

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

RSA No. 4675 of 2016 (O&M)

Date of decision : October 12, 2018

Neelam (deceased) through her LRsAppellant

Versus

Bipan TangriRespondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Jasmeet Singh Ghumman, Advocate
for the appellant.

LISA GILL, J.

Appellant – defendant is aggrieved of judgment and decree dated 17.01.2014 passed by the learned Civil Judge (Senior Division), Patiala whereby the suit for possession filed by the respondent – plaintiff has been decreed as well as judgment and decree dated 08.02.2016 passed by the learned Additional District Judge, Patiala whereby her appeal was dismissed.

Brief facts necessary for adjudication of the case that the plaintiff – respondent filed a suit for possession of house No. 5203/1 situated at Mohalla Arorian, Patiala, which is stated to be in illegal and unauthorised possession of the defendant. It was pleaded that the plaintiff is a son of Saroj Verma, serving in Indian Air Force. Saroj Verma – mother of the plaintiff purchased the house in question vide registered sale deed dated 24.04.1970. Saroj Verma died on 19.02.2008. After the death of his mother, the plaintiff became the owner of the house and was in continuous possession of the house. The defendant forcibly entered in the possession of the said house in February, 2009 when the plaintiff was away to Gujarat

and the defendant is in illegal, unauthorised possession of the house in question. Hence, the suit was filed.

Respondent – defendants contested the suit while taking preliminary objections that the suit filed by the plaintiff is not maintainable and he has no cause of action to file the suit. It was specifically pleaded that the defendant is an absolute owner of the house in question on the basis of registered will duly executed by Saroj Verma on 15.02.2008 in favour of the defendant. Dismissal of the suit was prayed for.

Replication was filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

1. Whether the plaintiff is entitled to decree of possession of suit property fully detailed in the headnote of the plaint?OPP.
- 1-A) Whether mother of plaintiff Saroj Verma executed a legal and valid Will dated 15.02.2008 registered on 18.02.2008 in favour of her sister Neelam?OPD
2. Whether the suit is not maintainable in the present form?OPD.
3. Whether the plaintiff has no locus standi to file the present suit?OPD
4. Whether plaintiff has no cause of action to file the present suit?OPD
5. Whether the suit is false and frivolous and is liable to be dismissed?OPD
6. Whether the suit is barred under Order 2 Rule 2 CPC?OPD
7. Relief.

Evidence was led by both the parties.

Learned trial Court on considering the facts and circumstances of the case decreed the suit filed by the plaintiff – respondent. Appeal filed

by the appellant was dismissed by the learned Additional District Judge, Patiala vide judgment dated 08.02.2016. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that will dated 15.02.2008 registered on 18.02.2008 has been duly proved by the appellant – defendant. Attesting witness DW3 Kamaljit Singh as well as Registry Clerk DW4 Inder Kumar have clearly deposed about the execution of will by its testator - Saroj Verma i.e. mother of the plaintiff – respondent. It is submitted that the appellant is the real sister of Saroj Verma and had been looking after her at the fag end of her life. The respondent – plaintiff though the son of Saroj Verma never took care of his mother. It is stated that due to these reasons, the property in question i.e. a house over 33 square yards was bequeathed to the appellant by Saroj Verma. It is contended that both the learned courts below have grossly erred in holding that the will dated 15.02.2008 was shrouded in suspicious circumstances. It is specifically mentioned in the Will itself that her son who was serving the Indian Air Force did not take care of her and she was being looked after by her real sister Smt. Neelam and all her medical expenses also have taken care of by her. Therefore, the suit property was bequeathed to her. Moreover, the attesting witness has deposed about the execution of the said will. The will is a registered document and there is nothing on record to question the validity thereof. Moreover, the property in question was sold by the appellant to her husband during the pendency of the suit on 02.12.2009. Therefore, the present suit for possession simpliciter is not maintainable. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 17.01.2014 passed by the learned Civil Judge

(Senior Division), Patiala as well as judgment and decree dated 08.02.2016 passed by the learned Additional District Judge, Patiala be set aside and suit filed by the appellant be decreed throughout.

I have heard learned counsel for the appellant and have perused the file as well as a photocopy of the relevant record produced in Court today i.e. photocopy of the Will, testimony of DW3 – Kamaljit Singh as well as DW4 – Inder Kumar, Registry Clerk in the office of Sub Registrar, Patiala.

A perusal of will dated 15.02.2008 reveals that even the age of the testator has not been mentioned and is left blank. It is relevant to note that the will is stated to have been drawn on 15.02.2008 and registered on 18.02.2000. DW3 Kamaljit Singh in his cross examination has stated that the will was registered on the same day on which it was typed. A perusal of his cross examination is telling and indeed reveals that the execution of the will is shrouded in extremely suspicious circumstances. The relevant part of the cross examination of DW3 Kamaljit Singh reads as under:-

“ I am running a Canteen and also doing the work of Property Dealing. Presently I used to go in Tehsil Complex for registering the documents if any. Till today I have only transaction regarding property dealing. I remained present before the Tehsildar at the time of execution of the sale deed. It is correct that at the time of registration of the document the Tehsildar used to confirm the amount paid by the purchaser to the seller and also confirm the other status for the other party. I started the business of property dealing for just 4/5 months back. I know Shavinder Singh Nambardar. I do not know whether Shavinder Singh used to come by 9.00 a.m. and remained present through out the day upto 5.00 P.M. in Tehsil Office. I do not know if Shavinder Singh used to put his witness on the documents. It is wrong to suggest that he is

purchased evidence. I cannot tell the age of Shavinder Singh Nambardar. He is resident of village Jhill. I have not seen Shavinder Singh today in the court. When the Clerk of the Tehsil office came to the residence of Saroj Verma then Shavinder Singh was also present. No doctor was present at that time. No doctor was called by the Tehsil Clerk on that day at the residence of Saroj Verma while executing the document. The official of the Tehsil Office checked the medical record of Saroj Verma. No Tehsildar came to the resident of Saroj Verma. The will was got typed in my presence. However, I have not get the will typed. I do not remember the date on which the will was typed. The will was registered on the day when it was typed. The person who got the will typed did not come to the residence of Saroj Verma. I do not know whether the person who typed the will was a Vasika Nawis, Arji Nawis. I do not know what has been written in the will by Vasika Nawis or Arji Nawis. I do not know whether the whole proceedings were done on the same day. At about 10.30 A.M. we went to Tehsil office. It is correct that we reached at about 10.30 A.M. before the deed writer. It took only 15 to 30 minutes to write the will. After that the official of the Tehsil came to the resident of Saroj Verma along with us. The official of the Tehsil after completing the formalities went back to Tehsil office and accordingly I left for my house. I do not know whether the said will after completing the formalities by the Tehsil Official handed over the same to Neelam or to Saroj Verma. I paid the amount of typing and writing of the will. Volunteered Saroj Verma directed me to pay the same. It is wrong to suggest that I had wrongly stated the volunteered portion. I cannot tell the exact amount paid by me. However it might be Rs. 100/-, Rs. 120/-. When the will was got typed, one of my friend namely Raji was present who is a resident of Khatra Sahib Patiala. But Shavinder Singh Nambardar was not present at that time. Raji has not got his name entered. He accompanied with me.”

DW3 has further stated that he was not aware of the respondent – plaintiff being the son of Saroj Verma, neither did know the name of the husband of Saroj Verma though in a paradoxical manner, DW3 specifically stated that he treated Neelam Rani i.e. wife of Rama as his mother. Husband of Neelam Rani as well as DW3, it was revealed belonged to the Congress party and DW3 was not a summoned witness. A perusal of the entire cross examination, which is not being reproduced herein for the sake of brevity reveals that the findings rendered by the learned courts below do not suffer from any infirmity.

It has been rightly held by the learned courts below that even DW4 - Inder Kumar Registry Clerk has not produced any document on record authorising him for the registration of the will in the manner which has been projected. At one stage, he has even stated that the testator Saroj Verma had come to the office of Sub Registrar at the time of filing of the application for registration of Will though later he stated that he did not have any knowledge whether Saroj Verma coming to the office for moving an application. Moreover, the appellant has indeed failed to establish on record that the testator Saroj Verma was in sound disposing mind at the time of execution/registration of the will. There is nothing on record to show the medical condition of Saroj Verma which would indicate that even if she was bedridden, she was of sound disposing mind. It is a settled principal that a person propounding the Will has to prove the same and dispel the suspicious circumstances which may be surrounding it. Both the learned courts below have rendered correct findings of fact based on a logical, sound and proper consideration of the evidence on record.

Another argument raised by learned counsel for the appellant that the property in question has been sold by the appellant to the husband during the pendency of this suit, therefore, the present suit is liable to be dismissed, is misconceived and untenable for the simple reason that the doctrine of lis pendens clearly applies in this situation.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

No other argument was addressed.

Learned counsel for the appellant is unable to point out any illegality and infirmity in impugned judgment and decree dated 17.01.2014 passed by the learned Civil Judge (Senior Division), Patiala as well as judgment and decree dated 08.02.2016 passed by the learned Additional District Judge, Patiala which calls for any interference by this Court.

There is a delay of 11 days in filing of the present appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in filing of this appeal has been rendered academic. Application is, accordingly, disposed of.

Accordingly, this appeal is dismissed with no order as to costs.

October 12, 2018
rts

(Lisa Gill)
Judge

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