

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

R.S.A. No. 56 of 2017

Date of Decision:- 25.01.2017

Joginder and others

....Appellants

vs.

Salwinder @ Surinder

...Respondent

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. A.K. Khunger, Advocate,
for the defendant-appellants.

DAYA CHAUDHARY, J.

The present appeal has been filed by the defendant-appellants to challenge the judgments and decrees passed by both the Courts below whereby suit of plaintiff-respondent for declaration with mandatory injunction was partly allowed and the appeal filed by the present appellants was dismissed.

Briefly, the facts of the case as made out in the appeal, are that plaintiff-respondent filed a suit for decree of declaration to the effect that she was owner of 1/4th share in the property which was initially owned by her father-in-law Mangal Singh and after his death, said property was inherited by his sons i.e. defendants and one Jagga @ Dharminder, who was husband of the plaintiff-respondent. After the death of said Dharminder @ Jagga, the plaintiff became owner of 1/4th share of the property of said Mangal Singh being the sole legal heir of her deceased-husband. The

Claim was also made for decree of mandatory injunction directing the defendants to hand over the possession of the suit property to the plaintiff being legally wedded wife of Dharminder Singh @ Jagga, who inherited 1/4th share in the estate of Mangal Singh.

Learned counsel for the appellants submits that judgments and decrees passed by both the Courts below are illegal and were passed without having jurisdiction and without appreciation of evidence available on record. The appellants proved the case on the basis of Will dated 7.9.2011 which was duly executed by Dharminder @ Jagga by examining DW-2 Balbir Singh, Ex Member Panchayat and DW-3 Ashok Kumar, who were the attesting witnesses of the Will. The Will was not believed by the learned trial Court and it was discarded only on the ground that there were contradictions in the evidence of DW-2 and DW-3 regarding its execution. Learned counsel further submits that while discarding the Will, it was illegally and wrongly observed by the learned trial Court that Dharminder @ Jagga remained admitted in the hospital from 6.9.2011 to 9.9.2011 and the Will was executed on 7.9.2011 which creates suspicion, whereas, he was admitted on 9.9.2011 and was discharged on the same day. Learned counsel also submits that respondent-plaintiff took away all the dowry articles and the compromise was reduced into writing on 14.12.2011, which was duly proved by the appellants as Exhibit D-2 wherein it was specifically stated that she had received all the dowry articles and she will not claim any share in the property of her husband Dharminder @ Jagga. Learned counsel also submits that the trial Court had wrongly observed that in the compromise Exhibit D-2, the fact regarding execution of the Will

was not mentioned whereas said Will was a separate document and there was no necessity to mention the said fact in the compromise deed. Counsel further contends that a wrong finding has been given by the learned trial Court that the deceased-husband put his signatures on the Will as Jagga whereas he used to sign as Dharminder. He submits that a question was put during cross-examination of DW-3 that 'it was wrong to suggest that the sign of Jagga was obtained on a blank paper'. Once said question was put during cross-examination, then the burden was shifted on the other party that the signatures of executant of the Will was obtained by way of fraud. At the end, learned counsel for the appellants submits that an application was moved for additional evidence but without deciding the same, the suit was decreed. He has also relied upon judgment of Hon'ble the Apex Court in case **Jatinder Singh and another minor through mother vs. Mehar Singh and others**, 2009(1) Civil Court Cases 211 (S.C.) as well as judgment of this Court in case **Kulbhushan Kumar vs. Amrik Singh and another**, 2014(3) Civil Court Cases 044 (P&H).

Heard arguments of learned counsel for the appellants and have also perused the judgments of both the Courts below as well as other documents available on the file.

Admittedly, plaintiff-respondent Salwinder @ Surinder Kaur, who is widow of Dharminder @ Jagga filed a suit for a decree of declaration to the effect that she was owner of the property measuring 3 Kanals 5 Marlas 4.5 Sarsai out of land measuring 13 Kanals 2 Marlas comprised of Khewat No. 23 Khatauni No. 164 Rect. No. 15 Killa No. 9/2 (5-2) Killa No. 12 (8-0) situated in the area of village Naurang Ke Lelli,

Tehsil & District Ferozepur as per Jamabandi for the year 2005-2006 and also 1/4th share of house constructed upon the plot measuring 10 Marlas.

Initially, the following issues were framed by the trial Court.

“1) Whether the plaintiff is entitled to the permanent injunction as prayed for? OPP.

2) Whether the husband of the plaintiff executed a legal and valid will dated 7.9.2011 in favour of defendants? OPP ?

3) Relief.”

Subsequently, with the concurrence of the parties, the issues were amended and re-framed as under:-

“1) Whether the plaintiff is entitled to decree for declaration as prayed for ? OPP.

2) Whether the plaintiff is entitled to decree of mandatory injunction directing the defendants to hand over the possession of the suit property? OPP .

3) Whether the plaintiff is entitled to decree of permanent injunction as prayed for ? OPP.

4) Whether the husband of the plaintiff executed a legal and valid will dated 7.9.2011 in favour of defendants ? OPD.

5) Relief.”

Issue Nos. 1 and 4 were decided in favour of the plaintiff and she was held entitled to 1/4th share of the property owned and possessed

by Mangal Singh being share of her deceased husband Dharminder @ Jagga. Defendant-appellants were restrained from alienating the share of deceased Dharminder @ Jagga and the suit was partly decreed in favour of the plaintiff-respondent.

Aggrieved by the judgment and decree passed by the trial Court, the appellants filed a civil appeal under Section 96 CPC by raising various grounds which was also dismissed and judgment/decreed passed by the trial Court was upheld. A specific finding was given by the trial Court which was upheld by the Lower Appellate Court that there were contradictions in the statements of DW-1 and DW-3, who were marginal witnesses of the Will executed by deceased Dharminder @ Jagga. Deceased Dharminder @ Jagga was admitted in the hospital immediately prior to execution of Will in dispute. It was admitted by DW-3 Ashok Kumar that deceased Dharminder @ Jagga remained admitted as indoor patient from 6.9.2011 to 9.9.2011. As per statement of DW-2, Balbir Singh, the Will in dispute was scribed by Dharminder @ Jagga after discharge from the hospital at the house of Nambardar Roshan Singh, whereas, it has been stated by DW-3 Ashok Kumar in his cross-examination that the Will was scribed in the house of Dharminder @ Jagga. The lower Appellate Court has also held that there were strong suspicious circumstances as to why the dowry articles were received and she relinquished her right over the property belonging to her husband after his death, whereas, there was no dispute between both the parties. Moreover, nothing was mentioned in the Will regarding the respondent which creates a strong suspicion. The Will in dispute Exhibit D-1 was found to be surrounded by suspicious

circumstances and was not termed as a legal and valid Will. Therefore, the Will in dispute was discarded by both the Courts below.

It has also been argued by learned counsel for the appellants that an application for additional evidence was moved by the appellants but the same was not decided by the trial Court. Neither in the grounds of appeal before the Lower Court nor before this Court, any such plea has been taken and nothing has been shown from the record as to whether any such application was pending.

After hearing the arguments and on consideration of evidence available on record, I am of the considered view that the findings of facts recorded by both the Courts below makes it evident that the Will prepared by the appellants was not proved on record as not only contradictions were found in the statements of DW-2 and DW-3 but other circumstances were also there, which creates serious doubt. The name of deceased-husband was Dharminder and his nick name was Jagga but the signatures on the Will has been put with his nick name Jagga. Even there is a contradiction in the statement of DW-2 and DW-3 regarding place of execution of Will. Nothing has been mentioned as to whether the Will was registered or not. Even the persons before whom the compromise was arrived at between plaintiff-respondent and her deceased-husband were not examined. The findings of facts have been recorded by both the Courts below with proper appreciation of evidence as no person would like to believe that any widow would not like to stake her claim over the property of her husband whereas there was no source of income. There is no sufficient evidence as to why a compromise was effected and dowry articles were received when

there was no dispute between both the parties.

Keeping in view the above facts and circumstance as also the concurrent findings recorded by both the Courts below in order and finding no merit in the arguments raised by learned counsel for the appellants and the appeal being devoid of any merit is hereby dismissed.

January 25, 2017
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No