghbir Singh and another) decided on 13.1.2017 and RSA No.1239 of 2016 (Satbir Singh Vs. Mukesh Rani and others), decided on 17.1.2017**

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments 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

RSA No. 5890 of 2015

Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by 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.

Since no plausible explanation has been found at the hands of plaintiff-appellant in both of his applications for condonation of delay in filing as well as re-filing, the same are also found misconceived and are dismissed, accordingly.

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

22.9.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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