

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

Sr. No.103

RSA No.4143 of 2014 (O&M)

Date of decision: 16.08.2017

Janeshwar Kumar Jain

....Appellant

versus

Aadeshwar Kumar Jain and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Rajesh Sethi, Advocate and
Ms. Pridhi Jaswinder Sandhu, Advocate
for the appellant.

* * *

DEEPAK SIBAL, J. (Oral)

The appellant, who was the plaintiff before the trial Court filed a suit seeking therein to be declared owner of 1/6th share out of 1/2 share of the premises bearing Municipal Committee House Tax Unit No.B-2/204, situated in Punjab National Bank Wali Gali, Rori Bazar, Sirsa and further to declare him owner in possession of 1/6th share of the residential house/premises bearing Municipal Committee Tax Unit No.B-2/130, situated in Gali Chhajran Wali, Rori Bazar, Sirsa (for short the 'suit properties'). He further prayed for declaring Will executed by Ginna Devi, mother of the parties to the suit and registered at Sr. No.93 dated 10.07.1998, in the office of Joint Sub Registrar, Sirsa in favour of respondent No.1 (defendant No.1 before the trial Court) as null and void being outcome of fraud, misrepresentation etc. Consequential relief of

permanent injunction for restraining respondent No.1 from alienating or transferring, the suit properties was also sought.

The case set up by the appellant was that Ginna Devi, the mother of the parties to the suit had owned the suit properties and because on 10.05.2003, she had died intestate, the appellant-plaintiff as her legal heir was entitled to inherit 1/6th share of the suit properties alongwith the possession thereof. On death of Ginna Devi, such inheritance, when demanded by the appellant, was denied by respondent No.1 on the strength of a Will executed by Ginna Devi through which the suit properties had been bequeathed by her to respondent No.1. According to the appellant, the above Will was a result of fraud having been played by respondent No.1 with Ginna Devi as she was of old age at the time when the alleged Will was executed and not keeping good health. Even otherwise, the Will in question was shrouded with suspicious circumstances as on the Will were appended Ginna Devi's thumb impressions whereas she being a well-read lady always appended her signatures on documents, as also for the reason that on 30.06.1998, two documents were got scribed, one of them being the Will in question and the other a General Power of Attorney executed by Ginna Devi in favour of respondent No.1. Though the General Power of Attorney was got registered on 30.06.1998 itself, the Will was got registered only on 10.07.1998 i.e. about 10 days later.

On being put to notice, respondent No.1 submitted that during the life time of Walaiti Ram Jain, the father of the parties, in a family settlement which had taken place between the parties, through a civil court decree, the suit properties were transferred in favour of Ginna Devi and she

being absolute owner of the same initially got registered a General Power of

Attorney qua the suit properties in favour of respondent No.1 and then 10 days thereafter through a registered Will bequeathed the suit properties to him. It is further the case of respondent No.1 that about 35 years ago, the appellant had shifted from Sirsa to Delhi where he was residing and running his own business. When the appellant had shifted, their father Wailiti Ram Jain was alive and at that time he had given the share of the appellant to him in an oral family settlement. The appellant-plaintiff used to visit Sirsa after gaps of several years and thus, neglected to look after his sister and old mother and even on her death, he had come 2/3 days later.

Respondents No.2 to 5 also filed a written statement opposing the claim of the appellant. While supporting the case of respondent No.1, it was submitted that on the date of execution of the Will in question, as also on the date of its registry, Ginna Devi was in a sound disposing mind and that the callousness of the appellant was clear from the fact that he came to Sirsa after 2/3 days of Ginna Devi's death due to which, her last rites were also performed by respondent No.1.

The trial court finding no merit in the appellant's suit, dismissed the same. Such judgment and decree was taken up in appeal by the appellant which met the same fate as his suit, giving him a cause to knock the doors of this Court through the present second appeal.

Learned counsel for the appellant submits that both the trial court as also the appellate court could have not placed any relevance on Ginna Devi's Will as the execution of the same had not been proved by respondent No.1 on whom was the onus to prove the same; the alleged attesting witnesses to the Will did not depose that the Will in question was signed by the witnesses and Ginna Devi in the presence of each other and

that the impugned judgments and decrees are perverse.

No merit is found in the above submissions.

The first and foremost issue is with regard to the genuineness of the Will in question. A perusal of the concurrent findings returned by both the trial court as also the appellate court reveal that not only was the Will in question a duly registered document, which certainly adds to its evidentiary value but the execution of same was also duly proved by respondent No.1 through the depositions of Satish Kumar, who was its scribe, Sube Singh, the Registration Clerk and Om Parkash its eye-witness as also through respondent No.1's own deposition. The scribe to the Will had specifically stated that after he had scribed the same he read over its contents to Ginna Devi who only after understanding the same appended thereto her thumb impressions. Similarly, Om Parkash, also deposed that he had appended his signatures to the Will in question in the presence of Ginna Devi when the same was scribed on 30.06.1998 as also in the presence of the Sub Registrar on 10.07.1998 where Ginna Devi and Sh. K.K. Singla, Advocate, alongwith other attesting witnesses were duly present. Cross-examination of the afore witnesses could not yield anything which would even dent respondent No.1's case.

The execution of the General Power of Attorney and the Will on 30.06.1998 but getting only the General Power of Attorney registered on 30.06.1998 and the Will on 10.07.1998, creates no suspicion in my mind with regard to the genuineness of the Will. Rather, as noted by the appellate court, it lends credibility to the document if it is registered after 10 days of its execution because if respondent No.1 as alleged, was in a hurry or sought to play fraud upon Ginna Devi, he would have certainly got the Will

registered immediately on it having been scribed, as there is always a chance that an executant may change his/her mind if a time gap is allowed to be given between its scribing and registration.

The argument that Ginna Devi being a well read person only appended her signatures on documents and therefore the Will in question on which are found appended her thumb impressions should be discarded also cuts no ice with me as on the record is found document Ex.DW 1/F, which is a mortgage deed duly executed by Ginna Devi much prior to the Will in question on which also Ginna Devi had appended her thumb impressions.

The Will in question was executed and registered in the year 1998 whereas Ginna Devi died in the year 2003. She had five years to amend/modify or change the contents of the Will in question but she did not exercise such option.

The other fact which is found on the record and needs to be noticed is the admitted position that the appellant had shifted his residence to Delhi at least 35 years prior to the death of Ginna Devi where he also started doing his separate business. That being so, it is not difficult to conclude that Ginna Devi, who was living with and was being taken care of by respondent No.1 sought to exclude the appellant from inheriting her properties. The other siblings of the parties to the suit siding with respondent No.1 is also a factor which goes on to show the genuineness in respondent No.1's claim.

Before disposing of the present second appeal, an application filed by the appellant under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure, 1908, to place on record additional evidence needs to be dealt with. Through this application, the appellant seeks to place on

record a certified copy of judgment/order dated 10.08.2009 passed by this Court in CR No.3173 of 2007-Baldev Raj vs. Aadeshwar Kumar Jain and another; certified copy of order dated 29.10.2013 passed by this Court in CR No.2594 of 2013-Janeshwar Kumar Jain vs. Aadeshwar Kumar Jain and certified copy of order dated 18.02.2014 passed by Judicial Magistrate 1st Class, Sirsa in Criminal Complaint No.69-1 of 2008/2012-Aadeshwar Kumar Jain vs. Janeshwar Kumar and others.

The first order dated 10.08.2009 which is sought to be placed on the record neither pertains to the parties to the present litigation nor the issue therein is found germane to the issue raised in the present lis. The same is, therefore, found to have no relevance in the adjudication of the present appeal.

So far as the order dated 29.10.2013 passed by this Court in CR No.2594 of 2013 is concerned, such order was passed in a revision petition filed by the petitioner against the order of the Appellate Court directing the petitioner to pay ad valorem fee. Thus, such order is also found to have no relevance in the decision of the instant appeal.

Lastly, the certified copy of order dated 18.02.2014 passed by Judicial Magistrate 1st Class, Sirsa is an order in the proceedings under the criminal law sought to be initiated by the respondent against the petitioner for forging certain documents. The same also has no relevance with the dispute raised in the present appeal.

In view of the above, there is no reason to interfere in the concurrent findings by both the trial court and the appellate court. No question of law, much less any substantial question of law, is also found to arise in the present second appeal.

Dismissed.

(DEEPAK SIBAL)
JUDGE

August 16, 2017
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>