

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Regular Second Appeal No. 2642 of 2018(O&M)

Date of Decision: March 15 , 2019.

Surjit Kaur and another

..... APPELLANT (s)

Versus

Jagjit Singh and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Ishan Gupta, Advocate
for the appellants.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Appellants/plaintiffs are aggrieved of judgments and decrees dated 20.01.2015 and 23.10.2017 passed by the learned Additional Civil Judge(Senior Division), Sunam and the learned Additional District Judge, Sangrur, respectively, whereby suit filed by the plaintiffs has been dismissed.

Appellants-plaintiffs filed a suit for declaration and permanent injunction pleading that they alongwith the defendants, are owners of the suit property as described in the plaint to the extent 1/8th share each, all of them being children of Dalip Kaur. It is to be noted that the suit was initially filed by the present two appellants alongwith their sister Charanjit Kaur (arrayed as

respondent No.5 in this appeal), but Charanjit Kaur had recorded her statement before learned trial court on 30.05.2012 seeking withdrawal of suit, which was accordingly dismissed as withdrawn qua her on 30.05.2012. Defendants No.3 and 4 have admitted the claim of defendants No.1 and 2. At the very outset, it is relevant to note that the appellants as well as the defendants are siblings.

It is pleaded that the property in question belonged to the mother of the plaintiffs as well as the defendants, namely, Dalip Kaur and all of them, it is stated, are entitled to inherit the suit property by way of natural inheritance. It is further pleaded that unregistered Will dated 13.02.2010 set up by defendants No.1 and 2, their brothers, was a forged and fraudulent document, never executed by their mother. It is further stated that brothers of the plaintiffs are cunning persons and they never looked after their mother, who was bed-ridden and unable to move for about two years prior to her death. Despite requests, defendants No.1 and 2 refused to accept the plaintiffs' claim. Hence, suit was filed.

Suit was resisted by defendants No.1 and 2, taking various preliminary objections. Averments on merits were controverted. It is however admitted that Dalip Kaur was the owner of the suit property. It is further stated that defendants No.1 and 2 were in possession of the suit land and it was they, who looked after their mother, who being pleased with their services and out of love and affection, executed unregistered Will dated 13.05.2010 in their favour. Therefore, they became owners-in-possession of the entire land belonging to their mother after her death. It is further stated the plaintiffs are well-settled in their respective matrimonial homes and they had no title or interest in the suit property. Dismissal of the suit was prayed.

As mentioned earlier, plaintiff-Charanjit Kaur withdrew her suit on 30.05.2012. The other two sisters i.e., respondents No.3 and 4 adopted the written statement filed on behalf of defendants No.1 and 2.

Replication was filed. On the basis of the pleadings of the parties, following issues were framed:-

1. Whether plaintiffs are entitled for the relief of declaration as prayed for? OPP
2. Whether the plaintiffs are entitled for the relief of permanent injunction as prayed for? OPP
3. Whether the plaintiffs have no locus standi and cause of action to file the present suit? OPD
4. Whether plaintiffs are estopped from filing the present suit by their own act and conduct? OPD
5. Whether the suit of the plaintiffs is not maintainable in the present form? OPD
6. Whether the plaintiffs have not come to the court with clean hands? OPD
7. Whether the defendants are entitled to the special costs from the plaintiffs? OPD
8. Relief.

Both the parties led evidence to substantiate their respective claims/stands.

Learned trial court on considering the evidence on record, facts and circumstances, dismissed the suit filed by the appellants vide judgment and decree dated 20.01.2015. Appeal filed by the appellants was dismissed by the learned Additional District Judge, Sangrur vide judgment and decree dated 23.10.2017.

Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellants vehemently argues that Will dated 13.05.2010 is not proved on record. Reference is made to the statements of DW3 Krishan Singh, scribe of the Will and DW4 Darshan Singh, one of the attesting witnesses. It is argued that there is a material discrepancy as to writing of the name of the attesting witness Darshan Singh on the Will. Krishan Singh stated that he did not write down the name of the witness Darshan Singh. DW4 Darshan Singh expressed his ignorance as to who had written his name on the said Will and also went on to say that the Will was not read over to him. Therefore, the Will in question is proved to be a forged, fabricated and fraudulent document. Will was registered subsequent to the death of the testator which in itself, is a material suspicious circumstance. It is further submitted that thumb impression of the testator has been placed in a vertical manner whereas it is commonly found to be in a lateral state. Moreover, spacing of the writing of Will points out to its fraudulent nature. It is thus prayed that both the impugned judgments and decrees dated 20.01.2015 and 23.10.2017 passed by the learned Additional Civil Judge(Senior Division), Sunam and the learned Additional District Judge, Sangrur, respectively, be set aside. Consequently, suit filed by the plaintiffs/appellants be decreed throughout.

I have heard Learned counsel for the appellants and have gone through the file with his assistance.

Appellants, who are two of the daughters of Dalip Kaur, have claimed ownership of the property belonging to Dalip Kaur to the extent of 1/8th share by way of natural succession. It is further asserted by them that Will dated

13.05.2010 set up by defendants No.1 and 2 is a forged and fraudulent document. It is relevant to note, at this stage, that the defendants in order to prove the Will produced a certified copy of Will dated 13.05.2010 as Ex.D3. DW4 Darshan Singh, one of the attesting witnesses of the Will has been examined alongwith DW3 Krishan Singh, who is the scribe of the Will. DW3 Krishan Singh testified on oath that the Will, Ex.D3 was scribed by him at the instance of Dalip Kaur. DW4 Darshan Singh clearly deposed about the execution of the Will by Dalip Kaur in favour of defendants No.1 and 2.

Genuineness of the Will is sought to be impugned on the ground that first and foremost, there is no reason for ignoring the plaintiffs, who are admittedly the real daughters of Dalip Kaur, alongwith other daughters who have been ignored as well. This argument is devoid of any merit as the mere fact that some of the successors have been ignored in the Will cannot per se, be taken to be a suspicious circumstance. A Will by its very nature entails ignoring of some of the successors. It has come on record that all the daughters of Dalip Kaur are married, living in their respective matrimonial homes. Three of the five sisters have supported the claim of respondents No.1 and 2. One of the sisters, Charanjit Kaur, who had initially filed the suit in question withdrew the same on 30.05.2012.

It is relevant to note, at this stage, that it is specifically pleaded in the plaint that Dalip Kaur was bed-ridden and remained unwell for about two years prior to her death. However, the plaintiffs themselves i.e., PW1 Surjit Kaur and PW2 Murti Kaur @ Paramjit Kaur in their cross-examination admitted that their mother was not suffering from any disease at the time of her death. There is

no document on record to even indicate that Dalip Kaur was not of sound disposing mind at the time of the execution of Will on 13.05.2010. Learned counsel for the appellants is unable to deny that there is no evidence on record to prove that Will dated 13.05.2010 is a forged and fraudulent document, though he attempted to argue that placing of thumb impression on the Will is unnatural as it is placed in a vertical manner. However, he had no plausible explanation when it was pointed that even the thumb impression of the appellant-Murti Kaur @ Paramjit Kaur is appended in a similar fashion on the power of attorney attached with the present appeal. Needless to say, argument as above is clearly fallacious and untenable, hence rejected.

Similarly, the argument that DW3 Krishan Singh was not a regular scribe, therefore, the document in question is suspicious, is an argument which cannot be countenanced. There is no requirement that the Will should be penned down by a regular scribe and none else. DW3 Krishan Singh is admittedly a jeweller from whom Dalip Kaur used to get ornaments prepared. There is indeed nothing suspicious in this regard, if Dalip Kaur chose to have her Will drawn up from her jeweller. There is no evidence on record to doubt the credibility of DW3 Krishan Singh. Furthermore, mere non-registration of a Will cannot be fatal to the genuineness of the same, as is sought to be urged.

I have perused the Will, Ex.D3 as well as statements of DW3 Krishan Singh and DW4 Darshan Singh. Learned counsel for the appellants is unable to point out any material discrepancies in the statements of the said witnesses i.e., DW3 Krishan Singh and DW4 Darshan Singh, which impinge upon the veracity or genuineness of the Will in question.

Learned counsel for the appellants/plaintiffs 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 have rightly dismissed the suit filed by the plaintiffs and have rendered concurrent findings of fact on the basis of proper appreciation of the evidence on record which do not call for any interference by this Court.

No other argument has been raised.

There is a delay of five days in filing and one day in refiling of this appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in filing and refiling of this appeal has been rendered academic. Applications are accordingly disposed of.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decrees dated 20.01.2015 and 23.10.2017 passed by the learned Additional Civil Judge(Senior Division), Sunam and the learned Additional District Judge, Sangrur, respectively, which warrant any interference by this Court.

Present appeal is, consequently, dismissed with no order as to costs.

March 15 , 2019.
'om'

(LISA GILL)
JUDGE

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