

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

RSA No.4550 of 2016(O&M)

Date of decision: September 27, 2018

Shri Surinder Singh Talib alias Surinder Dass ...Appellant

Versus

Punjab and Sind Bank and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr.Mohinder Kumar, Advocate
for the appellant.

Harinder Singh Sidhu, J. :

The plaintiff has filed the present Regular Second Appeal impugning the judgments of the Courts below, whereby, suit for recovery of Rs.15,00,000/- or in the alternative for mandatory injunction directing the defendants – respondents to deliver the contents of Locker No.240, to the plaintiff has been dismissed.

The case of the plaintiff was that Smt.Banarso Longani, mother of the plaintiff and defendant No.2 (his sister), during her life time executed a Will bequeathing her entire estate in favour of the plaintiff, including the contents of locker No.240, which she had hired jointly in her name and the name of defendant No.2. It was stated that the ornaments and jewellery worth more than Rs.15 lacs were kept in the safe custody in the Locker, which exclusively belonged to Banarso Longani as she was the sole owner thereof.

After the death of his mother Banarso Longani, the plaintiff filed suit for declaration bearing No.106 of 24.4.1984 titled “Surinder Singh vs. Jaswant Singh and others”, on the basis of the Will dated 22.11.1982, which was decreed in his favour vide ex parte judgment and decree dated 10.8.1984. In the said suit, defendant No.2 Baljit Kaur, sister of the plaintiff, was co-defendant along with his other brother and sister. It was the case of the plaintiff that defendant No.2 had accepted his claim and also appeared as a witness for him. Before the plaintiff could operate the Locker pursuant to the judgment and decree dated 10.8.1984, his other brother and sister, namely Jaswant Singh and Jagmohan Kaur filed an application under Order 9 Rule 13 CPC for setting aside the ex parte judgment and decree dated 10.8.1984. The said application was dismissed on 11.3.1998.

Thereafter, the plaintiff filed execution petition, wherein, he learnt that the Locker in question had already been operated by defendant No.2 and she had taken away its contents. Hence, the present suit was filed against the Punjab and Sind Bank (defendant No.1) and Baljit Kaur (defendant No.2) for recovery and handing over to the plaintiff the ornaments and jewellery kept in the said Locker.

The case of defendant No.1 was that the Locker in the Bank was joint in the name of Banarso Longani and Baljeet Kaur (defendant No.2) to be operated by either or survivor. Hence after the death of Banarso Longani, defendant No.2 being survivor had been operating the Locker as per Rules.

Defendant No.2 pleaded that the alleged Will dated 22.11.1982 was a forged and fabricated document and was not executed by her deceased

mother during her life time. Reliance was placed on judgment and decree dated 5.6.1993 of the Ld.Civil Judge (Jr.Divn.), Amritsar in the suit titled “Surinder Singh vs. Punjab & Sind Bank”, wherein, it was held that the Will in question was not executed by deceased Banarso Longani. The appeal of the plaintiff against the said judgment and decree was dismissed by the Ld. Additional District Judge, Amritsar.

Ld. Courts below noted that Locker No.240 was in the joint name of Banarso Longani and defendant No.2 and was to be operated on 'either or survivor' basis. The plaintiff was only appointed as a nominee by his deceased mother. It was noticed that in the civil suit titled “Surinder Singh Talib vs. Punjab and Sind Bank and others” filed on 25.10.1984, a specific issue regarding the validity of the Will dated 22.11.1982 was decided on merits and the suit was dismissed by judgment and decree dated 5.6.1993 passed by the Civil Judge (Jr.Divn.) Amritsar. It was held that the signatures of Banarso Longani were obtained on blank paper and she had not executed the Will in favour of the plaintiff. The appeal of the plaintiff was also dismissed by Ld. Additional District Judge, Amritsar on 10.12.1996. The plaintiff filed RSA No.1948 of 1997, which was disposed of by order dated 4.4.1997. The High Court observed that nothing said with regard to the validity of the Will in the case shall bind the parties and the matter shall be decided either in the suit in which application under Order 9 Rule 13 CPC was pending if the same is allowed or in the proceedings to obtain a succession certificate.

Admittedly, the application under Order 9 Rule 13 CPC was dismissed. Hence, the Court did not adjudicate on the validity of the Will,

nor did the plaintiff obtain succession certificate. It was held that in view of the directions of the High Court dated 4.4.1997, the plaintiff was precluded to raise the issue of validity of the Will in any other proceedings including the present suit. Thus, the suit was dismissed. It was also held that the present suit was barred by principle of res judicata as the same issue had already been raised in the previous suit titled “Surinder Singh Talab vs. Punjab and Sind Bank and others”.

The Ld. First Appellate Court affirmed the findings of the Trial Court.

Ld. Counsel for the appellant has not been able to establish as to how the findings of the Courts below are perverse or against the record.

No question of law arises for decision in the case.

Appeal dismissed.

September 27, 2018

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned Yes / No Whether Reportable Yes / No