

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA-981-2017(O&M)

Date of Decision:07.09.2017

Sukhjinder Singh

.....Appellant

Versus

Balbir Kaur

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr.P.S.Bajwa, Advocate,
for the appellant.

RAMESHWAR SINGH MALIK, J.(Oral)

Unsuccessful plaintiff is in regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby his suit for declaration was dismissed by the learned trial court vide its impugned judgment and decree dated 04.03.2015 and his first appeal was also dismissed by the learned first appellate court vide impugned judgment and decree dated 11.04.2016, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as noticed by the learned first appellate court in para 3 of its impugned judgment, are that plaintiff had averred that originally it was Piara Singh son of Malagar Singh, who was co-sharer in possession of suit property as per Jamabandi for the year 2008-09 situated in village Hansawala. However, the said erstwhile owner of this property passed away on 28.11.2011 leaving behind immovable property situated in two villages, one at village Hansawala and another in Fatehabad. Further plaintiff had averred that said deceased during his life time while in sound

disposing mind executed a legal and valid Will on 22.10.2011 in favour of plaintiff out of love and affection as latter used to serve him (the said testator). Clarifying this matter, further plaintiff also averred that he had been residing with the said deceased right from his childhood as he was brought up by the said deceased Piara Singh along with his wife defendant Balbir Kaur. Plaintiff used to look after said testator along with his wife in all possible ways and he also performed his last rites and ceremonies. Even defendant Balbir Kaur wife of said testator was also very much in the knowledge of this development regarding her husband having executed legal and valid Will on 22.10.2011 thereby bequeathing his right, title or interest qua the suit property situated in village Fatehabad in favour of plaintiff and she never objected to the same, but later on it was at the instance of her real brother Karam Singh and Thamma Singh that defendant started denying execution of the said Will. Further, plaintiff also averred that the mutation of inheritance of said deceased testator Piara Singh was also contested and appeal against the same is still pending in the court of Additional Deputy Commissioner, Tarn Taran. Further, plaintiff also averred that he became owner of the suit land as it was clearly expressed in the said Will by the deceased testator that after his death his wife Balbir Kaur present defendant will be owner of the property situated at village Hansawala and present plaintiff Sukhjinder Singh will have no concern with the same and as such obeying to his wish, plaintiff did not object the sanctioning of mutation of the above said land situated at village Hansawala in favour of plaintiff Balbir Kaur but latter denied of rest of the wish of the said testator, as per which, plaintiff was stated to be the owner of the suit land situated in village Fatehabad and thus said defendant even contested

the mutation qua this property before revenue court as well. This is how, defendant being the stranger to the suit property was unauthorisedly interfering into his peaceful and settled possession over the same and was threatening to dispossess him therefrom. Faced with this situation, he approached defendant on several occasions and requested her to admit him to be the owner and in possession of the suit property, but she being headstrong lady did not accede thereto and ultimately when no such headway was made in this regard, then he was left with no other alternative except to take recourse to the court by way of instant suit.

Defendant was put to notice. She appeared and filed her contesting written statement, raising more than one preliminary objections. It was specifically pleaded by the defendant that after the death of Sh.Piara Singh, mutation of inheritance bearing No.4438 was entered and sanctioned in her favour, in compliance of the order dated 30.05.2012 passed by the Assistant Collector 1st Grade. Plaintiff filed the appeal which also came to be dismissed by the learned appellate authority vide its order dated 26.09.2012. On completion of pleadings of the parties, the learned trial court framed the following issues:-

“1) Whether the plaintiff is entitled to declaration as prayed in this case?OPP

2) Whether the plaintiff is entitled to permanent injunction as prayed in this case?OPP

3) Whether the suit is not maintainable?OPD

4) Whether the plaintiff has not come to the court with clean hands and suppressed the material facts from the court?OPD

5) 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 the learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that the plaintiff has failed to prove his case for want of cogent and sufficient evidence. Accordingly, suit for declaration filed by the plaintiff was dismissed by the learned trial court vide its impugned judgment and decree dated 04.03.2015. Feeling aggrieved, plaintiff filed his first appeal which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 11.04.2016. Hence, this regular second appeal, at the hands of the unsuccessful plaintiff.

Heard learned counsel for the appellant.

The entire case of the plaintiff-appellant revolves around the Will in question, allegedly executed by late Sh.Piara Singh, husband of defendant-respondent Smt.Balbir Kaur. However, after the death of Sh.Piara Singh, this Will was not accepted to be a genuine document by the revenue authorities, at the time of entering and sanctioning the mutation of inheritance and the mutation was sanctioned in favour of Smt.Balbir Kaur alone. Plaintiff-appellant contested the said mutation No.4438 which was sanctioned in favour of Smt.Balbir Kaur-respondent alone, in compliance of the order dated 30.05.2012 passed by the Assistant Collector 1st Grade.

Even the appeal filed by the plaintiff was dismissed by the learned appellate authority vide order dated 26.09.2012. These orders passed by the revenue authorities attained finality against the appellant-plaintiff. In the interregnum, plaintiff approached the learned civil court by filing his suit for declaration to the effect that he was owner in possession to the extent of 1/4th share of the total land measuring 121 kanals situated

within the revenue estate of village Fatehabad, Tehsil Khadoor Sahib, District Tarn Taran, on the basis of same Will dated 22.10.2011 allegedly executed by late Sh.Piara Singh.

Since the plaintiff-appellant was propounder of the Will, onus was on him to prove due execution of the Will. It was also for the plaintiff-appellant to dispel all the suspicious circumstances surrounding the Will. However, the plaintiff-appellant failed to prove due execution of the Will. He was also unable to dispel all the suspicious circumstances surrounding the Will. In such a situation, plaintiff was bound to fail. That is what has been held by both the learned courts below. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Before arriving at his judicious conclusion, the learned Additional District Judge has rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 17 and 18 of its impugned judgment, which deserve to be noticed here, read as under:-

“It is also settled proposition of law that Will is a document, which is compulsorily attestable, meaning thereby before a document is said to be a true disposition of any testator, the same is required to be attested at least two witnesses who could say that the said executant had executed the said Will in question when he (executant) put his thumb mark or his signatures on the same in their presence and hearing in token of its execution of the same making some arrangement regarding his movable or immovable property. Further, before this execution of a

Will can be accepted at least one of the above said attesting witnesses is required to depose regarding the abovesaid execution of the Will in the court. All these things are required for a pure and simple reason that the Will speaks from the grave of the testator. It is virtually for this reason that certain legal requirements have put in place, which have very ably been quelled by the learned Civil Court and reiterated in para No.17 of the impugned judgment:-

- 1) A Will like any other document is to be proved in terms of provision of Indian Succession Act and the Indian Evidence Act.*
- 2) Onus of proving the Will is on the propounder.*
- 3) Testamentary capability of the propounder must also be established.*
- 4) The execution of the Will by the testator has to be proved.*
- 5) At least one attesting witness is required to be examined for the purpose of proving the execution of the Will.*
- 6. It is required to be shown that the Will has been signed by the testator with his free will and that at the relevant time, he was sound disposing state of mind and understood the nature and effect of disposition.*
- 7. It is also required to be established that he signed the Will in the presence of two witnesses, who attested his signatures in his presence or in the presence of each other.*

Now if we critically examine the Will in question alleged to have been executed by testator Piara Singh on the touch stone of abovesaid requirement, we will find that plaintiff has miserably failed to clear various suspicious circumstances surrounding the same. It is quite surprising as to how plaintiff has alleged that in fact he has been residing with testator right from his childhood as said original owner and his wife did not have any issue out of

their marriage because if this was so then there could not have been any difficulty for the plaintiff to bring on record for examination of the court any such material to prove his assertion in this regard. May be if plaintiff would have been residing with them, then his name should have been reflected in the ration card brought on record by the defendant Balbir Kaur, but as per which, only husband and wife duo used to reside together. Moreover, if this plaintiff would have been serving the testator and has been looking after about his health, then he must have been in possession of some documents showing of his having accompanied testator for rendering some medical assistance, but again plaintiff could not bring any such material on record to substantiate his contention in this regard. However, attesting witness Balkar Singh appeared in the witness box also could not do better to prove due execution, as he even miserably failed to depose that the testator Piara Singh was in sound disposing mind. Even what he admitted in his cross examination that also clearly shows that testator had also not thumb marked or signed the Will in his presence because as per his contention he himself along with another attesting witness Kulwant Singh and none other signed the Will when the same allegedly came into existence. Even plaintiff also did not learn any lesson from the fact as to how this Balkar Singh fared in his testimony as he did not think of examining any such attesting witness in support of his contention. Though plaintiff has alleged that rest of the attesting witnesses have died away, but again mere the above said oral assertion cannot be believed. Though plaintiff himself has reiterated his averment when he deposed in his sworn affidavit that he has been residing with deceased from his childhood onwards but his only supporting witness Balkar Singh has disclosed him to be residing in separate house. If this was true, then where was the occasion for said Piara

*Singh to have natural love and affection for this plaintiff, which could have compelled him to bequeath some of his immovable property of plaintiff. Even another confusion was also introduced by none other but plaintiff himself when he stated on oath while testifying as PW2 that testator disclosed about the factum of his having executed Will in his favour two days prior of his death, which he himself later on contradicted regarding the said testator having never disclosed about the same to him. This is how, learned Civil Court rightly came to the conclusion that the Will in question was surrounded with suspicious circumstances which could not be dispelled by the plaintiff. So guided by was observed by Hon'ble Supreme Court of India while deciding **Civil Appeal No.4882 of 2007 (Arising out of SLP (Civil) No.3374 of 2005) titled Savithri & others Vs. Karthyayami Amma & others** that onus to prove Will is always on propounder, failure in this regard will deny the benefits to him. So, virtually for this reason, conclusion arrived at by learned Civil Court while recording the findings qua issues No.1, 2 and 3 in favour of then defendant is the result of correct appreciation of oral and documentary evidence available on record. As such, the same stands affirmed and does not call for any such interference at this level. As there is no cross objection qua the finding of issue No.4, so the same also stands affirmed. So, in the net analysis present appeal is found to be devoid of any merit and hence the same stands dismissed and the judgment and decree dismissing the suit passed by learned civil court is hereby affirmed.”*

A bare combined reading of both the impugned judgments and decrees passed by the learned courts below will leave no room for doubt that the evidence led by the plaintiff-appellant, so as to prove his pleaded case, was rightly not found worth reliance. Balkar Singh claiming himself

to be an attesting witness was examined by the plaintiff as PW1. In his cross-examination, PW1 admitted that the testator had not thumb-marked or signed the Will in his presence. Similarly, PW-Kulwant Singh, other attesting witness did not sign the Will in the presence of PW1. Further, a bare reading of this Will in question, which was an unregistered Will, would show that late Sh.Piara Singh, husband of defendant respondent-Smt.Balbir Kaur, did not assign any reason much less cogent reason thereof, as to why he was disinheriting his wife from his moveable property, particularly when defendant-Smt.Balbir Kaur was having no other source of income except the suit land. This itself was a strong suspicious circumstance surrounding the Will. Since the plaintiff-appellant, being the propounder and beneficiary of the Will, could not dispel all the suspicious circumstances including this suspicious circumstance surrounding the Will, he was rightly non-suited by both the learned courts below by passing the impugned judgments and decrees and the same deserve to be upheld, for this reason also.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court in Ramchandra Rambux Versus Champabai and others, 1965 AIR (SC) 354, Rani Purnima Debi and another Versus Kumar Khagendra Naryan Deb and another, 1962 AIR(SC) 567, Apoline D'Souza Versus John D'Souza, 2007 (7) SCC 225, Bharpur Singh and others Versus Shamsher Singh, 2009(3) SCC 687, Kartar Kaur etc. Versus Gurdeep Kaur etc., 2010(5) RCR(Civil) 279 and Om Parkash and others Versus Shiv Kumar and others, 2007(5) RCR (Civil) 542.

During the course of hearing, learned counsel for the appellant

could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned courts below. He was also unable to refer to any question of law much less substantial question of law, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286** and **Santosh Hazari Versus 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 wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

September 07, 2017
seema

(**RAMESHWAR SINGH MALIK**)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No