

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-5305-2018 (O&M)
Date of Decision: 20.09.2018

Raj Kumar

--Appellant

Versus

Rajinder Kumar & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. D.S. Danipur, Advocate for the appellant.

TEJINDER SINGH DHINDSA.J (Oral)

Plaintiff Raj Kumar is in second appeal before this Court having remained unsuccessful in both the courts below.

Brief facts are that a suit for declaration was instituted against Will dated 9.10.2006 allegedly executed by Smt. Surjeet Kaur in favour of defendant no.1 Rajinder Kumar. Declaration was also sought against mutation, if any, in respect of a house situated in Ward No.4, Nadi Mohalla, Ambala City. Consequential relief of permanent injunction was also sought restraining defendant no.1 from alienating, selling, mortgaging or creating any kind of charge over the suit property. It was averred that Smt. Surjeet Kaur, who was mother of the plaintiff as also defendants was the owner and in possession of the house in dispute to the extent of her share which she had inherited from her husband Sh. Bachan Lal. As such, plaintiff and defendants were entitled to succeed to the movable and immovable property of Smt. Surjeet Kaur. However, defendant no.1 in connivance with the attesting witnesses set up a false and fabricated Will in his favour dated 9.10.2006 registered in the office of Sub Registrar, Ambala with the oblique motive to grab her property. It was stated that Smt. Surjeet Kaur had never executed any Will during her life time and the property in dispute to the

extent of share of Smt. Surjeet Kaur was ancestral as well as Hindu Joint Family Property.

Suit was contested in terms of filing of written statement by defendant no.1 taking stand that Smt. Surjeet Kaur had earlier executed a Will dated 8.1.2001 registered as Document No.265. During her life time she revoked such will as plaintiff/appellant Raj Kumar was not behaving well with her and as such, executed a fresh Will dated 9.10.2006 registered as Document No.240. On the strength of such Will defendant/respondent has inherited the suit property. It was further submitted by defendant/respondent that the share in the property owned by father Sh. Bachan Lal has already devolved upon the legal heirs by virtue of Will executed by Sh. Bachan Lal. It was further stated that Smt. Surjeet Kaur was in a sound and disposing mind at the time of execution of the impugned Will. Deed Writer Sh. Mohan Lal had scribed the Will and entered the same in the Document Register and thereafter Will was registered in the office of Sub Registrar, Ambala. Even Sh. Narota Ram, defendant no.1, who is the brother of both plaintiff as also defendant had duly attested the Will.

After hearing counsel for the parties and upon appreciation of evidence adduced on record, suit was dismissed by the Trial Court on 20.2.2016. Plaintiff-appellant Raj Kumar having preferred a civil appeal, the same has been dismissed vide judgement dated 21.9.2017 passed by learned Additional District Judge, Ambala.

Learned counsel representing the appellant has argued that there were numerous suspicious circumstances surrounding the Will and which have been discarded by the courts below. Further urged that only DW-1 Charanjeet Singh Lamba and Mohan Lal Deed Writer, DW-2 were

produced by the defendant/respondent and no other witness had been examined to prove execution of the impugned Will. Further argued that the executant of the alleged Will was not of sound mind and was suffering from a terminal disease at the relevant time i.e. 9.10.2006 and which aspect also has been overlooked. It is contended that Smt. Surjeet Kaur was not only the mother of the plaintiff but also of the defendants and as such, there was no occasion for her to have denied to the defendant-respondent his share in the suit property.

Having heard counsel for the appellant at length, this Court is of the considered view that there is no merit in the instant appeal and the same deserves to be dismissed.

The Trial Court upon due appreciation of evidence has recorded a finding that the mandate of Section 63 of the Indian Succession Act as also Section 68 of the Indian Evidence Act, 1872 has been met as regards the Will dated 9.10.2006.

In this regard it has been noticed that for proving execution of the Will dated 9.10.2006 Ex. P-1, defendant/respondent had examined Charanjeet Singh Lamba, who was the attesting witness to the impugned Will as DW-1 and who in turn clearly stated that the impugned Will was got typed from Mohan Ram, Deed Writer on the asking of Smt. Surjeet Kaur. After the will was scribed the same was read over to Smt. Surjeet Kaur and it is only thereafter that she appended her thumb impressions in his presence as also presence of the other two attesting witnesses and Mohan Ram Deed Writer. Deed Writer Mohan Ram was also examined as DW-2 and who deposed that he had typed the Will dated 9.10.2006 on the asking of Smt. Surjeet Kaur in the presence of Charanjeet Singh Lamba and Norata Ram.

The Will stood entered in the register of the Deed Writer at Sr. No.335 dated 9.10.2006. The suggestion put forth by the counsel that the Will in question has not been proved in accordance with law, as such, is without merit.

As regards the suspicious circumstance surrounding the Will, the counsel has highlighted the following circumstances:-

- (i) DW-1 Charanjeet Singh Lamba attesting witness to the impugned Will admitted in his cross-examination that he did not go to the Tehsil and had reached there after 5-7 minutes.
- (ii) No reason had been assigned as to why the natural legal heirs of Smt. Surjeet Kaur had been excluded by her for purposes of inheriting her estate.
- (iii) Smt. Surjeet Kaur was approximately 80 years of age and was suffering from a terminal disease i.e. cancer and which had rendered her mental faculties as infertile and as such, she was not in sound disposing mind.

The courts below have discarded the aforesaid circumstances cited on behalf of the plaintiff-appellant by assigning cogent and valid reasoning. It has been observed that there is no requirement under law that the attesting witness to a Will has to be present before the registering authority. That apart, exclusion of a legal heir cannot by itself in isolation, be considered as a suspicious circumstance as regards genuineness of a Will. Furthermore, even though, the appellant had asserted the executant to be in failing health but no evidence had been adduced on record as regards the disease that afflicted her and whether such disease, if, at all had adversely effected her mental health.

It is a case where the appellant has simply alleged fraud at the hands of the defendant/respondent in so far as setting up of a fake and forged Will. The onus was upon the plaintiff-appellant to have substantiated the plea of fraud. No evidence in this regard was adduced.

It would be apposite to take note that the third attesting witness namely Norata Ram is none other than the brother of the plaintiff and was arrayed in the suit as party/defendant no.3. However, such witness did not even grace the witness box to support the version of his brother i.e. plaintiff-appellant.

Suffice it to observe that the impugned Will dated 9.10.2006 was a registered document. A presumption would be in favour of such Will under Section 114 of the Indian Evidence Act.

This Court does not find any infirmity in the impugned judgements passed by the courts below denying to the appellant the declaration sought for.

The instant appeal is accompanied by an application i.e. CM-14600-C-2018 under Section 5 of the Limitation Act seeking condonation of delay of 202 days in filing the main appeal.

Applicant was required to explain each day of delay that has occurred. No such justification is forthcoming. The application has been filed by citing routine grounds. Prayer for condonation, as such, is declined.

In view of the above, the instant appeal is dismissed on merits as well as on the ground of delay.

(TEJINDER SINGH DHINDSA)
JUDGE

20.09.2018

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No