

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

RSA No. 1934 of 2019 (O&M)

Date of decision : April 29, 2019

Jog Raj Rana

.....Appellant

Versus

Harbans Singh

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sanjeev Duggal, Advocate
for the appellant.

LISA GILL, J.

Appellant – plaintiff is aggrieved of judgment and decree dated 28.07.2017 passed by the learned Civil Judge (Junior Division), Phagwara as well as judgment and decree dated 26.02.2019 passed by the learned Additional District Judge, Kapurthala.

Brief facts necessary for the adjudication of the case are that the appellant – plaintiff filed a suit for declaration to the effect that he is the sole and exclusive owner in possession of the house as detailed in the plaint. Further, suit for permanent injunction was sought for restraining the defendant from taking forcible possession or illegally interfering in the peaceful possession of the plaintiff or transferring or mortgaging the house in dispute.

At the outset, it is relevant to note that the plaintiff and the defendant – respondent are real brothers. Property in question i.e. a house is pleaded to be self acquired property of Shama Kaur, mother of the parties. It is further pleaded that Shama Kaur executed a registered disinheritance deed dated 04.04.1996 during her life time, disinheriting the defendant Harbans Singh. It is further stated that the disinheritance deed was executed

by Shama Kaur in her sound disposing mind, in the presence of Agya Ram, Lambardar and Harish Kumar son of Shanti Saroop. It is mentioned therein that defendant Harbans Singh and her wife Meena were involved in bad company as they insulted and threatened her. She, thus, disinherited the said defendants. Publication in the newspaper was also carried out. Therefore, the plaintiff claimed to be the sole legal heir of Shama Kaur, thus, entitled to the declaration as prayed for. In order to substantiate his plea of exclusive possession, the plaintiff claimed the electricity connection of the house to be in the name of plaintiff and water connection in the name of his wife namely Balwinder Kaur. Despite request, defendant refused to admit the genuine claim of the plaintiff. Hence, the suit

Respondent – defendant contested the suit. Various preliminary objections were raised in the written statement. It is denied that the plaintiff is the sole owner in exclusive possession of the suit property. Property is claimed to be joint between the parties. Disinheritance deed dated 04.04.1996 is denied and claimed to be a forged and fabricated document. Affidavit dated 04.04.1994 was also claimed to be fabricated. Defendant and his wife claimed to have cordial relations with Shama Kaur. Shama Kaur had appointed defendant Harbans Singh as a General Power of Attorney in respect to her property situated in village Raniya, Tehsil Moga, District Faridkot vide registered GPA dated 30.09.1991 and being the elder son of Shama Kaur, defendant claimed to be discharging his duties towards the family diligently. The property as mentioned in the GPA was mortgaged with one Vijay Kumar. It is the defendant who paid the mortgage amount and got the suit property redeemed. Defendant claimed to be staying in the residential house till 2005. Reliance was placed upon the voter identity card

of the defendant and his wife issued on 12.05.1995. However, due to constant bickering and disputes between the family members of the plaintiff and defendant, defendant claimed to have shifted to a rental accommodation at the address mentioned in the head note of the plaint. Mutation of inheritance of late Shama Kaur was duly entered and sanctioned in the name of both the brothers who are the only legal heirs of Shama Kaur. Dismissal of the suit was prayed for.

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

- i) Whether the plaintiff is entitled to declaration as prayed for?OPP.
- ii) Whether the plaintiff is entitled to permanent injunction as prayed for?OPP
- iii) Whether the present suit is not maintainable? OPD.
- iv) Whether the plaintiff has locus standi and cause of action to file the present suit? OPD.
- v) Whether the plaintiff has not come to the Court with clean hands and suppressed the material facts from the Court?OPD
- vi) Relief.

Evidence was led by both the parties.

Learned trial Court on considering the evidence, facts and circumstances of the case dismissed the suit filed by the plaintiff – appellant. Appeal filed by the appellant was also dismissed by the learned Additional District Judge, Kapurthala vide judgment dated 26.02.2019. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that disinheritance deed dated 04.04.1996 (Ex.P2) executed by his mother Shama Kaur is duly proved on record. Scribe of the disinheritance deed, PW2 namely Ashok Kumar has categorically stated that the said

disinheritance deed was executed at the instance of Shama Kaur. The relevant entries in his register have been duly proved by him. Therefore, evidence of DW2 Pardeep Kumar, brother of one of the attesting witnesses, namely Harish Kumar who has since died, is of no consequence. The other attesting witness i.e. Agya Ram, Lamberdar had also died. Therefore, there is no question of the property devolving by way of natural succession in view of the disinheritance deed executed by Shama Kaur in respect to her self acquired property. The said deed was duly registered. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 28.07.2017 passed by the learned Civil Judge (Junior Division), Phagwara as well as judgment and decree dated 26.02.2019 passed by the learned Additional District Judge, Kapurthala be set aside. Consequently suit filed by the appellant be allowed and decreed throughout.

I have heard learned counsel for the appellant at length and have gone through the file as well as part of the relevant record produced by learned counsel in Court today.

There is no dispute regarding the relationship of the parties. They are real brothers and sons of Shama Kaur, who was the owner of the house in dispute. It is relevant to note that the entire foundation of the plaintiff's case rests upon disinheritance deed dated 04.04.1996, purportedly executed by Shama Kaur in the presence of Agya Ram, Lambardar and Harish Kumar. Both the attesting witnesses have admittedly passed away. Plaintiff examined Ashok Kumar, Deed Writer as PW2. PW2 is stated to have scribed the disinheritance deed. Mutation of inheritance was sanctioned on the basis of natural succession which is evident from a perusal of Ex.P13 which is the jamabandi of the suit property pertaining to

the year 2010-11.

At this stage, it is relevant to note that the defendant – respondent examined Pardeep Kumar DW2, real brother of Harish Kumar i.e. one of the marginal witness of Ex.P2, disinheritance deed. DW2 categorically stated that signatures bearing at point Mark A on Ex.P2 are not the signatures of his brother Harish Kumar. DW2 further testified that his brother Harish Kumar died in January, 1996, therefore, it is beyond comprehension that once Harish Kumar died in January, 1996 how he could have attested Ex.P2 which is dated 04.04.1996. There is no evidence on record to rebut the factum of Harish Kumar's death in January, 1996 or to prove that he was alive on 04.04.1996. The plaintiff admittedly did not examine any kith and kin of Agya Ram, the other marginal witness who is stated to have died. Learned Additional District Judge, Kapurthala has rightly observed that the plaintiff has not even mentioned the date of death of Shama Kaur. Factum of Harish Kumar being dead at the time of alleged execution of Ex. P2 i.e. the disinheritance deed, in itself is enough to non-suit the plaintiff. It is further to be noticed that a General Power of attorney was admittedly executed by Shama Kaur in favour of the appellant. Certain transactions as have been referred to above were carried out by the defendant. Ex. D3/1 is agreement dated 19.10.1989 executed by Shama Kaur in favour of Nirmal Singh whereby she borrowed a sum of ₹15,000/- against a mortgage of her house i.e. house in question. Ex. D3/2 is an endorsement of Nirmal Singh qua receipt of the above said loan of ₹15,000/- by Shama Kaur from the defendant – Harbans Singh being the son of Shama Kaur, therefore, it is rightly observed by the learned Additional District Judge, Kapurthala that debt of ₹15,000/- raised by

Shama Kaur from Nirmal Singh was paid by Harbans Singh. There is indeed no evidence on record that the defendant Harbans Singh and his wife were involved in any kind of bad company or that they insulted Shama Kaur and threatened to kill her etc. as is claimed.

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.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 28.07.2017 passed by the learned Civil Judge (Junior Division), Phagwara as well as judgment and decree dated 26.02.2019 passed by the learned Additional District Judge, Kapurthala, which calls for any interference by this Court in second appeal.

No other argument has been addressed.

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

April 29, 2019
rts

(Lisa Gill)
Judge

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