

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

RSA No.1731 of 2018 (O&M)

Date of decision: 27.03.2018

Karan Singh and others

.....Appellants

Versus

Vikram Singh and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Harsh Bunger, Advocate,
for the appellants.

Ritu Bahri, J.

CM No.4650-4651-C of 2018

For the reasons mentioned in the applications, same are allowed
and delay of filing & re-filing of the appeal is condoned.

RSA No.1731 of 2018 (O&M)

This appeal has been filed against the judgment dated 04.10.2017
passed by the Additional District Judge, Gurdaspur, dismissing an appeal
filed by plaintiffs-appellants against the judgment and decree dated
24.09.2014 passed by the Additional Civil Judge (Senior Division),
Gurdaspur, whereby suit filed by plaintiffs-appellants for declaration and
permanent injunction, has been dismissed.

Plaintiffs (appellants herein) filed the aforementioned suit for
declaration and permanent injunction to the effect that plaintiff No.1-Karan

Singh was joint co-owner in possession to the extent of $\frac{1}{4}$ share and plaintiff Nos. 2 to 4 were co-owners in joint possession over the suit land to the extent of $\frac{1}{12}$ th share each out of the estate of deceased Kamla Devi as detailed in Schedule 'A' and Schedule 'B' of the head note plaintiff. They have further sought relief of declaration to the effect that plaintiff No.1 was co-owner in joint possession to the extent of $\frac{1}{32}$ th share and plaintiff Nos. 2 to 4 were co-owners in joint possession to the extent of $\frac{1}{96}$ th share each out of the estate of deceased Kamla Devi as detailed in head note 'C' of the plaintiff. As per plaintiffs, deceased Kamla Devi was the mother of plaintiff No.1, grandmother of plaintiff Nos. 2 & 3 and mother-in-law of plaintiff No.4. Father as well as husband respectively of plaintiff Nos. 2 to 4 namely Narain Singh had died prior to the death of deceased Smt. Kamla Devi. Plaintiff No.1 and defendant No.1 were sons, whereas defendant No.2 was daughter of late Kamla Devi. Kamla Devi had died on 03.03.2007 leaving behind the plaintiffs and defendant Nos.1 and 2 as her legal heirs. After her death, plaintiffs had been requesting defendant No.1 to get the land mutated in their names as per their respective shares, but defendant No.1 always put the matter pending on one pretext or the other. Ultimately, in the month of December, 2008, plaintiffs came to know that defendant No.1 had procured two sale deed dated 09.01.2006 and Will dated 10.01.2006 allegedly executed by deceased Kamla Devi in his favour. The said sale deed and the Will were illegal, null and void and were result of fraud, undue influence, without consideration and same had been procured by defendant No.1 in connivance with the scribe and attesting witnesses. It stated that sale deeds dated 04.05.2007 and 08.01.2008 with regard to the land mentioned in head note 'B' of the plaintiff, executed by defendant No.1 in favour of Sukh Devi

were also illegal, null, void and without consideration and were liable to the set aside. Mutation sanctioned on the basis of those sale deeds were also liable to be set aside. Hence, the suit.

Upon notice, defendant No.1 filed written statement taking preliminary objections with regard to cause of action, estoppel, non-joinder of necessary parties and suit being time barred. On merits, it was submitted that defendant No.1 was serving his mother in her old age, due to which, she executed a Will and two sale deeds in favour of her son i.e. defendant No.1. Narain Singh died during the life time of Kamla Devi and after his death, his children and widow were not in the control of Smt. Kamla Devi. Plaintiff No.1 got married with widow of Narain Singh against the wishes of his parents. Mother of defendant No.1 was not agreed and happy with the decision of his marriage with widow of Narain Singh defendant No.4. Due to this reason, Kamla Devi was not ready to give any land to plaintiffs. It was further stated that the sale deeds and Will duly executed by Kamla Devi during her life time, were legal, valid and binding on the plaintiffs. Sale deeds executed by defendant No.1 in favour of defendant No.12 were also legal and valid documents. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether sale deeds dated 09.01.2006 executed by Kamla Devi in favour of defendant No.1 are illegal, null and void being result of fraud, misrepresentation, if so, its effect? OPP
2. Whether Will dated 10.01.2006 executed by Smt. Kamla Devi in favour of defendant No.1 is the result of undue influence, fraud and misrepresentation? OPP

3. Whether mutation Nos.6161, 6213 and 673 on the basis of impugned sale deeds and Will are liable to be set aside? OPP
4. Whether Kamla Devi executed legal and valid Will dated 10.01.2006 in favour of defendant No.1? OPD
5. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit. Appeal against the said judgment also met the same fate.

Heard.

Both the Courts below have returned a concurrent finding of fact against the plaintiffs. It was observed that evidence with regard to proof of Will stands at a higher degree in comparison to the other documents and there must be a clear evidence of the attesting witnesses or other witnesses that the contents of the Will were read over to the executant and he, after admitting the same to be correct, puts his signatures in presence of the witnesses and then attesting witnesses put their signatures on the Will in presence of the executant. It is the duty of a propounder of the Will to prove by cogent and convincing evidence that Will in his favour has been executed by the testator out of free will while having sound disposing mind and he was not in a position to dominate him as well as he is required to explain all suspicious circumstances surrounding the Will in his favour, which are like his own active participation in execution of the Will, there should be plausible explanation in the Will for ignoring legal heirs of the executant like daughters, grand children etc. and what were compelling reasons with the testator to ignore them from inheriting his property by way of natural succession.

As per sale deed dated 09.01.2006 Ex.P5, land measuring 23

Kanals 15 Marlas has been sold and as per another transfer deed Ex.P6,

Kamla Devi has transferred 04 Kanals 2½ Marlas in favour defendant No.1-Vikram Singh. These deeds were never challenged by Kamla Devi during her life time. She had died on 03.03.2007. Kamla Devi was absolute owner of the property in dispute. Moreover, it was never pleaded nor proved that she was not competent to execute the sale deed. Both the Courts have examined that Smt. Kamla Devi was old aged and at one time, she had fallen in the main hole (*gatar*) and sustained some fracture. This in itself was not sufficient to prove that she was not mentally sound and unable to execute the Will in question. Plaintiffs had never looked after and served Smt. Kamla Devi and she had spent her entire life with the family of defendant No.1. Defendant No.1-Vikram Singh used to look after and serve her till she breathed last.

Plaintiffs had to prove that Smt. Kamla Devi was not mentally able to execute the Will dated 10.01.2006. In the Will, she had given reasons for depriving her daughter from inheritance. Plaintiff No.1 had admitted that he had come to know about the Will in question during the life time of Smt. Kamla Devi and asked her to get executed and registered sale deed in his favour, but she did not do so. Hence, it was clear that plaintiff No.1 had knowledge about the said Will and he had made attempts by asking Kamla Devi to execute one sale deed in his favour. But, she did not accept his request. Marriage of plaintiff No.1 and plaintiff No.4 was solemnized after the death of Narain Singh in the year 1992/1993. After this marriage, Jaswant Singh and his wife Smt. Kamla Devi had never resided with the plaintiffs. They used to be looked after and served by defendant-respondent No.1 and his family members. This could be the reason, due to which, Smt. Kamla Devi has disinherited the plaintiffs from her estate. At

the time of registration of the Will Ex.D3, Kamla Devi was standing along with Sub Registrar and no suggestion was put to the witnesses of the defendants that some other lady had been standing and photograph had been procured by fraud. The fact that plaintiff No.1, during his cross-examination, had admitted that he had the knowledge about the Will as well as sale deeds, demolished the entire case of the plaintiffs.

On the other hand, Will Ex.D3 being a registered document, was held to be a valid document as plaintiff No.1 had admitted himself that he was having knowledge of the Will as well as sale deeds in favour of defendant No.1 at the instance of Smt. Kamla Devi. Plaintiffs were not able to lead any evidence to show that Smt. Kamla Devi was not competent or was not in a position to understand the contents of the Will. Accordingly, both the Courts below have rightly held that the Will Ex.D3 was a validly executed document and the plaintiffs had failed to rebut this presumption. Since execution of the Will has been proved, further sale deeds executed by defendant No.1 in favour of defendant No.12 do not suffer from the ingredients of fraud or misrepresentation.

After going through the impugned judgments, it is apparent that plaintiffs-appellants have failed to prove that the Will Ex.D3 and sale deeds in question were the result of fraud and misrepresentation and the same are not binding upon the parties. Moreover, plaintiff No.1 himself admitted that he had the knowledge of execution of Will Ex.D3 in favour of defendant No.1. In the absence of any cogent and convincing evidence, the suit of the plaintiffs has been rightly dismissed by both the Courts below. No illegality, much less perversity, has been found in the impugned judgments,

warranting interference by this Court. The evidence has been appreciated in

the right perspective.

No substantial question of law arises for consideration in this appeal.

Dismissed.

27.03.2018
ajp

(RITU BAHRI)
JUDGE

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