

RSA-5949-2014

[1]

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

RSA No.5949 of 2014 (O&M)

Date of Decision: July 13, 2018

Mohinder Singh

...Appellant

Versus

Baldev Singh and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr. Sandeep Bansal, Advocate for
the appellant.

HARINDER SINGH SIDHU, J.

This regular second appeal has been filed by the plaintiff-appellant against the judgment and decree of the Courts below whereby his suit has been dismissed.

The plaintiff and defendant Nos. 1 and 6 are brothers being the sons of Saudagar Singh. Defendants No. 4 and 5 are their sisters. Defendants No. 2 and 3 are the sons of defendant no.1-Baldev Singh.

The plaintiff had filed a suit for declaration to the effect that he alongwith defendants No.1,4,5 and 6 were entitled to succeed/inherit 1/5th share in the property owned by Smt. Parkash Kaur, their mother being her legal heirs and that the Will dated 23.01.1998 executed by Parkash Kaur in favour of defendants No. 2 and 3 was not valid being the result of fraud and misrepresentation. The consequent mutation dated 26.4.2005 was also not legal and binding upon them.

The case of the plaintiff was that he alongwith defendants No.1,4,5 and 6 being the only legal heirs of their mother Parkash Kaur were

joint owners in possession of the suit land after her death on 25.10.2002.

The Will dated 23.1.1998 alleged to have been executed by her in favour of defendants No.2 and 3 was the result of undue influence and fraud played by respondents No.1 to 3 on her. The order dated 26.4.2005 passed by A.C. Ist Grade, Mukerian, whereby Mutation No. 2998 had been sanctioned in favour of defendants No.2 and 3 was also consequently not valid.

Defendants No.1 to 3 and 5 filed written statement asserting that Parkash Kaur being owner in exclusive possession of the suit property had executed a registered Will dated 23.01.1998 in favour of defendants No.2 and 3 which was legal and valid. Hence, the suit was liable to be dismissed.

In order to prove the execution of the Will, the defendants examined DW-1 Anoop Singh, who deposed through his affidavit Ex.DW1/A that he knew Parkash Kaur personally. He deposed that the Will was written by Deed Writer Satish Kumar at the instance of Parkash Kaur. After the completing the same, the contents thereof were read over to Parkash Kaur, who after admitting them to be correct, thumb marked the Will dated 23.01.1998 in his presence as well as in the presence of the other attesting witness Piara Lal, Sarpanch of village Bhangala and in the presence of Deed Writer Satish Kumar. He and the other attesting witness thumb marked the same. The deed writer also signed in the presence of Parkash Kaur. DW1 also deposed that the Will had been executed by Parkash Kaur while in sound disposing mind and without any pressure from any side. He also deposed that the Will was entered by the deed writer in his register at Sr. No. 317 where Parkash Kaur thumb marked the register. He and the other attesting witness Piara Lal also affixed their thumb marks on the register. The Will was produced before the Sub- Registrar Mukerian by

Parkash Kaur for registration. The Sub- Registrar read over its contents to Parkash Kaur, who after admitting the same to be correct, thumb marked in the presence of Sub-Registrar and both the attesting witnesses. Based on this deposition the Ld. Trial Court held that the Will has been proved as per the provisions of Section 68 of the Indian Evidence Act.

The learned trial Court held that the plaintiff had not been able to prove any suspicious circumstances surrounding the execution of the WILL. The Court took note of cross examination of PW 1 Mohinder Singh- plaintiff where he admitted that the ration card of Parkash Kaur was joint with Baldev Singh. Her voter card was prepared at the house of Baldev Singh and both of them used to reside separately. DW-1 Anoop Singh attesting witness of the Will had also stated that Parkash Kaur used to reside with Baldev Singh and that Baldev Singh alongwith his sons Jujvinder Singh and Sumeetpal Singh (defendants No.2 and 3) had rendered services to her.

It was also noted that in the Will there was recital to the effect that the property of Parkash Kaur situated in village Muradpur -Jattan had already been given to her legal heirs including Mohinder Singh- plaintiff and they would have no right in the remaining property. Based on this, the Court rejected the arguments of learned counsel for the plaintiff that the other legal heirs have been ignored by her.

In support of their plea that the Will had been executed by fraud and misrepresentation, the plaintiff relied on the evidence of Piara Lal, the other attesting witness who appearing as RPW/1 deposed that on 23.1.1998 Baldev Singh defendant no.1 had gone to him and told him that Parkash kaur had executed a sale of one killa of land in favour of Jujvinder Singh, defendant no. 2 and that he should help prepare the papers. But when he

came the documents were ready. The documents were not read over to him. When he asked Parkash Kaur about the contents of the documents she informed him that one killa of land was to be transferred in the name of Jujvinder Singh. Thereafter, she affixed her thumb impression on 3 to 4 plain papers of the sale deed. He also attested the same. The document was neither read over by the deed writer nor by the Niab Tehsildar. The learned Trial Court, however, did not give credence to the version of Piara Lal, rightly opining that it is highly improbable that a person who had remained Sarpanch for five years would append his signatures in English on the Will dated 23.1.1998 without going through its contents. In fact Piara Lal in his cross examination had admitted that he signed a document only after reading it.

The argument of the plaintiff that the fact that a sale deed was executed by Parkash Kaur in favour of defendants No.2 and 3 on the same day on which the Will was executed in their favour was a sufficient suspicious circumstance was negated by the learned trial Court by holding that firstly the sale deed which had been referred to by RPW-1 Piara Lal had not been proved. Only a marked copy thereof had been placed on record as Mark Y. Further a perusal of a copy of the sale deed and the Will showed that khasra nos. mentioned in both the documents were different. The fact that the Will was executed on 23.1.1998 and Parkash Kaur died on 25.10.2002 i.e. about 4 years after the execution of the Will was another factor which militated against any fraud or misrepresentation in the execution of the Will. For if there had any fraud, she would have taken steps to get the Will canceled or revoked. But nothing of that kind had been done.

The argument that the beneficiary of the Will had accompanied

Parkash Kaur and this was a suspicious circumstance was also rejected by holding that mere presence of a beneficiary at the time of execution of the Will does not render it invalid. When this ground was pressed before the Learned Lower Appellate Court, it rejected the same by further holding that the presence of the beneficiaries at the time of the execution of the Will cannot be said to be a suspicious circumstance considering that Parkash Kaur, who was the grandmother of the beneficiaries Jujvinder Singh and Sumeetpal Singh, was living with them and in her old age it was but natural for them to accompany their grandmother.

The learned lower Appellate Court further noted that respondents No.4 and 5 (sisters of the plaintiff) had admitted the execution of the Will. Respondent No.6 (his brother) had chosen not to contest the suit meaning thereby he also admitted execution of the Will. The statements of Piara Lal, attesting witness which were against the contents of registered documents were to be given no credence once he admitted his signatures on the Will.

Thus the Ld. Lower Appellate Court also affirmed the findings of the Trial Court.

Before the Ld. Lower Appellate Court the plaintiff had filed an application under Order 41 Rule 27 CPC for leading additional evidence to place on record certified copies of sale deeds dated 15.03.1085 and 23.01.1998 which had already been placed on record as Mark Y. The said application was also dismissed by learned lower Appellate Court along with the appeal by observing that the trial Court had already referred to sale deed Mark Y in its order and the land subject matter of sale deed Mark Y was different from the subject matter of Will Ex.D1.

Learned counsel for the appellant has broadly raised the same

arguments as were raised before the Courts below namely the presence of the beneficiaries at the time of the execution of the Will, the evidence of RPW1 Piara Lal about the contents of the Will having not been read over to him or to the testator, the weak mental condition of the testator etc. All these arguments which primarily relate to appreciation of evidence have already been dealt with by the Courts below. Ld. Counsel has not been able to show as to how the findings of the Courts below are perverse or against the evidence on record.

The only additional argument of the Ld. Counsel for the appellant is that both the Courts below negated the argument of suspicion surrounding the Will on account of the sale deed and the Will having been executed on the same day on the ground that the land subject matter of the sale deed and the Will is different. He argued that this is incorrect because in the Will khasra numbers of the land or details of the property is not mentioned. In my view this would not make any material difference. The Will is a registered document. DW 1 Anoop Singh attesting witnesses has proved due execution of the Will. Though RPW1 Piara Lal, the second attesting witness, had made certain assertions about the Will not having been read over to him before he signed it and also about the mental condition of the testator however he was not able to sustain these assertions in cross examination. In cross examination he admitted that he never signed any document without reading it. He also admitted that Parkash Kaur was in full command of her senses and that she had stated that her grandsons (defendant 2 and 3) had served her well. In the face of this there is no weight in the argument that the execution of the Will is surrounded by suspicious circumstances.

Thus, there is no merit in this appeal and the same is dismissed.

July 13, 2018
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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No