

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

**RSA No.2617 of 2019 (O&M)
Date of Decision:22.05.2019**

Narain Singh

.....Appellant

Versus

Jagat Singh and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Jitender Nara, Advocate
for the applicant-appellant.

LISA GILL, J.

Appellant, who was arrayed as defendant no.1 before the learned trial Court, is aggrieved of judgement and decree dated 08.08.2016, passed by learned Civil Judge (Jr. Division), Jhajjar, as well as judgement and decree dated 13.07.2017, passed by the learned Additional District Judge, Jhajjar.

Brief facts necessary for the adjudication of the case are that the plaintiff-respondent-Jagat Singh filed a suit seeking declaration to the effect that will dated 18.12.2012 and subsequent mutation no. 4809 dated 18.03.2013 are fraudulent, illegal, null, void and inoperative. Relief of permanent injunction was also sought. It is a matter of record that plaintiff, defendants no.1,2, 5 to 7 are siblings. Defendants no.3 and 4 are the wife and son respectively of Ajit, predeceased son of Bhagwan Singh. It is pleaded that Phoola Devi, mother of the plaintiff, defendants no.1, 2, 5 to 7, mother-in-law of defendant no.3 and grandmother of defendant no.4 was the owner

in possession of land measuring 31 Kanal 11 Marlas as detailed in the plaint. It is pleaded that one of her sons, namely Maman Singh was adopted by Dani Ram, father of Phoola Devi i.e., maternal grandfather of Maman Singh. Being the adopted son of Dani Ram, the entire estate of Dani Ram devolved upon Maman Singh. Defendant no.1-Narain Singh nursed a grudge against Maman Singh and due to the same, murdered him. Maman Singh died issueless. Phoola Devi being the mother of the deceased-Maman Singh, succeeded to his estate and become owner in possession of the said property. Phoola Devi apprehended danger to her life in the company of her sons, therefore she started residing with her daughters. However, on being persuaded by her daughters, she transferred three fourth share (3 /4th) in her property as described in favour of her three daughters-in-law i.e., Surja Devi wife of Narain Singh (Narain Singh is the present appellant), Guddi Devi wife of Jagat Singh and Rajwanti wife of late Ajit Singh in equal shares i.e., 1/4th share each vide registered sale deed dated 22.08.2006. Mutation no. 4182 was sanctioned on 30.03.2007 in this regard. Phoola Devi, thus remained owner in possession of 1/4th share in the property. She was also in receipt of family pension from the Punjab National Bank as her husband-Bhagwan Singh was an Army Personnel. Defendant no.1-Narain Singh was claimed to have an evil eye on the share of Phoola Devi. He thus went to his mother-Phoola Devi and asked her that in order to continue her pension, Bank officials requires some affidavit and he managed to obtain her thumb impressions on will dated 18.12.2012. Under the garb of execution of the said affidavit, mutation dated 18.03.2013 was sanctioned in his favour on the basis of the said fraudulent will. It is claimed that will dated 18.12.2012 was

a result of fraud, misrepresentation, therefore is illegal, null and void. It is thus prayed that the plaintiff and the defendants no.2 to 4 are entitled to inherit the one fourth ($1/4^{\text{th}}$) share retained by Phoola Devi in equal shares. Hence the suit was filed.

Defendants no.1 and 7 took a stand that the plaintiff had fraudulently managed to get three fourth ($3/4^{\text{th}}$) share transferred from Phoola Devi in favour of Surja, Guddi and Rajwanti, her daughters-in-law. Will dated 18.12.2012 was thus rightly executed by Phoola Devi in favour of Narain Singh-defendant no.1. Defendant no.7 expressed no objection to the said will and mutation no. 4809. Civil suit between the plaintiff and Phoola Devi was stated to be pending and it is stated that Phoola Devi was in-fact harassed by the plaintiff-Jagat Singh during her life time. She suffered from old age ailments for the last six months prior to her death. It is claimed that she was indeed able to carry out her daily routine without any kind of support. She was in her sound disposing mind and will dated 18.12.2012 was rightly executed in favour of defendant no.1.

Defendants no.2, 4, 5 and 6 were proceeded against *ex parte* on 30.04.2013. Defendant no.3 was proceeded against *ex parte* on 15.07.2013 and legal representatives of defendant no.7 were proceeded against *ex parte* on 15.03.2016.

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

1. Whether the plaintiff is entitled for relief as prayed for in the plaint?OPP
2. Whether the suit of the plaintiff is not maintainable in the present form?OPP
3. Whether the plaintiff has no locus standi to file the present suit?OPD

4. Whether the plaintiff is estopped by his own act and conduct from filing the present suit?OPD
5. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the facts and circumstances, as well as the evidence on record concluded that the will in question was surrounded by suspicious circumstances and could not be proved in accordance with law. None of the two attesting witnesses were examined. The suit filed by the plaintiff was thus decreed.

Appeal filed by defendant no.1-Narain Singh was dismissed by the learned Additional District Judge, Jhajjar, vide impugned judgement and decree dated 13.07.2017.

Aggrieved therefrom, present appeal has been filed by Narain Singh.

Learned counsel for the appellant vehemently argues that will dated 18.12.2012 is proved to have been validly executed by Phoola Devi. Some of the legal heirs of Phoola Devi had expressed no objection to the same. It is submitted that Phoola Devi was in her sound disposing mind. Moreover, the will in question is a registered document and cannot be ignored. Thumb impression of Phoola Devi, is also not disputed. Plaintiff-Jagat Singh had filed a civil suit against Phoola Devi during lifetime and she had already divested three fourth (3 /4th) of her share in the property to the family of her three sons. Phoola Devi being the exclusive owner in possession of the suit property had every right to alienate and transfer the remaining one fourth (1 /4th) property to anyone that she liked. Earlier, a

registered will dated 03.03.2008 in respect to the suit land was executed in favour of Sundra i.e., daughter of Phoola Devi. Earlier will is duly mentioned in the subsequent will dated 18.12.2012. Earlier will in favour of Sundra has not been challenged. Reference thereto, it is stated is being made only to show that the subsequent will dated 18.12.2012 is a genuine document.

Learned counsel for the appellant further argues that an application for leading additional evidence has been moved along with the present appeal seeking permission for examining the attesting witnesses of the will dated 18.12.2012. It is submitted that the said witnesses could not be examined before the learned trial Court due to a communication gap and negligence on the part of the counsel. It is thus prayed that the application for leading additional evidence be allowed and the present appeal be allowed, as well, while setting aside the impugned judgements and decrees passed by the learned Courts below.

I have heard learned counsel for the appellant, at length and have gone through the file with his assistance.

Learned counsel for the appellant does not dispute that the property in question devolved upon Phoola Devi on the death of her son Maman Singh. Maman Singh was admittedly adopted by Dani Ram, maternal grandfather of Maman Singh. Maman Singh, on the death of his maternal grandfather had inherited his entire property. It is a matter of record that the appellant was tried for the murder of his real brother Maman Singh. The dispute in the present proceedings is regarding one fourth (1/ 4th) share of Phoola Devi, which she retained with herself out of the property which

devolved upon her on the death of Maman Singh. Three fourth (3/ 4th) share of the said property already stood transferred by her in equal shares to her three daughters-in-law. The present appellant's wife namely Surja Devi admittedly received a share in this property. The appellant has based his entire case upon will dated 18.12.2012. Both the learned Courts below have rightly concluded that the said will, though a registered document, is surrounded by suspicious circumstances. It is a matter of record that the testator-Phoola Devi died sixteen (16) days after the alleged execution of the will on 03.01.2013. The testator, was admittedly 98 years old at the time of her death. The factum of her being unwell for six months prior to the death of Pholla Devi, is admitted by DW-1-Narain Singh in his cross-examination. DW-1 further conceded that he himself accompanied the testator to the Tehsil Complex for execution of the will. The present appellant has admitted that Phoola Devi was residing with her daughter-Sundra. Therefore, his own stand that he had served Phoola Devi, during her last days, is negated by his testimony. There is indeed not an iota of evidence on record to indicate even a semblance of a reason or explanation as to why Phoola Devi would have bequeathed her one fourth (1/ 4th) share to the exclusion of all others.

In respect to none of the attesting witnesses being examined by the defendants, learned Additional District Judge, Jhajjar, has specifically made a mention that the said witnesses are admittedly alive as revealed by the appellant. Defendant no.1 admittedly stated that both the said witnesses are respectables and had congenial relations with him. It is thus rightly observed that there was no obstacle for defendant no.1 to summon the said witnesses to prove the due execution of the will, Ex.P-3. An adverse

inference was thus rightly drawn.

In such situation and after specific observations of the learned Additional District Judge, Jhajjar, the appellant has moved an application for examining the witnesses to the will along with the present appeal, which is otherwise barred by limitation. A perusal of this application reveals that there is not a semblance of a ground, much less a reasonable ground, to permit the examination of the said witnesses, at this stage. It is not that the appellant was not alive to the issues involved in this case. The appellant was subjected to specific queries, thus absence of due diligence is apparent and allowing this application, at this stage, shall necessarily amount to permitting the appellant to fill up the lacunae in his case which is not permissible. There is thus no ground to allow this application, at this stage.

Learned counsel for the appellant 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 learned Courts below returned concurrent findings vide impugned judgements, after proper appreciation and consideration of the evidence on record, which calls for no interference.

No other argument has been raised.

There is a delay of 462 days in re-filing and 67 days in filing of this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in filing or re-filing of this appeal has been rendered academic. Applications are accordingly disposed of.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 08.08.2016 and 13.07.2017

passed by the learned Civil Judge (Jr. Division) Jhajjar and learned Additional District Judge, Jhajjar, respectively, are upheld.

Present appeal and application for leading additional evidence are consequently, dismissed with no order as to cost.

22.05.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned :
Whether reportable

:
:

Yes/No.
Yes/No.