

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

RSA No.527 of 2014 (O&M)

Date of Decision.19.11.2019

Gurbachan Singh

...Appellant

Vs

Santosh Kaur and others

...Respondents

Present: Mr. Sanjay Majithia, Sr. Advocate with
Mr. Inderjeet Singh, Advocate
for the appellant.

Mr. Amit Dhawan, Advocate
for the respondents.

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

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JAISHREE THAKUR J. (ORAL)

The appellant seeks to challenge the judgments and decrees of both the Courts below whereby the suit for declaration and permanent injunction filed by the plaintiffs-respondents has been decreed.

In nutshell, the controversy is that plaintiffs and defendant No.1 are children of Amar Singh, who died on 07.02.2004. Smittar Kaur wife of Amar Singh and mother of plaintiffs and defendant No.1 died on 05.11.2005. During his life time, Amar Singh had executed a Will dated 24.05.1999, that got registered on 25.05.1999 in favour of defendant No.1 but the same was cancelled vide cancellation deed dated 16.05.2001, owing to the bad habits of defendant No.1. Being fully aware about the cancellation deed, defendant No.1 got mutation No.5140 sanctioned in his favour vide order dated 28.07.2004 by propounding the Will dated 24.05.1999. The said order was challenged by the plaintiffs before SDM-cum-Collector, Jalandhar, who vide order dated 12.08.2005, remanded the matter to decide the same afresh after affording opportunity of hearing to

the parties. Against the remand order, defendant No.1 preferred appeal before the Commissioner, Jalandhar Division, Jalandhar and the case was remanded to Addl. Deputy Commissioner-cum-Collector Jalandhar. As defendant No.1 had threatened to dispose of the entire suit property to defendants No.2 and 3 on the basis of Will dated 24.05.1999, the plaintiffs were compelled to file the present suit for declaration to the effect that plaintiffs and defendant No.1 are owners to the extent of 1/6th share each in respect of land described in the head note of the plaint.

Defendant No.1 contested the suit by raising preliminary objections qua maintainability, estoppel, locus standi, mis-joinder and non-joinder of parties etc. On merits, it was stated that he looked after his father Amar Singh till his death and in lieu of his services and out of love and affection, Amar Singh executed the Will in his favour. The cancellation deed as alleged by plaintiffs is a forged and fabricated document. He is exclusive owner in possession of the suit property. Defendants No.2 and 3 have been impleaded as parties to the suit unnecessarily, as defendant No.2 is relative of defendant No.1 and defendant No.3 helps him in cultivation of the land, thus, prayed for dismissal of the suit.

On the basis of pleadings and evidence led by both the parties, the trial Court decreed the suit by upholding the cancellation deed and declared the plaintiffs and defendant No.1 to be owners to the extent of 1/6th share each in respect of the suit property and further restrained defendant No.1 from alienating/selling or parties with the possession of suit land more than his share. The appeal preferred by defendant No.1 against the judgment and decree of the trial Court before the lower Appellate Court was also dismissed.

Mr. Sanjay Majithia, learned Senior Counsel assisted by Mr. Inderjeet Singh submits that both the Courts below have erred in misreading the cancellation deed dated 16.05.2001, as it talks about a Will dated 26.05.1999 and not the Will dated 24.05.1999, which clearly proves that the alleged cancellation deed is forged and fabricated. Even plaintiff No.2 in her cross-examination before the Assistant Collector 1st Grade admitted that Amar Singh never cancelled the Will executed in favour of the appellant. It is argued that there is no iota of evidence brought on record to establish that the relationship between Amar Singh and the appellant was strained, which led to cancellation of the Will dated 24.05.1999. It is also vehemently argued that the trial Court gravely erred in not framing the issue qua Will dated 24.05.1999 and the Cancellation Deed dated 16.05.2001, as the burden of proof was on the plaintiffs.

Per contra, Mr. Amit Dhawan, learned counsel appearing for the respondent submits that the concurrent finding rendered by both the Courts below are based on appreciation of facts and law, which cannot be tinkered with. Strained relation between Gurbachan Singh and his parents is evident from the fact that Amar Singh and Samittar Kaur made a complaint to the police against appellant-defendant No.1 levelling allegation of his misbehaviour and assault upon them. The Assistant Collector IInd Grade, Jalandhar vide order dated 28.01.2008, Ex.P4 has already sanctioned mutation in favour of all legal heirs of deceased Amar Singh in equal shares. PW3 Dr. Kewal Singh, one of the attesting witness of the Cancellation Deed, duly identified his signatures on the cancellation deed, Ex.P1. He also identified signatures of Amar Singh and Lamardar Duna Singh on cancellation deed Ex.P1. Counsel, thus, prayed for

dismissal of the appeal by upholding the findings rendered by both the Courts below.

I have heard learned counsel for the parties, appraised the paper book and am of the view that there is no force or merit in the submissions of Mr. Majithia. The Will dated 24.05.1999 executed by Amar Singh in favour of appellant-defendant No.1 is not in dispute.

The only issue that has to be considered is whether the cancellation deed dated 16.05.2001, Ex.P1 is a valid document or not and whether the plaintiffs have been able to prove the same. PW-2 Rachpal Singh, deed writer deposed that he had scribed the cancellation deed, which was signed by Amar Singh and other witnesses. In this regard, an entry was also made at Sr. No.160 in his register. PW3 Dr. Kewal Singh, who was one of the attesting witness of the cancellation deed, stated that Amar Singh had cancelled the Will executed in favour of Gurbachan Singh due to his bad habits. Even Gurbachan Singh was fully aware about the cancellation deed. The appellant-defendant No.1 has not been able to rebut the evidence brought on record by plaintiffs, thus, both the Courts below have rightly held the cancellation deed as a valid document.

Even otherwise, the appellant-defendant No.1, Gurbachan Singh while appearing as DW1 in his cross-examination stated that “my father cancelled the Will which was in my favour voluntarily that Will was dated 26.05.1999.....It is correct that my father and mother gave an application to the police against me by alleging that I had beaten them. It is correct that a compromise was effected at PS Bhogpur in the said matter and the certified copy of the said compromise is Ex.PX...”

A perusal of the cross-examination of appellant-defendant No.1

reveals that he had a strained relationship with his parents, which caused Amar Singh to cancel the Will executed by him in favour of appellant-defendant No.1. As regards mentioning of date of the Will as 26.05.1999 instead of 24.05.1999, it seems a typographical error, as it was not at all case of the appellant-defendant No.1 that Amar Singh executed two Wills in his favour. Moreover, the Will dated 26.05.1999 has not seen light of the day at any point of time.

The star argument of Mr. Majithia that Courts cannot adjudicate upon the evidence led by the parties on a certain point without framing of appropriate issue falls flat, in view of judgment rendered by the Division Bench of this Court in **Ram Niwas and another Vs. Rakesh Kumar 1982 PLR 455** wherein it has been held that if the parties know that a point arises in a case and they produce evidence on it, though no specific issue has been framed on it, the Court can still adjudicate thereon. None of the parties can be allowed to say that the Court cannot decide the matter because it was not raised on the pleadings. Moreover, in the instant case, it was pleaded case of the plaintiffs that Amar Singh cancelled the Will dated 24.05.1999 executed by him in favour of appellant-defendant No.1 vide cancellation deed dated 16.05.2001 and evidence was led in support thereof.

In view of judgment rendered by Constitution Bench of Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others (2016) 6 SCC 157** reiterated in **Kirodi (since deceased) through his LR Vs. Ram Parkash and others 2019 (3) RCR (Civil) 168**, in the State of Punjab, a second appeal being filed under Section 41 of Punjab Courts Act does not require formulation of a substantial question of law.

I do not find any illegality and perversity in the concurrent finding rendered by both the Courts below as the same are based on correct appreciation of fact and law. No ground for interference is made out.

Dismissed.

(JAISHREE THAKUR)
JUDGE

November 19, 2019
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No