

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

RSA No. 4820 of 2017 (O&M)

Date of decision : October 10, 2018

Parveen

.....Appellant

Versus

Soma (since deceased) through his LR's and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Surjit Singh Swaich, Advocate
for the appellants.

LISA GILL, J.

Appellant - plaintiff is aggrieved of concurrent findings rendered against them by the learned Additional Civil Judge (Junior Division), Kharar vide judgment and decree dated 29.08.2013 and learned Additional Sessions Judge, SAS Nagar (Mohali) vide judgment and decree dated 17.02.2017 and consequential dismissal of her suit.

Appellant – plaintiff filed a suit for declaration to the effect that she is the owner of 5 marlas as described and detailed in the plaint on the basis of a valid Will dated 16.04.2003 executed by Bakhtawar Singh son of Sampuran Singh with consequential relief of permanent injunction restraining the respondent – defendants from interfering in any manner, in the peaceful ownership and possession of the plaintiff over the plot or obstructing the plaintiff from raising construction thereon. It was stated that Bakhtawar Singh son of Sampuran Singh was in possession of the plot in dispute. The plaintiff claimed to have helped Bakhtawar Singh financially due to which Will dated 16.04.2003 was executed by Bakhtawar Singh

bequeathing the said plot to the plaintiff. Bakhtawar Singh passed away on 14.06.2003. The plaintiff claimed to be in possession of the suit property. However, after death of Bakhtawar Singh, defendant – respondents i.e. son and daughter-in-law of Bakhtawar Singh tried to dispossess the plaintiff in an illegal manner. Hence, the suit.

Respondent – defendants resisted the suit. Written statement was filed taking various preliminary objections and controverting the averments on merits. It was denied that the plaintiff had ever extended any financial help to Bakhtawar Singh. Will dated 16.04.2003 was claimed to be a forged and fabricated document. Plaintiff, it was submitted, had no concern with the defendants, Bakhtawar Singh or the plot in question. Defendant No. 1 claimed to have inherited the plot being the son of Bakhtawar Singh. It was denied that the plaintiff was in possession of the plot. Dismissal of the suit was prayed for.

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

- i) Whether Bakhtawar Singh executed a valid will dated 16.04.2003 in favour of the plaintiff as alleged?OPP.
- ii)Whether plaintiff is owner in possession of the plot in the dispute?OPP
- iii)Whether plaintiff is entitled to declaration as prayed for? OPP
- iv)Whether plaintiff is entitled to injunction as prayed for? OPP
- v) Whether plaintiff has no locus standi to file the suit?OPD
- vi)Relief.

Evidence was led by both the parties.

Learned trial Court dismissed the suit filed by the plaintiff while observing that the Will in question was not proved in accordance with

law and was shrouded in suspicious circumstances. Appeal filed by the appellants was also dismissed by the learned Additional Sessions Judge, SAS Nagar (Mohali) vide judgment dated 17.02.2017. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that will dated 16.04.2003 has been duly proved on record. Mere fact that the plaintiff is a stranger to Bakhtawar Singh cannot be a reason to discard the said will. A Will by its very nature means exclusion of the natural heirs of the testator. It is submitted that both the learned courts below have erred in dismissing the suit filed by the appellant – plaintiff. There is misreading of evidence leading to rendering of perverse findings against the plaintiff. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 29.08.2013 passed by the learned Additional Civil Judge (Junior Division), Kharar as well as judgment and decree dated 17.02.2017 passed by the learned Additional Sessions Judge, SAS Nagar (Mohali) 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.

Appellant – plaintiff relies upon Will dated 16.04.2003 to stake her claim to the plot in question. Plaintiff testified as PW2 and stated that she had purchased the plot and paid a sum of ₹27,000/- to Bakhtawar Singh. Writing in this respect was prepared. Will in question was executed by Bakhtawar Singh. They had approached the Tehsildar and Notary but the sale deeds were not executed. The aforementioned refused to make an entry in this respect. PW1 further stated that Bakhtawar Singh was asking for money due to impending marriage of his grandson. ₹10,000/- was paid to

Bakhtawar Singh at home and another ₹10,000/- was paid at the Tehsil in the presence of the Notary. However, no receipt of the same is available on record. The plaintiff while testifying before the Ld. trial Court as PW1 has not given any detail of the suit property. She was unable to give the dimensions. Details regarding the date, month or year when she took possession of the same has also not been revealed by her. In order to prove Will dated 16.04.2003, Baldev Singh PW2 has been examined as an attesting witness. PW2 stated that Bakhtawar Singh appended his thumb impression in the presence of PW2 and other witnesses namely Pritam Singh, Pala and Bhajan Singh. It was entered in the register of the notary in their presence. However, in the cross examination PW2 stated that he did not remember who had typed the Will at Teshil. He had been called by Bakhtawar Singh. He revealed that Bakhtawar Singh wanted to take money from one Latta Sharma on account of marriage of his grandson. As sale deeds were not executed in those days, the Will was executed in favour of Latta Sharma. It could not be presented before the Tehsildar as he was on leave. PW2 did not reveal anything about receipt of any money and further stated that he had met Latta, who was a man. PW2 further stated that Latta wanted to purchase some property. However, PW2 further, in the cross-examination, in a peculiar manner stated that Latta was a woman. It is apparent that no reliance whatsoever can be placed on the testimony of this witness PW2. PW3 K.K. Sharma, Advocate, who was examined by the plaintiff to prove that an entry in respect to Will (Ex.P1) was incorporated in his register at serial No. 1747, stated that the Will was in favour of the plaintiff. However, PW3 admitted that there are two entries at Sr. No. 1747.

The entry in question is admitted to be in a different handwriting from the

other entries on the same page as well as as on the next page. The evidence of this witness PW3 is clearly discrepant and does not prove the case of the plaintiff in any manner.

Both the learned courts below have rightly held that Will dated 16.04.2003 cannot be treated to be a genuine will. Needless to say exclusion of legal heirs of the testators by itself is not a suspicious circumstance by itself. However, in the given facts and circumstances of the case, the plaintiff is a stranger to Bakhtawar Singh and his family. There is no reason forth coming from the evidence on record as to why Bakhtawar Singh would have executed a Will in favour of the plaintiff. There is no evidence on record to indicate that any financial aid had ever been proved by the plaintiff to Bakhtawar Singh. Furthermore, the attesting witness of the alleged will PW2 Baldev Singh has gone to the extent of saying that Will dated 16.04.2003 was executed in favour of one Latta Sharma and it is evident that PW2 does not even know whether Latta Sharma is a man or a woman. There are suspicious entries in respect to the said Will in the register of PW3 K.K. Sharma. The beneficiary of the will was statedly present at the time of execution of the same. Moreover, the plaintiff herself has taken variant stands. It is stated that the deceased Bakhtawar Singh had executed a Will in her favour as she had extended financial help to him whereas in her evidence she states that the will in question was executed as she had purchased the property in question for a sum of ₹20,000/-.

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 29.08.2013 passed by the learned Additional Civil Judge (Junior Division), Kharar as well as judgment and decree dated 17.02.2017 passed by the learned Additional Sessions Judge, SAS Nagar (Mohali) which calls for interference by this Court.

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

October 10, 2018

rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No