

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

**R.S.A No.628 of 2018(O&M)
Date of decision :30.07.2018**

Dhan Singh and another

..... Appellants

Versus

Chandgi Ram and another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ajay Ghangas, Advocate
for the appellants.

Mr. Amit Kohar, Advocate
for caveator-respondent no.1.

LISA GILL,J

CM-1568-C of 2018.

Heard.

Keeping in view the averments in the application duly supported by an affidavit as well as arguments addressed, delay of 207 days in re-filing of this appeal is condoned.

Application is disposed of.

CM-1569-C of 2018.

Exemption in filing certified copies of judgment and decree dated 13.01.2014 passed by the learned Addl.Civil Judge (Sr. Division) Rewari and true typed copy of judgement and decree dated 12.01.2017,

passed by learned District Judge, Rewari, is granted.

Application is disposed of.

RSA No. 628 of 2018.

Present appeal has been filed against the judgment and decree dated 13.01.2014 passed by the learned Addl. Civil Judge (Sr. Division), Rewari, whereby the plaintiff-appellants suit has been dismissed as well as judgment and decree dated 12.01.2017, passed by the learned District Judge, Rewari, whereby their appeal has also been dismissed.

Brief facts necessary for the adjudication of the case are that that the appellants filed a suit for declaration to the effect that they are owners in possession of the land as detailed in the plaint on the basis of a Will dated 23.04.1969 and that mutation no.244 is illegal, void, not binding upon the rights of the appellant-plaintiffs. It was averred that the suit property belonged to one Mansukh son of Deva @ Datta. Mansukh died on 25.02.1970. He left behind four sons and three daughters. Plaintiff-appellant-Dhan Singh, now represented by his legal heirs was one of the sons of Mansukh. Property of Mansukh devolved upon all the legal heirs by way of natural succession and was so reflected in mutation No. 244 dated 21.11.1981.

Suit for declaration as noted above was filed by the plaintiff-Dhan Singh, claiming that a Will dated 23.04.1969 had been discovered in 1998 by the brother-in-law of the appellant and handed over to Dhan Singh. As per the said Will, the entire property of Mansukh was bequeathed to plaintiff-Dhan Singh but the defendants were resisting the

claim. Suit was accordingly filed.

At the first instance, defendants were proceeded against ex parte. Suit filed by Dhan Singh was allowed by an ex parte judgment and decree dated 19.08.2000.

Defendant no.1-Chandgi Ram, filed an application under Order 9 Rule 13 CPC, which was dismissed on 22.07.2007. Chandgi Ram preferred Civil Revision No. 5259 of 2006 before this Court, which was allowed on 12.10.2012 and the matter was remanded to the learned trial Court for deciding the case afresh on merits after permitting the parties to lead evidence.

Thereafter, written statement was filed by the legal representatives of Chandgi Ram, taking various pleas as well as the plea that Will dated 23.04.1969 was a forged document. It was thus prayed that the suit be dismissed. Replication was filed.

From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiffs are entitled to declaration to the effect that they are owners in possession of the suit property on the basis of Will dated 23.04.1969?
2. Whether Shri Mansukh executed will dated 23.04.1969 in favour of plaintiff?OPP
3. Whether the suit filed by the plaintiff is not maintainable in its present form?OPD
4. Whether the plaintiffs have no cause of action and locus standi to file the present suit?OPD
5. Relief.

Evidence was led by both the parties.

Learned trial Court decided issue no.1 against the plaintiffs and in favour of the defendants. Issues no.2 to 5 were not pressed. Suit filed by the plaintiffs, was accordingly dismissed by the learned trial

Court.

Appeal was preferred by the appellants impugning judgment and decree dated 13.01.2014. However, learned District Judge, Rewari, on considering all the pleas raised by learned counsel for the appellants, dismissed their appeal vide judgment and decree dated 12.01.2017.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant vehemently argues that the Will in question has been duly proved on record. Son of the deed-writer has identified the signatures of his father on the Will. Both the attesting witnesses of the Will had passed away, therefore, examination of PW-2-Suraj Lal, the scribe's son, is sufficient to prove the Will. There are no suspicious circumstances surrounding the said Will as has been erroneously held by both the learned Courts below. Merely, because the plaintiff was not aware of the existence of the Will, he cannot be non-suited on the ground that the said Will was not produced for so many years. Moreover, once the defendant raised the plea of the Will being fraudulent, it was incumbent upon them to have proved that it was a forged and fabricated Will. Defendants have not led any evidence to prove that the Will was forged. Therefore, the suit of the appellant-plaintiff should be decreed. It is thus prayed that the impugned judgments and decrees be set aside.

I have heard learned counsel and have perused the file.

There is no dispute that the land in question was owned by one Mansukh son of Deva @ Datta Ram who left behind four sons and three daughters. Appellant-Dhan Singh, is one of the four sons of

Mansukh. Property of Mansukh admittedly devolved upon all the legal heirs by way of natural succession. Mutation in this respect was entered on 21.11.1981. After about 28 years of Mansukh having died, Will dated 23.04.1969 was propounded by the appellant with the averment that the said Will was handed over to Raghubir Singh, brother-in-law of the appellant by the deceased but Raghubir Singh forgot to handover the Will to the appellant. It is relevant to note at this stage that the said Raghubir Singh though having appeared when the matter was heard *ex parte*, he was not examined as a witness after the remand of the case. It is not denied that Raghubir Singh was alive at the relevant time during the trial, though it was averred that he was mentally and physically unfit. In respect to his mental or physical ability/inability to testify, no evidence medical or otherwise has been produced on record. Not even a family member of Raghubir Singh has testified that Raghubir Singh was incapacitated to appear before the learned trial Court on account of physical and mental ailment. It is opposed to all probabilities that Will of Mansukh would not have been disclosed by the brother-in-law of the appellant. It is indeed a material suspicious circumstance. Furthermore, both the attesting witnesses of the Will, it was stated had died. Son of the scribe was examined to prove the Will dated 23.04.1969.

It is rightly observed by the learned District Judge, Rewari, that due execution of the Will has not been proved. The said Will Ex.PW1/A, bears the thumb impression of the deceased without even mentioning whether it is the right or left thumb impression. Though, ousting the natural successors from the property, is a natural consequence

of a Will, it is relevant to note that no reason whatsoever has been mentioned in Ex.PW1/A as to why the entire property is being bequeathed to the appellant while ignoring the other sons and three daughters. The said Will was admittedly not acted upon for 28 years. The appellant himself had accepted the devolution of the property by way of natural succession. Parties were in possession of the suit land according to their shares. The plea that Raghubir Singh forgot to handover the said Will to the appellant for all these long years is indeed far fetched and completely unsubstantiated by any evidence on record. It has been observed by the learned District Judge, Rewari that apart from the appellant all the brothers of the appellant were residing at Delhi. PW-3-Amar Singh son of Dhan Singh admitted that his grandfather-Mansukh died on 25.02.1970 at Delhi. It is further admitted that Mansukh was unwell and PW-3-Amar Singh used to visit him at Delhi. Therefore, it is highly improbable that Mansukh would have executed the Will in question in favour of the appellant while completely depriving his other children from the property in question. Both the learned Courts below have correctly returned the concurrent findings.

No other argument has been raised.

Learned counsel for the appellant-plaintiff is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgments are well reasoned judgments rendered after proper appreciation and consideration of the evidence on record.

Keeping in view the facts and circumstances as discussed

above, I do not find any infirmity, illegality or perversity in the impugned judgments and decree dated 13.01.2014 and 12.01.2017 passed by the learned Addl. Civil Judge (Sr. Division) Rewari and learned District Judge, Rewari, respectively, which warrant any interference by this Court.

Present appeal is, consequently, dismissed with no order as to cost.

30.07.2018

s.khan

**(LISA GILL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No