

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

**RSA No.2907 of 2018 (O&M)
Date of decision: May 09, 2018**

Amarjit Singh Sahota

...Appellant

Versus

Manmohan Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.S.Mehndiratta, Advocate
for the appellant.

INDERJIT SINGH, J.

Appellant Amarjit Singh Sahota has filed this regular second appeal against Manmohan Singh and other respondents challenging the judgment dated 19.03.2013 passed by learned Civil Judge (Junior Division), Hoshiarpur, whereby suit filed by the appellant was dismissed and also judgment dated 26.02.2018 passed by learned Addl. District Judge, Hoshiarpur, vide which the appeal filed by the appellant was also dismissed.

I have heard learned counsel for the appellant and have gone through the record.

From the record, I find that Amarjit Singh Sahota, plaintiff filed a suit against Manmohan Singh and other defendants, for declaration to the effect that the Will dated 29.09.2005 executed by Kehar Singh, father of plaintiffs and defendants No.1 to 3, is null and void and result of fraud,

coercion and also for declaration that plaintiff is owner of 1/4th share out of

the land measuring 42 kanals 01 marla etc.

The brief averments of the plaint as noted down in the impugned judgment dated 19.03.2013 passed by learned Civil Judge (Jr. Divn.) Hoshiarpur, are as under:-

“2. In brief facts of the present case are that the plaintiff is permanent resident of abovesaid address. The defendants No.1 and 2 are brothers and defendant No.3 is sister of the plaintiff. Defendants No.4 to 6 are co-sharers in Khewat No.139, Khatauni No.153, Khasra No.6R/18/2 (2-18), however no relief is claimed against them. It has further been averred that earlier father of the plaintiff and defendants No.1 to 3 was hailing from Hoshiarpur and lateron forefather, father and grandfather shifted to a village in Pakistan before 1947. But due to creation of Pakistan in 1947 they came back to Hoshiarpur. Grandfather of the plaintiff and defendants No.1 to 3 was owner of land in Pakistan, but when they came to Hoshiarpur in 1947, the Govt. of India sanctioned the land in dispute to them in Hoshiarpur. The father of the plaintiff and defendants No.1 to 3 sanctioned the mutation of some land in favour of the plaintiff and defendants No.1 and 2 and some property kept in his name. The elder brother of the plaintiff was doing graduation when the total property was sanctioned to their father by the Govt. of India. Hence, no contribution of elder or younger brother to purchase the abovesaid property in India or in Pakistan. Moreover, the said land, earlier in Pakistan and then in Hoshiarpur was not purchased by father of the plaintiff and defendants No.1 to 3 himself. It was further stated that after the plaintiff settled in Canada he sponsored his father to visit there for so many times. All the expenses for the above said purpose were incurred by the plaintiff. The plaintiff was looking after his father regularly. It was further stated that father of the plaintiff and defendants No.1 to 3 was aged about 80 years and his physical position was not well and the plaintiff came to India, so many times just to check him up from some medical expert. The plaintiff claims that their father was not physically and mentally fit. His one eye was totally off and the second was working upto 80%. He did not know any deed or act done on his behalf. The plaintiff claims that due to the above circumstances the defendants No.1 to 3 took benefit of absence of the plaintiff in India and got the false Will executed in their favour with fraud and coercion. It was further stated that defendants No.1 and 2 were in India at the time of execution of the Will and with the connivance of defendant No.3 pretending to get their father checked up from some medical expert, they got the Will executed in their favour fraudulently. The plaintiff claims that none of the defendants No.1 to 3 looked after their father ever and on the other hand

the plaintiff had rendered best services to his father. The plaintiff claims that he had appointed/engaged a servant to serve his father and the salary was being paid by him. It was further stated that Kehar Singh was the owner of land measuring 42 kanals 01 marlas as detailed and described in the head note of the plaint. The plaintiff claims that Kehar Singh died intestate and he never executed any Will. However, the defendant No.3 in connivance with the defendants No.1 and 2 manipulated the alleged Will. The alleged Will is surrounded by various suspicious circumstances. The plaintiff claims that he being the legal heir of Kehar Singh is entitled to 1/4th share out of the suit land. The plaintiff claims that the defendant in connivance with the revenue official got entered and sanctioned the mutation in their names regarding the suit land illegally and without notice of the plaintiff. The said mutation entry in the name of the defendants is liable to be set aside. The plaintiff claims that the defendants on the basis of the said mutation entry are planning to alienate the suit land for which they have no right to do so. The plaintiff claims that the defendants cannot alienate more than their share i.e. 1/4th share each out of the suit land. The plaintiff claims that he is owner of the suit land to the extent of 1/4 share. The plaintiff claims that not only the defendants No.1 and 2 tried to grab the valuable right of the plaintiff, but they are trying to sell the valuable portion of joint property to some other person also. The plaintiff was therefore, constrained to institute the present suit.”

Upon notice, defendants No.1 and 2 appeared and filed joint written statement. In the written statement, defendants admitted relationship between plaintiff and defendants. It has been further stated that the suit land was the self-purchased property of their father, which he purchased from his own income and funds. It is also stated that Kehar singh had transferred major portion of his landed property measuring 201 kanals 17 marlas in favour of the plaintiff and defendants No.1 and 2 in equal shares during his life-time and they are in possession of 201 kanals 17 marlas. It further stated by defendants No.1 and 2 that their father had given nothing to his daughter-defendant No.3, when he transferred 201 kanals 17 marlas of land in favour of plaintiff and defendants No.1 and 2. Plaintiff

never contributed during his lifetime. It was denied that plaintiff ever came to India for medical checkup of his father. It is further stated by defendants No.1 and 2 that Kehar Singh executed Will dated 29.09.2005 in favour of defendants No.1 to 3, which was got registered by him on 03.10.2005 with Sub-Registrar, Hoshiarpur, with his own free will and without any pressure or coercion. It is also the case that at the time of execution of said Will, defendants No.1 and 2 were not present in India, therefore, coercion or fraud by defendants No.1 and 2 does not arise. It is further stated that plaintiff has no share in the suit property. Defendant No.3 appeared and filed separate written statement and also took similar plea.

Following issues were framed:-

- “1. Whether the plaintiff is entitled for declaration as prayed for?OPP*
- 2. Whether the plaintiff is entitled to permanent injunction as prayed for?OPP*
- 3. Whether the plaintiff is entitled to relief for joint possession in alternative?OPP*
- 4. Whether the suit is bad for non-joinder and mis-joinder as prayed for?OPD*
- 5. Whether the plaintiff is estopped by his own act and conduct by his suit?OPD*
- 6. Whether the suit has not been properly valued for the court fee?OPD*
- 6A. Whether Kehar Singh has executed a Will dated 29.09.2005 in favour of defendants No.1 to 3?OPD*
- 7. Relief.”*

Plaintiff examined himself as PW-1 and closed the evidence.

On the other hand, defendants examined defendant No.2 as DW-1, DW-2

Civil Judge (Jr. Divn.), Hoshiarpur and DW-4 Davinder Singh Dhami.

Learned Civil Judge (Jr. Divn.), Hoshiarpur, vide judgment dated 19.03.2013, after appreciating the evidence, dismissed the suit. An appeal was filed by the plaintiff and learned Addl. District Judge, Hoshiarpur, vide judgment dated 26.02.2018 dismissed the same.

Aggrieved from the above-said judgments, present Regular Second Appeal has been filed.

From the perusal of the judgments passed by both the Courts below, I find that both the Courts have given concurrent findings. The perusal of the reasonings shows that evidence has been appreciated in right perspective. In no way, the findings can be held as perverse or against the law.

After hearing learned counsel for the appellant, I find that nothing substantial has been pointed as to how the Will in question is surrounded by suspicious circumstances. Learned counsel for the appellant argued that in the Will, for excluding plaintiff, reasons have been given that property has already been given to him but the property was also given to defendants No.1 and 2. I have gone through the copy of the Will, which is a registered Will and scribed by regular deed-writer. The attesting witness of the Will has been examined to prove the execution of the Will. In the Will, it is written that the plaintiff has already been given his share in the land and some other things also and his rights have been fully satisfied. The Will was executed by Kehar Singh (since deceased) in presence of two witnesses, who attested the Will in the presence of executant and executant signed the Will in presence of two attesting witnesses. One attesting witness is

Dhami stated that he did not know Mohit Sharma, will not create any doubt. It is not mandatory or requirement of law that witnesses must know each other. Similarly, the fact that Mohit Sharma was not present at the time of registration of the Will, also will not create any doubt in the execution of the Will and cannot be held as suspicious circumstance because the Will was executed on 29.09.2005, whereas it was registered on 03.10.2005. The Will, as discussed above, is a registered document, which was scribed by regular deed-writer DW-2 Balraj Kumar and DW-4 Davinder Singh Dhami, one of the attesting witness, has also deposed regarding execution of the Will.

The perusal of the evidence on record shows that the Will is not surrounded by suspicious circumstances. Mere fact that deceased Kehar Singh used to write diary, which has not been produced till 2005, will not amount to suspicious circumstance surrounding the Will nor adverse inference can be drawn on this point. The witness was never asked to bring the diary before 2005 etc. nor it is proved that diary was available with the defendants. Moreover, Kehar Singh has appended signatures in English on each and every page of the Will.

In view of the above discussion, I find that no substantial question of law arises in this regular second appeal. The findings given by learned Courts below are correct and as per law. There is nothing on the record to show that the judgments passed by the Courts below are perverse or against the law.

In view of the above discussion, I find that judgment and decree dated 19.03.2013 passed by learned Civil Judge (Junior Division),

Hoshiarpur and judgment and decree dated 26.02.2018 passed by learned

Addl. District Judge, Hoshiarpur, in appeal are correct and as per law and the same are upheld.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

Since the main case is decided, the pending civil misc. application, if any, also stands disposed of.

May 09, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No