

(104) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.548 of 2016 (O&M)

Date of decision: 09.08.2018

Sarup Kaur

.... Appellant

Versus

Puran Singh and others

..... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Sanjay Gupta, Advocate for the appellant.
Mr. J.S. Dadwal, Advocate for the respondents/caveators.

B.S. Walia, J.

[1] Appeal has been filed against judgment and decree dated 28.10.2015 passed by the learned Addl. District Judge, SBS Nagar upholding the judgment and decree dated 05.02.2014 passed by the learned Civil Judge (Jr. Div.), SBS Nagar dismissing the suit filed by the appellant plaintiff.

[2] Brief facts of the case leading to the filing of the instant appeal are that the appellant/plaintiff filed a suit for declaration to the effect that she was owner in joint possession of land measuring 18 kanals 0 marla out of total land measuring 24 kanals 0 marla on the basis of Will dated 22.01.1995 executed by Charan Singh (since deceased) as more fully detailed in the head note of the plaint. The appellant/plaintiff also sought consequential relief of permanent injunction restraining the respondents/defendants from

alternative, for joint possession of land measuring 18 kanals out of the suit property on the ground that her father-in-law Charan Singh had bequeathed her 18 kanals 0 marla for looking after him during his lifetime vide Will dated 22.01.1995 in sound disposing mind and she was put in physical possession of said 18 kanals of land. The appellant/plaintiff claimed that the respondents/defendants were strangers to the suit property and were threatening to interfere and dispossess her from the same and that they had blatantly refused to admit her claim qua the suit property, therefore, she had been constrained to file the civil suit.

[3] Respondents/defendants in their respective written statements took the preliminary objections as regards locus standi, cause of action, estoppel, acquiescence and non-maintainability of the suit, suit being barred by limitation as well as suppression of material facts by the appellant/plaintiff. It was further contended that appellant/plaintiff had never served Charan Singh during his lifetime and Charan Singh (since deceased) had never executed any Will in favour of the appellant/plaintiff and that Will dated 22.01.1995 propounded by the appellant/plaintiff was a false and fictitious document and a result of fraud and misrepresentation and was prepared by the appellant/plaintiff in connivance with the scribe and convenient witnesses. It was further stated that the alleged Will did not even bear the thumb impression of the deceased Charan Singh and in fact it was the respondents/defendants who had served Charan Singh (since deceased) till his death and not the appellant/plaintiff. From the pleadings of the parties, the following issues were framed:-

- “1. Whether the plaintiff is entitled to the decree of declaration to the effect that she is owner in joint possession of 18 kanals of land out of 24 kanals on

the basis of Will dated 22.11.1995 executed by Charan Singh? If so to what effect? OPP.

2. Whether the plaintiff is entitled to the permanent injunction restraining the defendant from alienating, mortgaging, transferring the land in dispute to anyone during the pendency of the case? OPP.
3. Whether plaintiff is entitled to the decree of joint possession in alternative? OPP.
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the suit is within limitation? OPD
6. Whether the suit is bad for non-joinder and misjoinder of necessary parties as Neelam is not arrayed as defendant? If so, to what effect? OPD.
7. Whether the plaintiff has not come to the Court with clean hands? OPD.
8. Relief.”

[4] On the basis of the evidence led by the parties, the learned Civil Judge (Jr. Div.), SBS Nagar dismissed the suit with costs vide judgment and decree dated 05.02.2014. Appeal against the same was also dismissed by the learned Addl. District Judge, SBS Nagar vide his judgment and decree dated 28.10.2015.

[5] The learned Civil Judge (Jr. Div.), SBS Nagar dismissed the civil suit by taking into account that alleged Will dated 22.01.1995 propounded by the appellant/plaintiff bore the stamp of Gian Chand,

appellant/plaintiff after the execution of the alleged Will, she had never met Gian Chand, Lambardar while on the other hand attesting witness Bihari Lal i.e. PW-2 stated that Gian Chand had affixed the stamp on the alleged Will after he was directed to do so in the presence of the appellant/plaintiff by the Tehsildar when the Will was presented to him to get the mutation sanctioned in the name of the appellant/plaintiff. The learned Civil Judge found the contradictory statements made by the appellant/plaintiff and the attesting witness Bihari Lal beyond comprehension especially since it had not been clarified as to why the Tehsildar would ask Gian Chand, Lambardar to affix his stamp on the testamentary documents which earlier never bore a stamp. Secondly, perusal of alleged register maintained by the scribe Tarsem Lal revealed that similar stamp had been affixed by the Lambardar in the said register but neither the appellant/plaintiff nor Bihari Lal (PW-2) mentioned that Gian Chand had affixed his stamp in the register later on. Besides, the stamp bore details of Gian Chand, Lambardar, Tehsil and District Nawanshahr which was surprising as at the time of alleged execution or even at the time of alleged presentation of Will before the Tehsildar, Nawanshahr had not attained the status of a District rather it was a Tehsil and Sub Division. Besides, PW-2, Bihari Lal had categorically stated that Charan Singh had thumb marked the alleged Will after the attesting witnesses had appended their signatures upon it. Ajay Kumar (PW-4) grandson of Tarsem Lal, Deed Writer admitted that entry No.525 for the alleged Will in the register that he had produced before the Court was different from the pen which had been used to make all other entries on the same date. The learned Civil Judge also took into account that the aforementioned entry was at the fag end of the page on which it was made

had no knowledge of Urdu language nor had appellant/plaintiff made any attempt to prove the entry made in the register brought by Ajay Kumar (PW-4). The learned Civil Judge further took into account that while in the plaint, testimony of PW-2 as well as cross-examination, the appellant/plaintiff and witness had stated that Charan Singh had died in 2006 but it had been proved on record by the respondents/defendants that Charan Singh died in December, 1997. Likewise, perusal of statements made by the appellant/plaintiff as well as Bihari Lal (PW-2) before the Court of AC-1st Grade, Nawanshahr revealed that the appellant/plaintiff had stated that she had discovered the Will after four to five days of death of Charan Singh whereas as per her testimony before the learned Civil Judge, it was alleged that Charan Singh had handed over the Will to her during his lifetime. The learned Civil Judge also took into account that the Court of AC-1st Grade had not accepted the Will dated 22.01.1995 and had directed the estate of deceased Charan Singh to be mutated in the name of his legal heirs in natural course of succession. Bihari Lal (PW-2) categorically stated that after the alleged Will was scribed, firstly he put his signatures on the said Will in Punjabi, thereafter, the other attesting witness namely Gian Chand, Lambardar put his signatures and finally Charan Singh, testator put his thumb impression on the Will. However, the alleged Will is absolutely silent as to why Charan Singh chose not to give anything to his wife Sant Kaur or to his daughter Surjit Kaur. Besides, on one hand while appearing as PW-1, appellant/plaintiff had stated that Charan Singh (since deceased) had handed over the alleged Will dated 22.01.1995 three-four days prior to his death to her but perusal of record of proceedings before the AC-1st Grade, Nawanshahr revealed that appellant/plaintiff had categorically suffered a statement therein that she had discovered the alleged Will three-

four days after the death of Charan Singh. So much so she had also stated that Charan Singh had died in the year 2006, contrary to the documentary evidence available on record that death of Charan Singh occurred on 24.12.1997. Learned Civil Judge also took into account that admittedly, Charan Singh and his wife Sant Kaur were residing together till the death of Charan Singh and Charan Singh did not have strained relations with either his sons or his daughter. On the basis of the aforementioned position, the learned Civil Judge held that the execution of the alleged Will was surrounded with suspicious circumstances, the onus to dispel which rested on the appellant/plaintiff but she had miserably failed to discharge the same. Accordingly, issue Nos.1 to 3 were decided in favour of the respondents/defendants and against the appellant/plaintiff. Issue Nos.4 to 6 onus to prove of which was on the respondents/defendants, were neither pressed by them nor was any evidence led in respect thereto, therefore, the said issues were disposed of accordingly.

[6] As regards issue No.7 it was held that it stood established that Charan Singh had died on 24.12.1997 and that the same stood corroborated from the testimony of DW-2 Paramjit Singh, Record Keeper of Gurudwara Shri Keshgarh Sahib, Anandpur Sahib, District Ropar who had brought on record the register maintained by Gurudwara Sahib and as per Entry No.53138 on page No.14 dated 30.12.1997 which pertained to Charan Singh (deceased) son of Jawala Singh aged about 90 years it was mentioned that Charan Singh had died on 26.12.1997 and his ashes were brought by his son Puran Singh. The learned Civil Judge also held that from the oral evidence, it had been brought out on record that Charan Singh was not having strained relations with any of his children and the family was on visiting terms with

each other. Accordingly, issue was decided in favour of the respondents/defendants and against the appellant/plaintiff.

[7] The appeal filed against judgment and decree dated 05.02.2014 passed by the learned Civil Judge (Jr. Div.), SBS Nagar dismissing the suit filed by the appellant/plaintiff was dismissed by the learned Addl. District Judge, SBS Nagar vide his judgment and decree dated 28.10.2015.

[8] I have considered the submissions of learned counsel for the appellant/plaintiff who could not explain the contradictions as have been noted above as well as the suspicious circumstances relating to the alleged Will dated 22.01.1995 propounded by the appellant/plaintiff.

[9] The contradiction between the oral and documentary evidence led by the appellant/plaintiff especially with regard to the affixation of stamp of Gian Chand, Lambardar village Khoja, Tehsil and District Nawanshahr depicting Nawanshahr to be district whereas on 22.01.1995 Nawanshahr had not attained the status of district and was merely a Sub Division of Jalandhar leads to the only inference that the Will was not executed on 22.01.1995 and was forged and fabricated. There is no explanation as to why the stamp of Gian Chand, Lambardar was affixed not only on the Will but also on the copy of register Ex.P4/A maintained by scribe Tarsem Lal. Apparently, the Will was forged and fabricated without realising that the stamp affixed on both the documents depicted Nawanshahr to be a District whereas on 22.01.1995 it was only a Sub division of Jalandhar District. Besides, the signatures of the attesting witnesses to the alleged Will were put prior to the affixation of the thumb impression of the testator contrary to the law laid down by Hon'ble the Supreme Court in case **Dhannulal and others vs Ganeshram and another, 2015 (3) CCC 263** as per which the attesting

witnesses were required to put their signatures on the Will only after the

executant of the Will had affixed his signatures on the same. Admittedly, attesting witness (PW-2) had stated that the executant had put his thumb impression after the signatures were put by him and Gian Chand, Lambardar. Moreover, the alleged Will was scribed in Urdu whereas PW-2 Bihari Lal, attesting witness had admitted in his cross-examination that neither he nor Gian Chand, Lambardar or executant of the Will i.e. Charan Singh were conversant with Urdu language. The same is also a suspicious circumstance for although a Will can be executed in any language, yet care is required to be taken that it should be scribed in a language which is known at least to the testator or one of the attesting witnesses so that its contents can be read over word by word to the testator. A perusal of the alleged Will (Ex.P2) also shows that wife and daughter of testator Charan Singh have been totally excluded from the Will without assigning any reason thereof. Admittedly, Charan Singh and his wife Sant Kaur were residing together till the death of Charan Singh and he did not have strained relations with his wife or his daughter, therefore, it is highly unbelievable that he would give $\frac{3}{4}$ th of his property to his daughter-in-law to the complete exclusion of his wife and his daughter. Furthermore, the testimony of PW-1 i.e. the appellant/plaintiff is not trust-worthy and does not inspire any confidence. The appellant/plaintiff in her plaint as well as in her cross-examination stated that Charan Singh died in 2006 where it stood established on record by the respondents/defendants that Charan Singh died in December, 1997. Even the order passed by AC-1st Grade, Nawanshahr (Ex.D3) revealed that Charan Singh died on 24.12.1997. The appellant/plaintiff as well as Bihari Lal made statements in the Court of the AC-1st Grade, Nawanshahr that the appellant/plaintiff had discovered the alleged Will about 4-5 days after the

appellant/plaintiff Sarup Kaur stated that Charan Singh had himself given Will to her while he was alive i.e. 3-4 days prior to his death. Even, if the testimony of the appellant/plaintiff as PW-1 is believed, it is beyond comprehension that if she was in possession of the alleged Will in the month of December, 1997 why she remained silent for nearly 10 years for getting the mutation sanctioned on the basis of alleged Will. However, in the later part of her cross-examination, appellant/plaintiff (PW-1) demolished her own case by stating that the Will of Charan Singh was found by her 10 - 15 days after the death of Charan Singh. It is, therefore, apparent that the testimony of appellant/plaintiff (PW-1) is full of contradictions and is not worthy of being believed. Apart from the contradictions in the testimony of the appellant/plaintiff (PW-1), there are glaring contradictions in the testimony of attesting witness i.e. Bhiari Lal (PW-2), who stated in his cross-examination that after the execution of Will, the same was handed over to Hira Singh son of testator Charan Singh. The admission by Bihari Lal (PW-2) is totally contrary to the pleadings as well as testimony of PW-1 and establishes the contradictory stand of witnesses i.e. PW-1 (appellant/plaintiff) and PW-2 (Bihari Lal), therefore, is not reliable and worthy of credence. Although PW-1, appellant/plaintiff stated in her cross-examination that testator Charan Singh was 100 years of age at the time of execution of alleged Will, but she did not lead any evidence to prove that he was in sound disposing mind at the time of execution of Will. The thumb impression of testator Charan Singh was not compared with his specimen thumb impressions on the other documents to dispel the suspicious circumstance surrounding the execution, validity and legality of the Will and the fact that legal heirs of Charan Singh (i.e. wife and daughter) had been deprived of their due share in the property and sons had been given very less

share in the property. Aforementioned aspects cast serious doubt on the genuineness of the Will. In the light of aforementioned position, it is clear that the appellant/plaintiff miserably failed to discharge the onus to prove that the alleged Will was valid and legal document executed by Charan Singh in sound disposing mind.

[10] In the circumstances, I do not find any infirmity in the judgment and decree passed by the learned Civil Judge (Jr. Div.), SBS Nagar dismissing the suit as well as the judgment and decree dated 28.10.2015 passed by the learned Addl. District Judge, SBS Nagar upholding the judgment and decree passed by the learned Civil Judge (Jr. Div.), SBS Nagar. No substantial question of law arises for consideration in the instant appeal. Accordingly, finding no merit in the Regular Second Appeal, the same is dismissed in limine.

(B.S. Walia)
Judge

09.08.2018
amit

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