

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

RSA No.5591 of 2017 (O&M)

Date of decision:21.03.2018

Swaran Singh (since deceased) through LRs ... Appellant

Vs.

Parkash Wati and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.S.Rangi, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.4116-C of 2018

The application is allowed, subject to all just exceptions. Legal representatives of appellant-Swaran Singh, as mentioned in the application are ordered to be brought on record for the purpose of prosecuting the present appeal.

Amended memo of parties is taken on record.

RSA No.5591 of 2017 (O&M)

The appellant-plaintiff is in Regular Second Appeal against the judgment and decree dated 12.02.2017, whereby suit claiming declaration and permanent injunction on the basis of Will dated 20.02.1990 regarding the estate of Sarwan Singh, has been dismissed by the trial Court and judgment and decree dated 23.02.2017 rendered by the Lower Appellate Court affirming the judgment and decree of the trial Court.

Before advertng to the arguments of learned counsel for the appellant, it would be in the fitness of things to give short pleadings of the respective parties and evidence brought on record for adjudication of the lis.

The appellant-plaintiff instituted a suit for declaration and permanent injunction on the premise that Sarwan Singh and his wife Nand Kaur, who was paralyzed were looked after by the plaintiff and they were residing at the address given in the memo of parties. Sarwan Singh was the owner of land measuring 23 kanals 7 marlas. He was married to Nand Kaur-defendant No.10 and both of them had no issue, in essence, they were issueless. The plaintiff used to serve Sarwan Singh and Nand Kaur. On account of services rendered by the plaintiff, Sarwan Singh executed a legal and registered Will dated 20.02.1990 in favour of the plaintiff. Since Sarwan Singh was no keeping good health, much less his wife was paralyzed, all the medical expenses were also brought on record. Sarwan Singh died on 14.08.1996 leaving behind his widow/defendant No.10 Nand Kaur, who was the only successor in interest on the basis of natural succession but the plaintiff instituted the suit on the basis of aforementioned Will. Sarwan Singh son of Gurdit Singh was not married to any Kartar Kaur, therefore, defendant no.4 to 9 also alleged some Will in their favour.

The suit was contested by defendants No.1 to 5 and filed written statement by taking objection of maintainability etc. It was stated that Sarwan Singh was cultivating the suit land and the same was given on chakota to one Kesar Singh son of Pritam Singh. Kesar Singh handed over the vacant possession of the suit land to defendants No.1 to 5 on 05.06.1997

and as such Vinay Kumar and Kamal Kumar were cultivating the suit land. No khasra girdawari and mutation were brought on record. Defendants No.2 to 5 were sons and daughter of Harbans Singh and defendant no.1 was the widow of Harbans Singh. Harbans Singh died prior to Sarwan Singh and Kartar Kaur also died. After the death of Kartar Kaur, Sarwan Singh brought Nand Kaur to his house and started treating her as his wife. On merit, it was stated that Sarwan Singh never married to Nand Kaur. Rather Sarwan Singh married to Kartar Kaur and out of this wedlock only one son namely Harbans Singh was born. Nand Kaur was not legally wedded wife of Sarwan Singh and the alleged Will was a result of fraud and misrepresentation.

Defendant No.6 filed separate written statement and contested the suit by denying the execution of the Will. Defendant no.7 also filed separate written statement and denied that names of his family members were ever entered in the ration card of Sarwan Singh and votes of village Daheru. Sarwan Singh had been treating defendant no.7-Gian Kaur as his daughter and out of love and affection, he had executed a legal, valid and registered Will dated 28.11.1983 in favour of Nand Kaur and Charanjit Kaur, which was, never revoked.

The defendants No.8 and 9 also contested the suit by filing a separate written statement and stated that name of their family members were entered in the ratio card of Sarwan Singh. They also came out with unregistered Will dated 02.03.1996.

Defendant no.10 also filed separate written statement and stated that she was the only legal heir of Sarwan Singh and was entitled to receive the property left by deceased Sarwan Singh. However, it was admitted that plaintiff was looking after her.

The trial Court on the basis of the pleadings of the parties framed the following issues:-

- “1. Whether the plaintiff is entitled to declaration as prayed for? OPP*
- 2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP*
- 3. Whether Sarwan Singh executed a legal and valid Will dated 20.02.1990 in favour of plaintiff as alleged? OPP*
- 4. Whether the suit is not maintainable in the present form? OPD*
- 4-A Whether deceased Sarwan Singh had executed the valid and registered Will dated 28.11.1983 in favour of defendant no.7 Nand Kaur, if so, its effect? OPD*
- 5. Relief.”*

Both the parties examined the witnesses in respect of their cases, particularly PW8 -Nazar Singh son of Jagir Singh, attesting witness of the Will and PW9- Naveen Gupta, handwriting expert and PW6 Daljit Singh Registration Clerk. On the other hand, defendants examined DW1- Harbans Singh, Deed Writer, DW2-Jarnail Singh Namberdar, DW3- Gurcharan Singh, DW4-Avtar Singh Head Teacher, DW4-Sr. Clerk SDM

Office, Khanna and DW6 Charanjit Kaur wife of Charan Singh and closed the evidence.

On the basis of aforementioned evidence, the trial Court dismissed the suit and appeal as noticed above had also been dismissed by the Lower Appellate Court. The prime reason given by both the Courts below as that Will propounded by the appellant-plaintiff was suffering from suspicious circumstances.

Mr. S.S.Rangi, learned counsel appearing on behalf of the appellant-plaintiff submitted that both the Courts below have abdicated in not noticing the fact that Nand Kaur in cross-examination, much less in written statement admitted that it was plaintiff, who was looking after deceased Sarwan Singh and Nand Kaur. The medical bills Ex.P5 to Ex.P20 issued by Medical Store showed that medicines were purchased by the appellant for the treatment of Sarwan Singh and his wife Nand Kaur. Even the last rites were performed by the appellant which has been proved on record through the testimony of PW3 and entry register Ex.P22. The Courts below unnecessarily laid emphasis on the Will dated 28.11.1983 executed in favour of in favour of Nand Kaur and Charanjit Kaur, whereas the contents of Will dated 20.02.1990 showed that aforementioned Will of 1983 was revoked. Nand Kaur on one occasion opened her account in Indian Overseas Bank and made the appellant as her nominee. Non-bequeathing of property in favour of Nand Kaur could not be fatal for the purpose of adjudication of the suit, in view of the categoric averment in the written statement and examination-in -chief. It was also specifically pleaded that Nand Kaur, who

died during the pendency of the suit, during her life time executed a Will dated 09.01.997, Ex.P1 in favour of the appellant which was proved through testimony of PW1-Harbans Singh and PW2-Bachittar Singh, who was Nambardar of village. There was no piece of evidence in raising the suspicion with regard to the Will, Ex.P1. He further submitted that the emphasis of the Court was on the statement of DW1-Harbans Singh, who in the revenue proceedings made a statement against the appellant and the said statement was not permissible in law as it was made without oath and thus, urged this Court for setting aside the judgments and decrees under challenge.

In support of aforementioned contention, relies upon the ratio decidendi culled out by this Court in **Bhajan Singh vs. Smt. Jaswant Kaur 1996(1) RRR 738**, noted by this Court in un-reported judgment dated **04.12.2015 rendered in RSA No.1875 of 2013 titled as Surender Kumar Vs. Subhash Chander and others.**

I have heard the learned counsel for the appellant, appraised the judgments and decrees of both the Courts below and of the view that there is no force and merit in submissions of Mr. Rangi.

The Will dated 20.02.1990 revealed that Sarwan Singh had not taken care of his ailing wife-Nand Kaur, who is stated to have been living with plaintiff on the ground that he was not taking care of her. Since she was suffering from paralytic attack, therefore, rendering of service by the husband was impossible. It was un-believable to comprehend that Sarwan

Singh could non-suit the wife while bequeathing the entire property in favour of the appellant-plaintiff with whom there was no relationship.

There is another aspect of the matter. The categorical case of the appellant was that on the date of execution of the Will dated 20.02.1990, Sarwan Singh executed a registered Will in favour of the appellant-plaintiff in respect of land measuring 23 bighas. If at all, the plaintiff was looking after the treatment of both husband and wife, there was no occasion for Sarwan Singh to sell the land for arranging the funds for their treatment, therefore, suspicious circumstances weighed in the mind of the Courts below. The arguments of Mr. Rangi, have not been able to cut the ice to form this Court a different opinion than the one arrived at by both the Courts below.

During the course of hearing, the statement of attesting witness Gurdev Singh was read out, who had not deposed in terms of Section 63(c) of Indian Succession Act. He alongwith other witnesses in examination-in-chief denied the signatures on the direction of the testator which is mandatory requirement of law as noticed by the Supreme Court of India in **Janki Narayan Bhoir Vs. Narayan Namdeo Kadam 2003(1) RCR (Civil) 409**. All these factors weighed in the mind of the Courts below while rejecting claim of the plaintiff.

In view of what has been observed above, I do not find any illegality and perversity in the findings under challenge which are based upon the appreciation of oral and documentary evidence, much less no

substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 21, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No