

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

RSA No.805 of 2017 (O&M)

Date of decision: 24.08.2017

Jaidev Sharma

.....Appellant

Versus

Krishan Kumar and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Som Dutt Kaushik, Advocate,
and Ms. Sumanjit Kaur, Advocate,
for the appellant.

Ritu Bahri, J.

This appeal has been filed against the judgment dated 27.09.2016 passed by the Additional District Judge, Jind, dismissing an appeal filed by plaintiffs-appellant against the judgment and decree dated 01.05.2012 passed by the Civil Judge (Senior Division), Narwana, whereby suit filed by plaintiffs-appellant for declaration and permanent injunction, has been dismissed.

Bala Dutt Sharma and Jai Dev Sharma-plaintiffs filed a suit for declaration to the effect that Will bearing No.118 dated 18.01.2007, registered in the office of Sub Registrar, Uchana, executed by late Smt. Rajwan daughter of Dhan Kaur in favour of defendant Nos.1 to 3 (respondent Nos.1 to 3 herein) was illegal, null and void and liable to be set aside. According to the plaintiffs, suit land was owned and possessed by Smt. Rajwan to the extent of ½ share as per jamabandi for the year 2004-05.

She was wife of Panna Lal son of Paras Ram. Panna Lal was the real

brother of Arjana Nand (father of plaintiffs and proforma defendants). Panna Lal died in the year 1937 leaving behind Smt. Rajwan as his widow. He had no issue at that time. Later on, Smt. Rajwan died on 25.06.2008. Plaintiffs and proforma defendants were her legal heirs and successors being sons and daughters of real brother of husband of Smt. Rajwan. It was further stated that the aforesaid Will was got executed and registered by defendant Nos. 1 to 3 in order to grab the share of plaintiffs and proforma defendants in the suit land. The same was not binding on the rights of the plaintiffs and proforma defendants and was liable to be set aside. Hence, the suit.

Upon notice, defendants-respondent Nos.1 to 3 filed written statement by taking preliminary objections with regard to maintainability of suit, cause of action and concealment of true & material facts. On merits, it was stated that Will No.118 was legal and binding on the rights of the parties, as the same had been executed by Smt. Rajwant in sound and disposing mind. It was denied that the plaintiffs and proforma defendants were the legal heirs of Rajwant. In fact, the land had been inherited by Rajwant from her mother Dhan Kaur widow of Har Dutt son of Ram Kishan. As per the provisions of Hindu Succession Act, the Will was binding on all, including the plaintiffs and proforma defendants. It was categorically denied that the plaintiffs and proforma defendants ever served Smt. Rajwan during her lifetime. It was stated that Smt. Rajwanti used to live at village Kakrod and not Tohana and defendant Nos. 1 to 3 and their family members were serving her. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following issues were framed

by the trial Court:-

1. Whether the plaintiff are entitled to decree of declaration as well as permanent injunction as prayed for? OPP
2. Whether the plaintiffs have no cause of action to file the present suit? OPD
3. Whether the suit of the plaintiffs is not maintainable in the present form? OPD
4. Whether the plaintiffs have concealed ture and material facts from the Court? OPD
5. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit. Appeal against the said judgment also met the same fate.

Heard.

Both the Courts have given concurrent finding of fact that execution of the Will was duly proved by the contesting defendants. The defendants had examined scribe of the Will namely Sh. Satpal Sheokand, Advocate as DW-2, who had stated that the Will was scribed by him on the asking of the testator. (Rajwan). Harikesh, Lamberdar (DW-3) was the attesting witness of the Will. Will bearing No.118 dated 18.01.2007 Ex.D2 was a registered document. After execution of the said Will, Smt. Rajwan had died on 25.06.2008. The property in dispute had devolved upon Smt. Rajwan from her mother and this fact was corroborated from the mutation Ex.D5. During her lifetime, Smt. Rajwan had been staying with defendant Nos. 1 to 3. This fact was proved by way of ration card Ex.D4. As per this ration card, she was residing with defendant Nos.1 to 3 at village Kakrod. Moreover, ration card Ex.D1 also showed her to be resident of village Kakrod. As per her death certificate Ex.D4, Smt. Rajwan had died in village

Kakrod on 25.06.2008. Her old age pension card Mark-D2 reflected that she was receiving the old age pension till 09.06.2008. This card had come from the custody of defendant Nos. 1 to 3. As per *abiana* receipts Mark-B to Mark-J, Rajwan was in actual cultivating possession of her land situated in village Kakrod. Even otherwise, from the cross-examination of plaintiff (appellant) and his witnesses, it was revealed that Smt. Rajwan had never stayed with the plaintiffs. During cross-examination, Jaidev Sharma (PW-1) had admitted that the land in dispute had fallen to the share of Smt. Rajwan after the death of her mother Dhan Kaur. He had also admitted that name of Rajwan was present in the ration card of defendant No.1-Krishan. There was no specific denial to the suggestion that it was Krishan, who was looking after deceased Rajwan during her old age. Further, Ramphal (PW-2) had admitted that defendant Nos.1 to 3 were in cultivating possession of the property left behind by Smt. Rajwan.

The above said evidence was sufficient to prove that after the death of her husband in 1937, for more than 71 years till she died in 2008, Smt. Rajwan was looked after by defendant Nos.1 to 3 and their family members. Even the property in dispute had fallen to the share of Smt. Rajwan after the death of her mother Smt. Dhan Kaur. Hence, as per Section 14 of the Hindu Succession Act, she was the absolute owner of the suit property and the same had not devolved upon her from the side of her husband. She was competent to execute the Will regarding her estate, which had devolved upon her from her mother Dhan Kaur.

In the absence of any evidence that the plaintiffs had ever looked after Smt. Rajwan during her lifetime, the Will Ex.D2 is not surrounded by any suspicious circumstances, fraud or coercion. In these circumstances,

the suit of the plaintiffs has been rightly dismissed by both the Courts below. No illegality, much less perversity, has been found in the impugned judgments, warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration in this appeal.

Dismissed.

24.08.2017
ajp

(RITU BAHRI)
JUDGE

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