

228

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3262-2017 (O&M)
Date of decision : 11.01.2018

Sawinder Singh

... Appellant(s)

Versus

Satnam Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Sidhu, Advocate
for the appellant(s).

AMIT RAWAL, J. (ORAL)

CM-7993-C-2017

For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed and the delay of 68 days in filing the appeal is condoned.

RSA-3262-2017

The appellant-plaintiff is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby the suit seeking following relief has been dismissed, though decree by the trial Court:

"Suit for declaration decree to the effect that the plaintiff is owner of 2/160 share in land Khewat No.86, Khatuni No.123, Khasra No.774(8-0), 2/94 share in Khatuni No.124, Khasra No.775 (4-14), 1/38 share in Khatoni No.125 Khasra No.776(1-18), 3/152 share in Khatuni No.126, Khasra No.777(7-12), 4/160 share in land Khatoni No.127, Khasra No.778 (8-0), situated in the area of village Kakka Kandiala, Tehsil and District Tarn Taran, as mentioend in the copy of

Jamabandi for the year 2007-08 on the basis of Will dated 5.7.2011 executed by Daljit Kaur wife of Jaswant Singh mother of the plaintiff and defendant No.1.

With consequential relief the defendant No.1 be restrained to alienate the share of the plaintiff in the above said property, on the basis of Will dated 5.7.2011 executed by Daljit Kaur wife of late Jaswant Singh original owner.

Learned counsel for the appellant-plaintiff submits that the trial Court on the basis of the preponderance of the evidence decreed the suit declaring the plaintiff to be owner of 2/160 share in land, aforementioned, on the basis of the unregistered Will dated 05.07.2011 as it found that the transfer deed dated 13.05.2010 executed by Daljit Kaur, mother of the plaintiff was not a genuine document and was obtained by playing a fraud upon the aforementioned lady, but the lower Appellate Court reversed the aforementioned findings holding that the testator was the owner of the land referred to in the transfer deed, thus, there is illegality and perversity. The Will has been given in a coloured affidavit as it was attested by the Oath Commissioner. The Will can be given in any document. The ingredient of suspiciousness of the Will drawn of the lower Appellate Court is wholly misplaced. The Will had been proved through the testimony of Manjit Kaur, but her testimony has erroneously been discarded, thus, urges this Court for setting aside the judgment and decree, under challenge.

I have heard the learned counsel for the appellant-plaintiff and appraised the paper book. In order to establish that the transfer deed was actually obtained by playing a fraud upon the testator i.e. it was prior in time to the Will, the ingredients of Order 6 Rule 4 of the Code of Civil Procedure were to be proved. No evidence has been placed on record to prove the

same as the aforementioned document is registered one. Once Daljit Kaur was not having title in the property referred to in the transfer deed, she could not will away vide Will dated 05.07.2011, it is subsequent transfer deed. A person who is not the owner of the property cannot deal with the property though it has been found that the Will was on affidavit attested by the Oath Commissioner and there were various suspicious circumstances. Even the ingredients of Section 2(h) of the Indian Succession Act were not sufficed with.

For the foregoing reasons, I do not find any illegality and perversity in the judgment and decree passed by the lower Appellate Court being the last Court of fact and law, as the same is based upon correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration. Accordingly, the present appeal is dismissed.

11.01.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No