

RSA-1354-2015(O&M) &
RSA-1361-2015(O&M)

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

(1) RSA-1354-2015(O&M)

Ram Singh

...Appellant

Versus

Gurdev Kaur through LR's and others

...Respondents

(2) RSA-1361-2015(O&M)

Ram Singh

...Appellant

Versus

Gurdev Kaur through LR's and another

...Respondents

Date of Decision:-22.5.2019

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.S.S. Salar, Advocate
for the appellant.

Mr.Kamal Goyal, Advocate
for respondent No.2.

H.S. MADAAN, J.

By this order, I shall dispose of two RSAs i.e. RSA-1354-2015 and RSA-1361-2015 filed on behalf of appellant - Sh.Ram Singh.

Briefly stated, facts of the case are that plaintiff Ram Singh had brought a suit against defendants i.e. his mother Smt.Gurdev Kaur since dead now represented by her legal representatives as well as Sh.Gurpreet Singh seeking a declaration that the mutation No.6195 dated 29.8.2005 of land measuring 8 kanals 17 marlas situated in revenue estate

of village Beer Kalan as per jamabandi for the year 2000-2001, fully detailed in the plaint and judgment, with regard to inheritance of Smt.Ajmer Kaur daughter of Sh.Sampuran Singh in favour of defendant Smt.Gurdev Kaur is illegal, null and void and is liable to be set aside and further transfer deed No.6203 vide which Smt.Gurdev Kaur had transferred the land in favour of Sh.Gurpreet Singh is also null and void and liable to be set aside since Smt.Gurdev Kaur had no right to transfer the suit land since according to him on the basis of Will dated 11.1.2001 he is the legal representative of Smt.Ajmer Kaur @ Jamer Kaur to inherit her estate including landed property with electric motor of 7 ½ BHP bearing account No.K-25.

The plaintiff also craved for relief of permanent injunction restraining the defendants from alienating or mortgaging the suit land and electric motor in any manner to any other person.

As per the version of the plaintiff Smt.Ajmer Kaur alias Jamer Kaur, daughter of Sh.Sampuran Singh was owner of the suit land; that on 14.12.1983, she transferred her land in favour of plaintiff and his father through a Court decree, however, the land was not entered in their names, due to this, Smt.Ajmer Kaur had executed a registered will dated 11.1.2001 in favour of plaintiff; that Smt.Ajmer Kaur died unmarried and issueless; she owned sufficient immovable property in her name; that she had brought the father of the plaintiff as her son in the family to look after her property and render services to her, therefore, Smt.Ajmer Kaur got entered her entire land in the names of plaintiff, his father and her sister Smt.Gurdev Kaur; that Smt.Ajmer Kaur was real aunt (Maasi) of

plaintiff's father and grandmother of the plaintiff and was residing with the plaintiff and his father from the very beginning; that pleased with the services rendered by the plaintiff, Smt.Ajmer Kaur executed a registered Will dated 11.1.2001 in favour of the plaintiff; that after death of Smt.Ajmer Kaur, the plaintiff inherited her estate; that mutation No.6195 regarding inheritance of Smt.Ajmer Kaur was got sanctioned in favour of defendant No.1 in his absence; that mutation transfer-deed No.6203 vide which defendant No.1 transferred the land in favour of the defendant No.2 is also illegal, null and void and liable to be set aside since no notice was ever served upon the plaintiff before sanctioning of mutation; that Smt.Ajmer Kaur had died on 18.5.2004; that during life time of Smt.Ajmer Kaur, the plaintiff and his father used to cultivate the land in dispute and after her death, the plaintiff is in possession of the suit land; that the defendants have threatened to alienate the suit land to which they have no right. Feeling aggrieved the plaintiff had brought the suit in question.

On notice, the defendants appeared and filed written statement contesting the suit taking preliminary objections that the plaintiff had not approached the Court with clean hands and the suit was not maintainable being barred under Order 9 Rule 8 and Order 2 Rule 2 CPC. On merits, the defendants admitted that Smt.Ajmer Kaur was owner of the suit land but they denied that she had executed any Will in favour of the plaintiff; rather the Will set up by the plaintiff was dubbed as forged and fictitious. According to the defendants in the year 2000, Smt.Ajmer Kaur had fallen ill and lost her mental faculties and she was

confined to bed and she remained in such condition till her death and the plaintiff might have prepared the alleged Will in connivance with the scribe and witnesses; that Smt.Ajmer Kaur was unmarried and issueless. The answering defendants had denied that Smt.Ajmer Kaur had brought the father of the plaintiff in her family to serve her. They further contended that the plaintiff had never resided with Smt.Ajmer Kaur and the plaintiff and his father never served her; that the plaintiff had committed murder of his father; that defendant No.1 served Smt.Ajmer Kaur during her life time; that the alleged Will is forged and fictitious, therefore question of plaintiff to be owner of the suit land being her legal heir did not arise at all. The answering defendants further denied that the plaintiff was owner in possession of the suit land. According to them the mutation No.6195 was rightly sanctioned in favour of the defendant No.1. The defendants had denied that the mutation had been sanctioned in absence of plaintiff and without notice. According to the answering defendants Smt.Gurdev Kaur defendant No.1 was owner in possession of the suit land being legal heir of Smt.Ajmer Kaur, therefore defendant No.1 orally entered into an exchange with defendant No.2; that she along with Smt.Raj Rani had given other land at Beer Kalan including the suit land to defendant No.2 and took the land of defendant No.2 at village Bhai Ke Pashaur; that she further sold the land, which she had taken in exchange at Bhai Ke Pashaur to Ranjit Singh son of Malkiat Singh, resident of Ludhiana vide sale deed No.1376 dated 21.12.2005, so mutation No.6203 of exchange was valid; that neither the plaintiff nor his father was in cultivating possession of the suit land; that after the death of Smt.Ajmer

Kaur, Smt.Gurdev Kaur became owner in possession of the suit land; that Smt.Gurdev Kaur had given the suit land in exchange to Sh.Gurpreet Singh - defendant No.2; that now defendant No.2 is in possession of the suit land and he had sown wheat crop therein; that defendant No.2 had taken the suit land in exchange after inspecting the revenue record and after making due inquiry; that it was so done in a *bona fide* manner and rights of defendant No.2 are duly protected under Section 41 of the Transfer of Property Act. Refuting the remaining allegations, the defendants prayed for dismissal of the suit.

On the pleadings of the parties, following issues were framed:

1. Whether Ajmer Kaur deceased executed a registered Will dated 11.1.2001 in favour of the plaintiff? OPP.
2. Whether the right of defendant no.2 is protected U/S 41 of the Transfer of Property Act? OPD.
3. Whether plaintiff has no cause of action and locus-standi to file the present suit? OPP.
4. Whether Civil Court has no jurisdiction to try the present suit? OPD.
5. Whether suit is barred U/O 9 Rule 8 U/O 2 Rule 2 CPC? OPD.
6. Whether suit is not maintainable in the present form? OPD.
7. Whether plaintiff is entitled to the relief of declaration as prayed for? OPD.
8. Whether plaintiff is entitled for the relief of permanent injunction as prayed for? OPD.

9. Relief.

In order to prove his case, the plaintiff had examined Sh.Sukhdev Singh as PW1, Sh.Amarjit Singh as PW2, Sh.Kuljit Singh as PW3, Sh.Surinder Kumar as PW4, Sh.K.M. Jauhar, Advocate as PW5, Sh.Kali Ram Garg, Advocate as PW6, Sh.Daya Nand as PW7 and Sh.Sukhdev Singh as PW8, whereas plaintiff got his statement recorded as PW9.

On the other hand, the defendants had examined Smt.Balwinder Kaur as DW1, Sh.Gobinder Singh as DW2, and Sh.Gurpreet Singh - defendant No.2 as DW3.

After hearing learned counsel for the parties, the trial Court dismissed the suit of the plaintiff with costs. This was so done vide judgment and decree dated 26.11.2011.

Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal and defendants had filed cross-objections in the said appeal in the Court of District Judge, Sangrur, which was assigned to Additional District Judge, Sangrur, who vide judgment and decree dated 16.2.2015 dismissed the appeal in toto, whereas cross-objections filed on behalf of the defendants with regard to the issues decided in favour of the plaintiff were allowed.

Dissatisfied with the judgments and decrees passed by the Courts below, the plaintiff has knocked at the door of this Court by way of filing two regular second appeals praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and the suit filed by him be decreed and cross-objections filed by the

defendants be dismissed.

Notices of the appeals were issued to the respondents. Initially respondents were appeared through counsel but later on only respondent No.2 appeared through counsel.

I have heard learned counsel for the parties besides going through the records.

The trial Court on the basis of the evidence adduced before it has observed that in this case the plaintiff had examined attesting witness PW2 Sh.Amarjit Singh. It has been observed that it has come in evidence that Smt.Ajmer Kaur had already given property to plaintiff and his father through a compromise decree during her life time and at that time nothing was given to Smt.Gurdev Kaur so, it cannot be expected in these circumstances that she must have bequeathed her remaining estate to her sister. The trial Court has further observed that presence of beneficiary at the time of execution of Will is also not a ground to discard the Will in every case. The trial Court has rejected the contention of defendants that the testatrix was not having sound mental faculty and she was unable to understand the things; that she was confined to bed and was suffering from prolonged illness, therefore she was not competent to execute the Will in question.

As regards other attesting witness Bir Singh, he had died, therefore he could not be examined. The trial Court has observed that since execution of Will in question stands proved, therefore, issue No.1 was decided in favour of plaintiff and against the defendants.

As regards issue No.6, the trial Court has observed that the

counsel for defendants relied upon judgment of the Apex Court in case **Ram Saran & Anr. Versus Smt.Ganga Devi, AIR 1972 S.C. 2685**, wherein principles of law were laid down to the effect that where the defendant is in possession of some of the suit properties and plaintiff in his suit does not seek possession of those properties, but merely claims a declaration that he is the owner of the suit properties, the suit is not maintainable. Similar principle had been followed by our own High Court in judgment **Mohinder Singh Versus Shamsher Singh, 2010(2) Civil Court Cases 656(P&H)**. The trial Court has observed that the plaintiff had failed to prove his possession. Referring to the revenue record, it has been observed that earlier Smt.Ajmer Kaur was in possession of the suit land thereafter Smt.Gurdev Kaur came in possession, then vide mutation No.6203, the suit property was mutated in the name of Sh.Gurpreet Singh upon transfer from Smt.Gurdev Kaur and from the exchange of land by Smt.Gurdev Kaur with defendant No.2 - Sh.Gurpreet Singh, it comes out that it was Smt.Gurdev Kaur, who was in possession of the land and not the plaintiff; that after exchange of land, Smt.Gurdev Kaur has executed a sale deed in favour of one Sh.Ranjit Singh, copy of which Ex.D1 showing that Smt.Gurdev Kaur had exchanged the land with Sh.Gurpreet Singh; that the sale deed was never challenged by the plaintiff, meaning thereby, that he has admitted the fact of exchange and this fact leads to the inference that it was Smt.Gurdev Kaur, who was in possession of the land and not the plaintiff. However, the plaintiff was not found entitled to relief of declaration and permanent injunction.

Coming to issue No.2, the trial Court had observed that

defendant No.2 had purchased the suit land from Smt.Gurdev Kaur after inquiring the revenue record and he had no knowledge about any Will. He had exchanged the land with defendant No.1 after seeing the revenue record and after death of Smt.Ajmer Kaur, she became owner of the suit land on the basis of natural succession and mutation No.6195 was sanctioned in her favour. The trial Court further observed as under:

40. This Court finds itself agreed with this contention of the learned counsel for the defendants because in the revenue record, Gurdev Kaur has been shown as owner of the suit land after the death of Ajmer Kaur. The plaintiff has failed to adduce any evidence to the effect that defendant no.2 was in the knowledge of alleged Will. So, the rights of defendant no.2 as to the suit property is protected U/S 41 of the Transfer of property Act. Accordingly, this issue is decided in favour of the defendants and against the plaintiff.

The trial Court on the basis of the evidence adduced before it in the form of examination of attesting witness of the Will PW2 Amarjit Singh and scribe of the Will PW1 Sukhdev Singh as well as considering the fact that the Will was a registered document came to the conclusion that execution of Will by Smt.Ajmer Kaur in favour of the plaintiff while in sound disposing mind stood established. The contentions raised on behalf of the defendants that the beneficiary had played active role in execution of the Will and that no mention was made to Smt.Gurdev Kaur sister of the testatrix in the Will and further endorsement of Sub-Registrar was defective were discussed and rejected by giving valid and convincing

reasoning.

Learned Additional District Judge, Sangrur giving undue importance to those very factors, which had been taken into consideration by the trial Court and rightly rejected unnecessarily came to the conclusion that Will was shrouded by suspicious circumstances, which the propounder had failed to clear. Therefore, finding recorded by the trial Court on issue No.1 is absolutely correct and is affirmed, whereas reversal of such finding by learned Additional District Judge, Sangrur is found to be unjustified.

Now coming to the finding recorded by the Courts on other crucial issues i.e. issues No.5 and 8. The Courts below have come to the conclusion that the plaintiff was not in possession of the suit property and he had sought a declaration simpliciter without asking for consequential relief of possession and therefore suit was not maintainable. Furthermore, earlier the plaintiff had filed a suit in Courts at Samana, which he had withdrawn without seeking permission of the Court to file fresh suit on the same cause of action. Therefore, it was barred under Order 9 Rule 8 and Order 2 Rule 2 CPC. The First Appellate Court has dealt with such aspect in detail referring to the applications moved by the plaintiff including for amendment of the plaint seeking possession, application for leading evidence, which were dismissed, his having moved application for correction of khasra girdawari before revenue authorities, which was also dismissed, his appeal against order of Naib Tehsildar, Cheema also meeting with the same fate. The Courts have have correctly come to the conclusion that plaintiff has not been in possession of the suit land.

However, the conclusion arrived at by both the Courts below was same i.e. dismissal of the suit filed by the plaintiff. Though the First Appellate Court has rightly allowed the cross-objections filed by Sh.Gurpreet Singh finding him to be bona fide purchaser for consideration observing that when property in dispute was given by its owner to Sh.Ram Singh then Smt.Gurdev Kaur would exchange the same with Sh.Gurpreet Singh and no cause of action arose to the plaintiff to bring the suit and he had no locus standi to do so.

Except as above on the point of execution of Will by Smt.Ajmer Kaur in favour of the plaintiff, which does not affect the result of the suit, the same having been barred under Order 9 Rule 8 and under Order 2 Rule 2 CPC. There is no reason to decree the suit as prayed for.

No substantial question of law arises in the appeals.

Therefore, the appeals stand dismissed accordingly.

22.5.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No