

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

**SAO No.66 of 2015 (O&M)  
Date of Decision: December 06, 2018.**

Nirmal Singh and others

**.....APPELLANT(s).**

**VERSUS**

Harinder Singh and others

**.....RESPONDENT(s).**

**CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA**

Present: Mr. Sunil Chadha, Senior Advocate with  
Mr. Himanshu Jain, Advocate  
for the appellant (s).

Mr. Rajinder Sharma, Advocate  
for respondent No.1.

Mr. Sourabh Arora, Advocate  
for respondents No.7 and 8.

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**SURINDER GUPTA, J.**

Nirmal Singh, appellant No.1 moved an application before the Guardian Judge, Amritsar seeking permission to sell the property owned by his grand sons Charanjeev Singh and Agamjeev Singh sons of Manmeet Singh, which was allowed by the Guardian Judge, Amritsar vide order dated 19.04.2002. That permission pertained to two shops-cum flats bearing property No. A-12, which minor Charanjeev Singh and Agamjeev Singh have inherited from their great grand mother Inder Kaur vide her Will. One other property bearing No.A-13 was inherited by them from their father Manmeet Singh. Plaintiff-respondent No.1 Harinder Singh, while

challenging the impugned order, took the plea that his father Amar Singh, who had settled in Afganistan, had four sons and 3 daughters. Nirmal Singh, his brother, shifted to India in the beginning of 1968. Plaintiff started his business in Kabul and earned a lot from the import business of textile. He sent a large amount for purchase of property in India for their family members and children. With that money, properties were purchased in the name of Manmeet Singh, Smt. Inder Kaur and Nirmal Singh. Later, dispute arose amongst plaintiff, Nirmal Singh and their brother Kirat Singh, which was referred to sole Arbitrator Sardar Balwant Singh on 18.01.2001 and 05.02.2001. Despite the fact that property in the name of later Manmeet Singh was purchased from the funds sent by him, it was during arbitration proceedings, Nirmal Singh disposed off property bearing No.A-12 and A-13. Both these properties had been purchased from the funds sent by the plaintiff. While property No.A-13 was purchased in the name of Inder Kaur qua which Nirmal Singh forged a Will in favour of appellants-defendants No.2 and 3, who were minors; took permission from the Guardian Judge and sold this property to defendants No.9 and 10.

During the pendency of suit, an application was moved before learned Civil Judge that suit is not maintainable as per provisions of Section 48 of Guardian and Wards Act and learned Civil Judge (Junior Division), Amritsar allowed the application and dismissed the suit. The plaintiff filed appeal before Additional District Judge, who remanded the case back to Civil Judge (Junior Division) to decide the same on merits in accordance with law after affording opportunities to the parties to lead evidence.

Against the order of learned Additional District Judge,

Amritsar, defendant Nirmal Singh, Charanjeev Singh and Agamjeev Singh have come up in this appeal.

The short question, which arises for consideration in this appeal, is that there were two properties regarding which permission was sought by Nirmal Singh from the Guardian Judge on the ground that first property bearing No.A-13 had devolved upon Charanjeev Singh and Agamjeev Singh from their father. The other property bearing No.A-12 was owned by Inder Kaur wife of late Amar Singh, which allegedly devolved upon Charanjeev Singh and Agamjeev Singh as per Will of late Inder Kaur dated 25.07.1994. So far as inheritance of property bearing No.A-13 is concerned, the same cannot be disputed by plaintiff-respondent no.1 as it had devolved on Master Charanjeev Singh and Master Agamjeev Singh from their father, who admittedly was recorded as owner of the property.

Plaintiff-respondent No.1 has taken the plea that order of Guardian Judge dated 19.04.2002 was obtained by fraud and by concealing material facts. Learned counsel for respondent No.1 has argued that so far as property bearing SCF No.A-12 is concerned, it was owned by Inder Kaur and after her death, it would have devolved by natural succession on her sons and daughters. A forged Will dated 25.07.1994, was prepared by Nirmal Singh in favour of Charanjeev Singh and Agamjeev Singh, which has been challenged by the plaintiff. The finding of trial Court that suit is barred by limitation, is not tenable. When the plaintiff is alleging fraud, there is no bar to the jurisdiction of the civil Court. In the petition filed before the Guardian Judge, respondent No.1 was not a party, as such, he could not raise the plea that the Will executed by Inder Kaur is forged and

fabricated document. A judgment or decree obtained by playing fraud is a nullity and in support of his contention, he has placed reliance on the observations in cases ***S.P. Changalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. 1994(1) SCC Page 1; Devi Lal Vs. Balwant Singh and another 2005 (4) RCR (Civil) 658 and Kothakapu Muthyam Reddy and others Vs. Bhargavi Constructions and others 2015 (56) RCR (Civil) 175.***

Learned counsel for the appellants has argued that as per Section 48 of the Guardian and Wards Act, remedy available to the respondent-plaintiff is to approach the Guardian Judge instead of challenging his order in a separate suit. He has fairly conceded that provisions of Section 26 of Guardian and Wards Act are not applicable to the facts of the present case.

Here, the question which arises for consideration, is as to who is aggrieved by the order of Guardian Judge. Certainly, it is plaintiff-respondent No.1, who is alleging that Will of Inder Kaur on the basis of which order has been obtained from the Guardian Judge is a forged and fabricated document. To ascertain, legality and validity of the Will, is the domain of Civil Court and not of the Guardian Judge. Even as per the law settled by Hon'ble Apex Court in case of ***S.P. Changalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs (supra)***, a judgement or decree obtained by playing fraud from the Court is a nullity. Even if, plaintiff-respondent No.1 has no right to challenge the permission granted by the Guardian Judge with regard to the property owned by Manmeet Singh, still plaintiff-respondent No.1 has right to demonstrate before the trial Court in

the civil suit filed by him that the Will on the basis of which, permission was sought by Nirmal Singh to sell the property bearing SCF No.A-12, is a forged and fabricated document. Learned first Appellate Court has committed no error while observing that the suit of the plaintiff is maintainable as it challenge the impugned order passed by the Guardian Judge on the ground of fraud on the part of Nirmal Singh-appellant No.1.

As a sequel of my above discussion, this appeal is partly accepted to the extent that suit of the plaintiff so far as it relates to the property of SCF No.A-12 owned by Inder Kaur for which permission was allowed to Nirmal Singh to sell the same vide order dated 19.04.2002, is maintainable. The trial Court as per order of first Appellate Court will proceed further in the matter in accordance with law.

**December 06, 2018.**  
*Sachin M.*

**( SURINDER GUPTA )**  
**JUDGE**

***Whether speaking/reasoned:*** ***Yes/No***

***Whether Reportable:*** ***Yes/No***