

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

**RSA No.278 of 1996 (O&M)
Date of Decision: April 17, 2018**

Hansa Singh

...Appellant

Versus

Gurbachan Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

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

Ms Neha Jain, Advocate
for Mr. K.S. Dadwal, Advocate
for the respondents No.5 to 7.

Mr. I.P.S Bains, Advocate
for respondents No.1 to 4 and 8 to 10.

FATEH DEEP SINGH, J.

Appellant-Hansa Singh, the then complainant filed against Gurbachan Singh and others-respondents before this Court, a suit for declaration to the effect that he was the owner of property comprising of land situated in village, Panwan fully detailed in the plaint as well as sought recovery of Rs.12,000/- being share of the produce by way of mesne profit and also sought possession of these properties. The brief stand of the plaintiff is that one Dewan Singh had two sons Bela Singh and Ishar Singh and Bela Singh had one son Bhan Singh, who further had two sons Hansa Singh and Harbans Singh, who has since died. Ishar Singh had one son Udham Singh, out of which one son Lachman Singh was born who has

since died and property owned by him is subject matter of present dispute. It is admitted stand of the two sides that Lachman Singh who died in the year 1972 was employed in Army from where he had retired. His first wife had died having pre-deceased him, whereas, his second wife deserted him and has not been heard of since then. It is alleged that Lachman Singh had a house in village Gorakhpur (U.P.), where he used to reside and that upon death of Udham Singh, Lachman Singh in a childhood brought up by Bhan Singh, father of the plaintiff. It is claimed by plaintiff that he resided with Lachman Singh for one year when he was in service prior to year 1951 and even after the plaintiff joined Army had been often visiting Lachman Singh at Gorkhpur and looked after him. Claiming that in lieu of services, love and affection, Lachman Singh executed an unregistered Will dated 27.1.1972 in favour of plaintiff bestowing his entire estate in him. It is alleged that defendants No.1 to 7 have wrongly at his back mutated in their names property owned by Lachman Singh by misrepresentation, concoction and fraud and, whereas, defendants No.8 to 10 claimed that they had been transferred property by defendant No.2 and, hence, relief in question.

Defendant No.2 was proceeded ex-parte, whereas, other defendants in their written statement admitted the ownership of the suit property to be of Lachman Singh and also did not deny that Lachman Singh used to reside in his house at Gorakhpur but denied that plaintiff ever served Lachman Singh at any point of time and claimed that upon death of Lachman Singh his father's sister who happens to be mother of defendants No.1 to 4 had inherited the property and termed the Will to be sham, forged, and fabricated document invalid in the eyes of law. The defendants

took the plea that earlier a civil suit No.322 of 1972 has been filed by Harbans Singh, real brother of the plaintiff-Hansa Singh, wherein he set up another Will dated 9.1.1972 by Lachman Singh where it was alleged that present plaintiff too was a beneficiary of the Will. Thus, defendants denied each and every allegations of the plaintiff and sought dismissal of the suit. Defendants No. 8 to 10 in their written statement denied the correctness of the pedigree table so claimed by other parties and denied that Lachman Singh ever brought up by the parents of the plaintiff. Neither plaintiff ever served Lachman Singh nor he executed any such Will as claimed by him and, thus, denied the stand of the plaintiff for laying claim to the property in question. Thus, the defendants claimed that they have purchased 05 kanals and 16 marlas of land from Kartar Kaur and Channo defendants No.2 and 3 through sale deed dated 13.6.1986, thus, claimed to be bonafide purchaser. Upon replication etc., the trial Court framed the following issued:-

1. Whether Lachman Singh, deceased, executed a valid Will in favour of the plaintiff on 27.1.1972? OPP
2. Whether defendants Nos. 1 to 7 have got mutation of inheritance of Lachhman Singh sanctioned in their name by mis-representing and concoction and in connivance with the plaintiff's brother? OPP.
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the suit is within time? OPP
5. Whether the plaintiff is estopped from filing the present suit by his act and conduct? OPD
6. Whether defendants NO. 8 to 10 are bonafide purchase of the suit land for value and without notice? OPD
7. Whether the suit is bad for non-joinder of necessary parties? OPD
8. Relief.

The plaintiff to prove his stand examined PW1 Ram Subak, PW2 Mahan Dev Parshad and closed the evidence after tendering documents Ex.P2 to Ex.P4. On the other hand, defendants No.1 to 3

examined DW1 Amar Singh and one of the defendant Gurbachan Singh as DW2 and closed the evidence after tendering documents Ex.D5 to Ex.D10. Defendants No.8 to 10 examined DW3 Kewal Krishan and one of the defendant Kashmir Singh as DW4. Defendants No.5 to 7 examined DW5 Gian Singh and DW6 Hargurcharan Singh and proved documents Ex.DA mark DB and Mark DC and closed the evidence. The Court of learned Additional Senior Sub Judge, Dasuya through judgment dated 1.10.1992 dismissed with costs suit of the plaintiff. Aggrieved over it, plaintiff filed appeal and the Court of learned Additional District Judge, Hoshiarpur through judgment dated 16.8.1995 dismissed the appeal with costs. That is how, the plaintiff is before this Court.

Upon hearing learned counsel for the parties and perusing the records of the case. The only moot point that has been contested hotly and debated by the rival sides revolves around the very legality, validity and enforceability of un-registered Will dated 27.1.1972. It cannot be displaced by any of the side that it is for the propounder of a Will to prove it to the hilt to the satisfaction of the Court and cannot be allowed to take benefit of weakness of the other's case. In the earlier civil suit detailed above, the plaintiff and his brother have set up another Will dated 9.1.1972 and now belatedly by filing present suit on 27.10.1987 the plaintiff raked up another Will dated 27.1.1972. It is the claim as has been contended in the arguments of the plaintiff that he had been serving and looking after Lachman Singh and in lieu of which Will was executed in his favour. It is the admitted stand of the plaintiff that from the years 1951 to 1985, he remained in Army posted at Lucknow, whereas Lachman Singh lived in

Gorakhpur in his own house and, thus, a suspicious circumstance crops as to the claim of the plaintiff that he had rendered services to the deceased which prompted him to execute Will in his favour. Neither the plaintiff upon whom the onus lay heavily could bring on record any such nomination by Lachman Singh in the Army records pertaining to beneficiary being the plaintiff nor any proof in what manner, he had been serving Lachman Singh as claimed by him. Attested witnesses of this Will Ram Subak and Mahan Dev Parshad, who have sought to prove the Will as Ex.P1 nowhere proved to the hilt that deceased at the time of execution of Will was in a sound disposing state of mind and the same was voluntarily, out of free will and accord of Lachman Singh and both these witnesses have remained silent over such a necessary ingredient to prove a Will. More so, being an unregistered Will certainly casts heavy burden of proof upon the propounder of the Will to bring about its authenticity, truthfulness and credibility. As it has been rightly argued by learned counsel for the respondents side, if as is the stand of the plaintiff deceased had initially executed Will dated 9.1.1972 why would after short period of time had executed another Will dated 27.1.1972 is anybody's guess. The Court below has rightly observed that plaintiff had certainly failed in its endeavour to prove that signature/thumb impression of Lachman Singh on alleged Will were akin or of the executant by bringing any admitted signature or any testimony of an expert witness to prove the signatures of Lachman Singh. Looking from another angle, Hansa Singh plaintiff admits that Santi was the real sister of Udham Singh, father of the Lachman Singh and defendants No.1 to 4 are sons and daughters of Santi and, therefore, under the Hindu

Succession Act, 1956 are preferential heirs than the claim of the plaintiff and there is not even an iota of mention in the Will in question as to why the executant is denying them this inheritance. The biggest lacuna that has been pointed out by the learned counsel for the respondents is that the very Scribe of the Will has never been examined. The plaintiff claims that he was handed over Will by the Scribe, Mehinga Singh in the year 1985 and what prompted him to sleep over the matter and filing the same at the fag end of year 1987 are matters which certainly raises much more suspicion in the mind of the Court over the authenticity of this alleged Will. Thus, these contentions certainly put alleged Will dated 27.1.1972 propounded by the plaintiff to be impregnated with suspicion and falsehood. None of the parties raised any other arguments.

In view of foregoing discussions, detailed and discussed above, learned counsel for the appellant could not convince this Court how there is any perversity or illegality in the consecutive findings of the two Courts below which need intervention by this Court. The appeal thus, being hopelessly without any merits stands dismissed.

(FATEH DEEP SINGH)
JUDGE

April 17, 2018
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No