

RSA No. 3740 of 2018 (O&M)

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

RSA No. 3740 of 2018 (O&M)

Date of Decision: September 16, 2019

Satnam Singh

..... Appellant(s)

Versus

Sarwan Singh and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sanjeev Kumar Arora, Advocate
for the appellant.

LISA GILL, J.

Appellant-plaintiff is aggrieved of the judgment and decree dated 12.12.2017, passed by the learned Additional District Judge, Jalandhar as well as judgment and decree dated 22.07.2014, passed by the learned Addl. Civil Judge (Sr. Division), Nakodar whereby suit filed by the appellant has been dismissed.

Brief facts necessary for the adjudication of the case are that appellant-plaintiff filed a suit seeking declaration to the effect that he is the owner in possession of the suit property measuring 20 Kanal 10 Marla as detailed in the plaint, on the basis of a Will dated 20.03.1977 (Ex.P-1) purportedly executed by Malla Singh son of Sunder Singh in the plaintiff's favour and that mutation No.727 in regard to inheritance of Malla Singh sanctioned as per succession was sought to be declared null and void. Consequential relief of permanent injunction was also sought. It is pleaded that the land in question was owned by Malla Singh son of Sunder Singh who died

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on 10.07.1992. The plaintiff claimed to be son-in-law of Malla Singh in relation as the niece of Malla Singh was married with the plaintiff. Malla Singh it is stated was residing abroad and whenever he visited India he would stay with the plaintiff and the plaintiff's father Sunder Singh. Malla Singh is claimed to have executed an un-registered Will dated 20.03.1977 during his life time in favour of the plaintiff out of love and affection for the plaintiff. The Will was stated to be left in the custody of the plaintiff's father Sunder Singh. It is further pleaded that the plaintiff came to know about the existence of the said Will only about a month prior to the filing of the civil suit on 18.02.2010. It is pleaded that in view of the said Will dated 20.03.1977 wherein the plaintiff has been bequeathed the entire property of Malla Singh, mutation No.727 sanctioned in favour of the defendants i.e. children of Malla Singh and Smt. Parath Kaur widow of Malla Singh (who had passed away at the time of filing of the suit) is illegal, null and void qua the rights of the plaintiff. When the defendants refused to accede to the claims of the plaintiff, the suit was filed.

None appeared on behalf of defendants no.1 to 4 despite service. Defendant no.5 contested the suit. Various preliminary objections were raised in the written statement filed by her. It is stated that the plaintiff had not approached the Court with clean hands and merely wanted to grab the land in question. Defendants no.1 to 4 were stated to be residing in Malaysia since many years. Malla Singh was also residing in Malaysia since 1930. It is denied that the plaintiff was the owner or in possession of the suit property or that any Will had been executed by Malla Singh in the plaintiff's favour. Dismissal of the suit was prayed for.

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Following issues were framed by the learned trial Court on the basis of the pleadings:-

1. Whether plaintiff is entitled to the decree of declaration as prayed for? OPP.
2. Whether plaintiff is entitled to permanent injunction as prayed for? OPP
3. Whether suit is time barred? OPD.
4. Whether plaintiff has not come to the court with clean hands? OPD
5. Whether the suit is not properly valued? OPD
6. Whether plaintiff is estopped by his own act and conduct from filing the present suit? OPD
7. Relief.

Evidence was led by both the parties in support of their respective claims/stands.

Learned trial Court on considering the evidence on record, facts and circumstances of the case concluded that the plaintiff failed to prove the execution of the Will in question. Issues no.1 and 2 were decided against the plaintiff and issue no.3 in respect to the suit being time barred was decided in favour of the plaintiff. Issues no.4 to 6 were decided against the defendants and in favour of the plaintiff. Plaintiff's suit was ultimately dismissed.

Appeal preferred by the plaintiff was dismissed by the learned District Judge, Jalandhar vide the impugned judgment and decree dated 12.12.2017. Aggrieved therefrom, present appeal has been filed by the plaintiff.

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Learned counsel for the appellant-plaintiff argues that both the learned Courts below have grossly erred on facts and in law in dismissing the suit filed by the plaintiff. Merely because Will dated 20.03.1977 was not in the knowledge of the plaintiff and he could not file the suit earlier, cannot be held against him in any manner. Malla Singh, it is submitted, executed the said Will out of love and affection for the present plaintiff. He used to stay with the plaintiff whenever he would visit India. Plaintiff claimed to be married to a niece of Malla Singh, which explained the love and affection which the plaintiff had with Malla Singh. Makhan Singh PW2 an attesting witness of the Will, it is submitted, has duly proved the execution of the same. Learned Courts below have thus wrongly concluded that the execution of the Will is doubtful or surrounded by suspicion circumstances. It is, thus, prayed that this appeal be allowed and judgments and decrees of both the Courts below be set aside.

I have heard learned counsel for the plaintiff at length and have gone through the file.

Learned counsel for the appellant-plaintiff has laid the foundation of his case on the basis of an un-registered Will dated 20.03.1977. It is a matter of record that Malla Singh who is alleged to have executed the said Will died on 10.07.1992. It is claimed that this Will dated 20.03.1977 had been handed over by Malla Singh to Sunder Singh i.e. father of the plaintiff. Learned counsel for the appellant is unable to deny that the plaintiff has not revealed the date of death of his father Sunder Singh to whom the Will was entrusted by Malla Singh. However, in his cross-examination, the plaintiff (PW1), while not giving the exact date of death of Sunder Singh, stated that his

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father died 15 years ago. Therefore, Sunder Singh, as per the said statement died in or around the year 1998. Both the learned Courts below have rightly held that it is highly improbable, unnatural and unlikely that a document like a Will executed by Malla Singh, purportedly in custody of Sunder Singh (plaintiff's father) would not have been handed over to the plaintiff by his father immediately on the death of Malla Singh. Plaintiff's father died nearly six years after the death of Malla Singh. Therefore, Will dated 20.03.1977 not having seen the light of the day for these long years, clearly casts a serious dent on its genuineness. Another glaring aspect which is required to be noticed is that PW-1 claimed that his father Sunder Singh transferred his entire property to the plaintiff during his life time. It is rightly observed by the learned Additional District Judge, Jalandhar that in case Sunder Singh has transferred his own property in favour of the plaintiff, during his life time, it is opposed to all probabilities that Sunder Singh would not have handed over the Will to the plaintiff, allegedly executed by Malla Singh, if he was in possession thereof.

Makhan Singh PW-2 an attesting witness of the Will is undeniably an agricultural labourer working for the plaintiff. PW-2 admitted that he was working in the same capacity earlier with Sunder Singh i.e. father of the plaintiff. The other attesting witness Santa Singh, as per the plaintiff had passed away, though, there is no evidence on record to indicate the same. Santa Singh and Makhan Singh were admittedly residents of the same village as the plaintiff and it is indeed improbable that they too would not have revealed the execution of the purported Will. There are indeed sufficient reasons and credible evidence on record to discard the said document. The plaintiff has indeed failed to prove the genuineness of the Will dated 20.03.1977.

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Learned counsel for the appellant is unable to point out any ground for interference in terms of Section 41 of the Punjab Courts Act, 1918, neither is he able to point out any substantial question of law involved for adjudication in this appeal.

In my considered opinion there is no illegality, infirmity or perversity in the impugned judgment and decree dated 12.12.2017, passed by the learned Additional District Judge, Jalandhar as well as judgment and decree dated 22.07.2014, passed by the learned Addl. Civil Judge (Sr. Division), Nakodar, which calls for any interference by this Court in second appeal.

No other argument has been raised.

Judgment and decree dated 12.12.2017, passed by the learned Additional District Judge, Jalandhar as well as judgment and decree dated 22.07.2014, passed by the learned Addl. Civil Judge (Sr. Division), Nakodar are upheld.

Accordingly, this appeal is dismissed with no order as to costs.

As the appeal is finally decided, no separate orders are required to be passed in any pending applications, if any.

September 16, 2019.
Sunil

(LISA GILL)
JUDGE

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