

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

RSA No. 4258 of 2018 (O&M)

Date of decision : September 05, 2018

Harbans Lal (deceased) through LR Kailash RaniAppellant

Versus

Mani Dass and othersRespondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Siddharth Gupta, Advocate
for the appellant.

LISA GILL, J.

CM-11356-C-2018

For the reasons mentioned in the application and the arguments addressed, delay of one day in filing of the appeal is condoned.

Application is disposed of.

CM-11357-C-2018

Filing of certified/true typed copies of judgment and decree dated 28.07.2016 as well as judgment and decree dated 19.03.2018 is exempted.

Application is disposed of.

RSA No. 4258 of 2018 (O&M)

Appellant/Kailash Rani - wife and one of legal representatives of the deceased – plaintiff Harbans Lal has filed this appeal being aggrieved of judgment and decree dated 28.07.2016 passed by the learned Civil Judge (Senior Division), Moga as well as judgment and decree dated 19.03.2018 passed by the learned Additional District Judge, Moga.

Brief facts necessary for adjudication of the case are that the

appellant – plaintiff Harbans Lal (through his legal heirs) filed a suit for declaration to the effect that he being the legal heir of Smt. Dwarka Devi widow of Ram Kishan Dass (his sister) on the basis of will dated 25.10.1989 was the sole/absolute owner in possession of land as detailed in the plaint and a further declaration that order dated 23.06.2006 passed by the Assistant Collector Second Grade, Dharamkot, order dated 10.08.2007 passed by the Collector, Moga, order dated 20.05.2010 passed by the Commissioner, Ferozepur Division, mutation No. 1002 as well as sale deed dated 10.07.2006 by respondent – defendants No. 1 to 4 in favour of defendant No. 5 and alienation of the property by defendant No. 3 in favour of defendant No. 5 besides the subsequent mutations on the basis of sale deeds are illegal, null, void and ineffective qua the rights of the plaintiff.

It was pleaded that the land in question was owned by Prem Dass son of Kirpa Dass father of the plaintiff – Harbans Lal as well as Dwarka Devi. Prem Dass had five sons and three daughters, the plaintiff and Dwarka Devi being two of them. Dwarka Devi inherited the suit property being one of the legal heirs of Prem Dass. Dwarka Devi was initially married to Ram Kisan Dass Chela Sunder Dass alias Bachan Dass. Ram Kisan Dass died on 10.02.1977. Dwarka Devi, it was pleaded, solemnised second marriage in the year 1980 with Baldev Raj son of Ami Chand as she was not taken care of by her son and daughters i.e. defendants No. 1 to 4. The said defendants opposed the marriage of their mother Dwarka Devi as they felt that their reputation in society and brotherhood could be lowered. All ties were snapped by the mother Dwarka Devi. Relations of Dwarka Devi with her second husband were also stated to be strained. Consequently, Dwarka Devi used to more often reside in the house of the plaintiff – her

brother. Will dated 25.10.1989 was allegedly executed by Dwarka Devi in favour of the plaintiff – her brother Harbans Lal. Dwarka Devi passed away on 10.06.1992. However, respondents – defendants No. 1 to 4 in connivance with revenue authorities got mutation No. 1002 sanctioned on the basis of natural succession. Appal preferred by the plaintiff before the Collector, Moga was dismissed on 10.08.2007. His appeal and revision was dismissed vide order dated 20.05.2010. Taking undue advantage of the mutations in their favour, defendants No. 1, 2 and 4 sold their alleged share to defendant – respondent No. 5 vide sale deed dated 10.07.2006. Mutation No. 1029 was sanctioned. It was pleaded that defendant No. 5 further intended to alienate the suit property. Hence the suit was filed.

Defendant – respondent No. 5 Jagdish Kumar resisted the suit. Various preliminary objections were taken in the written statement. Averments on merits were controverted. It was pleaded that the suit was time barred. Will dated 25.10.1989 was a forged and fabricated document. Dwarka Devi, it was contended, died intestate on 10.06.1992 leaving behind her son Mani Dass and daughters Nirmala Devi, Bimla Devi and Bholi. Mutation No. 1002 was entered in their favour on the basis of natural succession. Defendants No. 1, 2 and 4 sold their share in the land to defendant No. 5 on 10.07.2006 for valuable consideration of ₹72,000/-. Possession was delivered to him. Defendant No. 3 – Bimla Devi also sold her land to Jagdish vide sale deed dated 20.11.2006 for valuable consideration. It was denied that Dwarka Devi ever resided with the plaintiff or that she had any love and affection towards him. It was denied that she ever remarried. It was further stated that Dwarka Devi died intestate in the house of her son Mani Dass, who performed her last rites and ceremonies.

She was never neglected by her children during her life time. Dismissal of the suit was prayed for.

Defendants No. 1 to 4 were proceeded exparte on 28.10.2011.

Following issues were framed by the learned trial Court on the basis of the pleading:-

- i) Whether Smt. Dwarka Devi executed a will dated 25.10.1989 in favour of plaintiff?OPP.
- ii) Whether the order dated 23.06.2006 passed by A.C.-II Dharmakot, the order dated 10.08.2007 passed by Collector, Moga and order dated 20.05.2010 passed by Commissioner, Ferozepur Division, Ferozepur alongwith mutation No. 1002 are illegal, null and void and not binding qua the rights of plaintiff?OPP
- iii) Whether the sale deed dated 10.07.2006 executed by defendants No. 1, 2 and 4 in favour of defendant no. 5 is illegal, null and void, not binding qua the rights of plaintiff alongwith mutation No. 1019? OPP.
- iv) Whether the sale deed executed by defendant no. 3 in favour of defendant no. 5 alongwith mutation no. 1034 is illegal, null and void, not binding qua the rights of plaintiffs? OPP.
- v) Whether defendant no. 5 is threatening to alienate the suit property and so liable to be restrained?OPP
- vi) Whether the suit of the plaintiff is bad for concealment of facts?OPD
- vii) Relief.

Evidence was led by both the parties.

Learned trial Court on considering the facts and circumstances of the case dismissed the suit filed by the plaintiff. Appeal filed by the appellant was also dismissed by the learned Additional District Judge, Moga vide judgment dated 19.03.2018. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that both the learned courts below have erred in dismissing the suit filed by the appellant – plaintiff. The attesting witnesses Munshi Ram and Dara Singh both have identified the thumb impressions of their respective father on the will dated 25.10.1989 (Ex.P1). Moreover, the learned courts below have erred in holding that no person can identify the thumb impression but at the same time they have relied upon Ex.D1 i.e. affidavit of Dara Singh while observing that thumb impression of Dara Singh has been identified by his son Kashmir Singh - PW2. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 28.07.2016 passed by the learned Civil Judge (Senior Division), Moga, besides judgment and decree dated 19.03.2018 passed by the learned Additional District Judge, Moga be set aside and suit filed by the appellant be decreed throughout.

I have heard learned counsel for the appellant and have perused the file with his able assistance.

It is not in dispute that deceased Dwarka Devi and Harban Lal were siblings being the children of Prem Dass. It was contended by the plaintiff that Dwarka Devi was married to Ram Kisan Dass Chela Sunder Dass alias Bachan Dass, who died on 10.02.1977. Dwarka Devi again solemnised marriage with Baldev Raj as she was not looked after by her three daughters and a son i.e. defendants – respondents No. 1 to 4. Her second marriage was also not very successful and she would often reside with her brother Harbans Lal and out of love and affection she executed will dated 25.10.1989 whereby she bequeathed her entire estate in his favour.

In order to prove Will dated 25.10.1989, its scribe PW5 Ramesh Kumar besides PW1 Lal Chand, PW2 Kashmir Singh sons of

Munshi Ram and Dara Singh attesting witnesses of Will led evidence. PW5 Ramesh Kumar did not support the case of the plaintiff. He was declared hostile. PW5 Ramesh Kumar specifically stated that at the time of scribing of the will Dwarka Devi was not present. PW5 categorically stated that he typed Will Ex.P1 at the instance of the plaintiff, neither Dwarka Devi nor any of the attesting witnesses were present and they never thumb marked/signed the said will in his presence. In fact PW5 stated that the said Will was got scribed by the plaintiff on the pretext that he would obtain the thumb impressions of testator and witnesses at a later stage.

PW1 Lal Chand son of Munshi Ram identified the signatures of his father Munshi Ram on the will dated 25.10.1989 while stating that his father had died on 29.02.2008. It is to be noticed that the said witness also identified thumb mark of the other attesting witness i.e. Sarpanch Dara Singh. PW1 deposed that he alongwith his mother never had any cordial relations with his father.

PW2 Kashmir Singh son of other attesting witness Dara Singh identified the thumb impression of his father on the said will. PW2 also identified thumb impression of his father on Ex. D1 i.e. an affidavit executed by the deceased Dara Singh. As per Ex. D1, the deponent (Dara Singh) stated that he came to know that Harbans Lal had manipulated the alleged will purportedly executed in his favour by his real sister Dwarka Devi bearing thumb impression of Dara Singh as a witness. Will dated 25.10.1989, it was stated, in the said affidavit was a completely forged and fabricated document.

In the facts and circumstances of the case, both the learned courts below have rightly concluded that the plaintiff failed to prove the

execution of Will dated 25.10.1989. It is beyond imagination and improbable that a thumb impression of anyone could be identified with naked eye. Contention of learned counsel for the appellant that once PW2 Kashmir Singh was disbelieved in respect to Will dated 25.10.1989, no reliance should have been placed on his testimony in respect to Ex. D1, is of no avail to the appellant in the facts and circumstances of the case. It is a matter of record that PW2 did not support the plaintiff's case. Apart from the fact that identification of thumb impressions by a novice merely on the basis of his relationship is not very credible, it is admitted by Lal Chand that he was not even residing with his father as he and his mother did not have cordial relations with his father. It is not the case of Lal Chand that his father had appended his thumb impression on the Will in his presence. Furthermore, the document writer categorically denied the execution of the will.

It is pertinent to note that Kailash Rani wife of Harbans Lal - the present appellant while testifying as PW3 clearly admitted that the deceased Dwarka Devi had herself performed marriage of all her children. Dwarka Devi is admitted to have died at village Dandhiwal. Her ration card was also issued on the address of village Dandhiwal. PW3 admitted her participation in the marriage of the grand daughters and grandsons of Dwarka Devi as well. Moreover, there is no evidence on record to prove solemnisation of second marriage by Dwarka Devi with Baldev Raj. PW4 Jagdev Singh alleging himself to be brother of the deceased Baldev Raj failed to prove the said marriage. PW4 stated that karewa marriage was performed between Dwarka Devi and his brother by the Panchayat but no such member of the Panchayat was examined, neither was any documentary

evidence led to prove the said marriage. To the contrary, respondent/defendant No. 5 - Jagdish Kumar duly proved the execution of the sale deeds dated 10.07.2006 (Ex.D3) and 20.11.2006 (Ex.D4). DW3 – Surjit Singh Sohi, Document Writer gave the details of the said sale deeds and proved that contents were read over to the parties who appended their signatures/thumb impressions in the token of its correctness. DW2 - Resham Singh and DW4 – Gurmail Singh have also deposed regarding the execution of the said sale deeds. The said sale deeds were presented before the Joint Sub Registrar, Dharamkot. There is specific evidence regarding passing of the valuable consideration from the subsequent purchaser to the owners.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

No other argument was addressed.

Learned counsel for the appellant is unable to point out any illegality and infirmity in impugned judgment and decree dated 28.07.2016 passed by the learned Civil Judge (Senior Division), Moga and judgment and decree dated 19.03.2008 passed by the learned Additional District Judge, Moga which calls for interference by this Court.

Accordingly, this appeal is dismissed with no order as to costs.

(Lisa Gill)
Judge

September 05, 2018
rts

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