

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

**RSA No. 750 of 2010 (O&M)
Date of Decision: March 14, 2019**

Suresh Kumar and others

..... Appellants-plaintiffs

VERSUS

Ishwar Chand and others

..... Respondents-defendants

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. B.S.Bedi, Advocate
for the appellants-plaintiff.

Mr. Rajinder Goyal, Advocate
for the respondents-defendants.

JAISHREE THAKUR, J.(Oral)

This Regular Second Appeal is directed against the judgments and decrees dated 15.06.2009 and 06.01.2009 rendered by the Court of Additional District Judge, Kaithal and Additional Civil Judge (Sr. Division) Kaithal respectively whereby the appeal and suit filed by the appellant were dismissed.

The brief facts of the case are:

1. That the plaintiff-Rameshwar, now deceased, represented by his LRs, filed a suit for declaration vide which mutation No. 1855 and sale deed No.1865/1 dated 10.07.2006 and 1722/1 dated 30.06.2006 and mutation No.2701 and 2699 be set aside, as they are not binding on the rights of the plaintiff and further that the mutation be sanctioned in favour of the plaintiff (now deceased) on the basis of the Will dated 05.05.1985

and the defendants-respondents be restrained from interfering in the peaceful possession of the plaintiff in the suit land. It has been pleaded by the plaintiff (now deceased) that suit land i.e. $\frac{1}{2}$ share of agricultural land measuring 46 kanals 8 marlas was inherited by Smt. Reshmi, mother of the plaintiff and defendants, after the death of her brother Sh. Sadhu Ram in the year 1970. Smt. Reshmi also died in the year 1985. The plaintiff (now deceased-represented by LRs) claimed right of ownership by way of inheritance through Will dated 05.05.1985 executed by deceased-Reshmi Devi in his favour. Reshmi had three sons i.e. Plaintiff -Rameshwar, defendant No.1- Ishwar Chand and defendant No.2- Ghanpat and one daughter i.e. defendant No.3-Bimla Devi (since deceased). It is further the case of the plaintiff (now deceased) that after inheritance of the property by Smt. Reshmi, there arose a family dispute among the plaintiff and defendants regarding the inheritance of land and in order to settle the dispute among her sons Smt. Reshmi at the instance of defendant No.1, who claimed $\frac{1}{2}$ share of the land, had to sell $\frac{1}{2}$ share of the total land and the entire sale consideration was given to defendant No.1. Defendant Nos. 1 and 3 sold the suit property to defendant Nos. 4 to 6, who were made party and they contested the suit on the ground of bona-fide purchaser. Now the remaining land as specified in para No. 1 of the plaint relates to the share of the plaintiff-appellant and other LRs of Reshmi. It was pleaded that Reshmi died in the year 1985 after executing her last Will dated 05.05.1985, in favour of the appellant-plaintiff (now deceased), who was living with him and his family members only and was taken care by them till her last breath.

The appellant alone was in cultivating possession of the suit land who was

irrigating the same and also installed a tubewell and also constructed one kotha there. After the death of Reshmi, the appellant along with Keshi Ram, Lumberdar of village Geong, who is now expired, and one another person of that village handed over a notarized copy of Will dated 05.05.1985, along with requisite fee to concerned Halqa Patwari for entering and sanctioning of the mutation in his favour. Thereafter, as pleaded in the plaint, the appellant remained under impression that the mutation has been sanctioned in his favour by the Revenue Authorities on the basis of last Will of Reshmi. Instead the Halqa Patwari, neither made any entry on the basis of the said Will, nor informed him about its status. It was only in the year 1993, when the appellant borrowed the loan from Land Mortgaged Bank, Kaithal, he came to know that the revenue officials have not sanctioned the mutation No. 1855 dated 17.07.1990 in his favour rather sanctioned the same in favour of respondents only on the basis of inheritance, ignoring the last Will of Smt. Reshmi propounded by the appellant. At that time, the appellant requested the respondent-defendant to treat the mutation No. 1855 and other entries as null and void, to which the respondent-defendant agreed and assured him that there is no need to challenge the mutation, as they admitted the long and continuous possession of the appellant over the suit land and assured not to interfere in the possession. Hence, due to good relations between the parties and the good faith between them, the appellant did not challenge the mutation. But after some time, the respondents initiated proceedings for partition of the suit land and for rendition of account etc and started threatening the appellant to dispossess him from the suit land in view of the said mutation. Even no notice was served upon the

appellant by the revenue authorities while sanctioning the mutation, the revenue authorities ignored the inheritance of the appellant over the suit land and the Will executed by Smt. Reshmi and the fact that the appellant was cultivating the suit land over the last 30 years. Inter-alia on these premises, the suit has been filed.

2. Upon notice, the respondents-defendants No. 1 appeared and contested the suit by filing a comprehensive written statement. Inter-alia, the appellant pleaded in the preliminary objections that the suit is time barred and that the appellant has no locus standi and cause of action in his favour. It has also been pleaded that the appellant has not come to the Court with clean hands, rather suppressed the true and material facts. Smt Reshmi died intestate, and after her death, her estate was to be devolved upon her all legal heirs in equal share. As defendant-respondent No.1 -Ishwar was in Military service, thus , having full faith in the appellant, he allowed him to cultivate the suit land on his behalf as well. Neither the appellant gave the share of crop to the respondent No.1-Ishwar nor did he allow him to cultivate the suit land, which led the respondent No.1-Ishwar to file a suit for rendition of account and an application for partition of the joint land. The appellant also appeared in those proceedings but never raised any plea regarding execution of any Will. It has been pleaded that Smt. Reshmi used to live with respondent No.1 and that neither any Will has ever been executed by her in favour of the appellant nor the appellant ever served her. It has also been pleaded that the suit is time barred. On these premises, the dismissal of the suit has been prayed for.

3. Defendant Nos. 3 to 6 also filed written statement wherein it is

pleaded that Reshmi Devi died intestate and after her death, natural succession opened amongst her legal heirs and claimed their share through natural succession. It has also been pleaded that the mutation of succession was accordingly entered and entries of ownership were made in the presence of the appellant-plaintiff. The Will dated 05.05.1985 is stated to be nothing but an act of fraud and collusion on part of appellant-plaintiff and that the appellant has never been in cultivating possession of the suit land. On these premises, the respondent-defendant No.3 has pleaded for dismissal of the suit. The respondent-defendant Nos. 4 to 6 are the bonafide purchasers and the sale is in their favour under Section 41 of the Transfer of Property Act and the suit of the appellant is barred under Section 34 of the Specific Relief Act.

4. The appellant-plaintiff filed replication reiterating the contents of the plaint.

5. Vide order dated 15.06.2009 the trial Court framed the following issues :-

1. *Whether the deceased Reshmi Rani executed a will in favour of the plaintiff?OPP*
2. *Whether the mutation No. 1855 and sale deed No. 1855/1 dated 10.07.2006 and 1722 dated 30.06.2006 and mutation No. 2701 and 2699 is liable to be set aside?OPP*
3. *Whether the suit is not maintainable in the present form? OPD*
4. *Whether the suit is time barred? OPD*
5. *Whether the plaintiff has no cause of action to file the present suit?OPD*
6. *Whether the plaintiff has no locus standi to file the present suit?OPD*

7. *Whether the suit of the plaintiff is not properly valued for the purposes of court fee?OPD*
8. *Whether this Court has no jurisdiction to entertain and try this suit? OPD*
9. *Whether the plaintiff has not come to the Court with clean hands, if so its effect?OPD*
10. *Relief.*

6. To prove his case, the plaintiff himself appeared in the witness box as PW-1 and also examined PW-2 to PW-4 and produced Exhibit-P1 to P11 on record. On the other hand, the defendants-respondents produced as many as 8 witnesses and also exhibited documents DW-3/a, DW-5/a, DW-7/a and DW-8/a.

7. The trial Court after appreciating the evidence brought on record by the respective parties dismissed the civil suit. In appeal, the First Appellate Court, finding no merits also dismissed the same hence giving rise to the present Second Appeal.

8. The plaintiff-appellant has claimed right of ownership by way of inheritance through Will dated 05.05.1985 stated to have been executed by the deceased-Reshmi Devi. During the pendency of the suit, the plaintiff died and his legal heirs were brought on the record. The issue was framed whether Reshmi Devi executed a Will in favour of the plaintiff. The defendant-respondents contested the Will on the ground that the Will had not been attested by two attesting witnesses which is a pre-requirement of the Section 68 of the Indian Evidence Act. It is contended that it was witnessed by only one witness i.e. namely Baru and other witness -Ashok

Kumar was to scribe the Will and therefore, could not be termed as an attesting witness of the Will. It was also argued that even the thumb impression on the alleged Will is not clear in the documents and the finger expert who appeared as DW-8 categorically stated that the thumb impression on the alleged Will is not comparable. The scribe was an interested party as he was the son-in-law of the plaintiff-appellant, who in collusion forged and set up the Will.

9. On consideration of the evidence and the arguments raised, both the Courts below held the Will not to be a genuine document. The trial Court while relying upon the statement of the handwriting expert, who had decided that he had examined the disputed thumb impression of Smt. Reshmi Devi on the unregistered Will and the discrepancies in the statements of the witnesses. Once the Will in question was held to be not a genuine and valid document, issue No.4 was decided in favour of the defendants i.e. pertaining to the mutation entered and sanctioned by the Assistant Collector 2nd Grade qua the estate of the deceased Reshmi Devi in favour of all her legal heirs on 17.07.1990 on the basis of natural succession. The trial Court also dismissed the suit on the ground that it had not been filed within the period of limitation. The plaintiff had knowledge about the sanctioning of mutation that was sanctioned in the year 1993. He ought to have filed the suit within the period 03 years from the date of his knowledge, however, the suit was filed almost seven years thereafter. Since the plaintiff had failed to prove the execution of the Will in his favour, his suit was dismissed and was affirmed in appeal and the appeal was dismissed. On a consideration of the judgments rendered above, this Court

finds no infirmity in the said judgments. Once the appellant-plaintiff failed to prove due execution of the Will in his favour and failed to challenge the mutation on the basis of natural succession within a period of three years, he would not be entitled to the relief as sought for. Moreover, no substantial question of law has been raised in the instant appeal.

10. Accordingly, the appeal stands dismissed.

March 14, 2019

seema

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes.
No.