

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

RSA No.4070 of 2018 (O&M)
Date of Decision: April 11, 2019

Bhupinder Singh

...Appellant

Versus

Swaranjit Singh and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Gautam Diwan, Advocate
for the appellant.

Mr. R.D. Vinayak, Advocate
for caveator/respondent No.1.

JAISHREE THAKUR, J. (Oral)

1. The instant appeal has been filed against the judgment and decree dated 26.02.2018 passed by the Addl. District Judge, Chandigarh whereby the appeal filed by the appellant/defendant No.1 against the judgment and decree dated 23.10.2015 passed by the lower court, has been dismissed.

2. In short, the facts of the case are that respondent No.1/plaintiff is the son of late Sh. Bihari Lal and elder brother of appellant/defendant No.1, respondents No.2 and 3/defendants No.2 and 3. Late Sh. Bihari Lal expired on 22.04.2017 intestate, leaving behind immovable and movable properties i.e. House No.358, Sector 16, Panchkula, Booth No.51, Sector 4, Panchkula and an amount of ₹ 7,37,518.63 p being balance in his account

No.10445067737 in State Bank of India, Panjab University, Sector 14, Chandigarh. It is submitted that mother of the parties Smt. Leelawanti also expired intestate on 05.05.2007 leaving behind immovable property i.e. House No.230, Sector 15-A, Chandigarh. It is averred that respondent No.1/plaintiff is in physical possession of first floor of House No.358, Sector 16, Panchkula as well as ground and second floors of House No.270, Sector 15-A, Chandigarh and the appellant/defendant No.1 is in physical possession of first floor of House No.230, Sector 15-A, Chandigarh. It is further averred that respondent No.1/plaintiff, appellant/defendant No.1, respondents No.2 and 3/defendants No.2 and 3 are the Class I legal heirs of their deceased parents, as such, they are entitled to 1/4th share of the whole property. It is further submitted that after the death of his father, respondent No.1/plaintiff learnt that his younger brother appellant/defendant No.1 was flaunting a fake and forged Will and intended to get some property transferred from their late father to himself behind the back of other class I heirs of the deceased. Then, respondent No.1/plaintiff wrote a letter dated 18.06.2007 to the Estate Officer, Panchkula intimating him that respondent No.1/plaintiff being the eldest son of the deceased was a Class I heir and as such, entitled to his due share in the property. On receipt of the said letter, the Estate Officer refused to transfer the property. Thereafter, a family settlement was done in November 2008 in which decision was taken that respondent No.1/plaintiff will withdraw his letter dated 18.06.2007 and facilitate the transfer of property, as stated above. However, after the said property was transferred to the name of appellant/defendant No.1 by the Estate Officer, Urban Estate, Panchkula, he went back on his word and

instead of vacating the first floor of House No.230, Sector 15-A, Chandigarh, he staked his claim to 1/4th share of the said house. Hence, the present suit.

3. Upon notice, the appellant/defendant No.1 appeared and filed his written statement contesting the present suit stating therein that the present suit is not maintainable and respondent No.1/plaintiff has not come to the court with clean hands, as he has concealed the true and material facts from the court. It is further averred that late Sh. Bihari Lal executed a valid registered Will dated 03.02.2006, vide which he bequeathed his property i.e. House No.358, Sector 16, Panchkula and Booth No.51, Sector 4, Panchkula in his favour. It is submitted that appellant/defendant No.1 is in physical possession of first floor of House No.230, Sector 15-A, Chandigarh. It is further submitted that the property bearing House No.358, Sector 16, Panchkula had already been re-allotted to the appellant/defendant No.1 prior to the withdrawal of letter dated 18.06.2007 and the other property i.e. Booth No.51, Sector 4, Urban Estate, Panchkula was also re-allotted to him. It is stated that as per Hindu Succession Act, 1956, all the legal heirs have equal right to the property of the deceased. Remaining averments were categorically denied.

4. Respondent No.2/defendant No.2 filed her separate contesting written statement stating therein that the present suit is not maintainable and that respondent No.1/plaintiff has no locus standi to file the present suit. It is averred that she being one of the legal heirs of her deceased parents, is entitled for her share as per Hindu Succession Act and she has already applied for her share in the Estate Office, Chandigarh. It is submitted that

respondent No.1/plaintiff and appellant/defendant No.1 fraudulently got transferred House No.358, Sector 16 and Booth No.51, Sector 4, Panchkula in a collusive manner. Remaining averments were categorically denied.

5. Respondent No.3/defendant No.3 initially appeared through her counsel, but later on failed to appear before the court, as such, she was proceeded ex parte.

6. Respondent No.4/defendant No.4-Estate Office appeared through Govt. Pleader and filed separate written statement stating that the suit is not maintainable qua it as respondent No.1/plaintiff failed to serve mandatory legal notice under Section 80 CPC. It is submitted that as per office record site No.34 (new House No.230) Street B, Sector 15-B, Chandigarh was transferred in the name of Smt. Leelawanti Bhatia d/o Sh. Thakur Dass Bhatia vide transfer letter dated 11.06.1964 on the basis of registered sale deed dated 11.05.1964 and the property still stands in her name. It is further averred that on 12.08.2009, respondent No.1/plaintiff was duly informed through registered post by respondent No.4/defendant No.4 and he was also asked to apply for transfer of his share as appellant/defendant No.1 and respondents No.2 and 3/defendants No.2 and 3 have applied for transfer of property held by Smt. Leelawanti on the basis of intestate death to the extent of 3/4th share, but no reply has been received from him nor he protested except an objection sent in their office on 22.01.2010. Remaining averments were categorically denied.

7. Replication was not filed. From the pleadings of the parties, the following issues were framed;-

1. Whether the plaintiff is entitled for declaration as prayed

for?OPP.

2. Whether the plaintiff is entitled for mandatory injunction as prayed for?OPP.

3. Whether the present suit is not maintainable?OPD.

4. Whether the plaintiff has not come to the court with clean hands?OPD.

5. Whether the plaintiff has no locus standi to file the present suit?OPD.

6. Relief.

8. In order to prove his case, respondent No.1/plaintiff Swaranjit Singh himself examined as PW1, Amit Roy, Customer Assistant, State Bank of India, Sector 14, P.U., Chandigarh was examined as PW2, Rajesh Kumar, Clerk o/o Estate Office, Chandigarh was examined as PW3, Krishan Kumar, Clerk from Estate Office, HUDA, Panchkula was examined as PW4, Mr. Bharat Bhushan, Clerk o/o Estate Office, HUDA, Panchkula was examined as PW5 and thereafter, respondent No.1/plaintiff closed the evidence.

9. On the other hand, appellant/defendant No.1 Bhupinder Singh himself examined as DW1, respondent No.2/defendant No.2 Parvinder Kaur herself examined as DW2, Jagdish Chander, one of the attesting witness of Will, was examined as DW3 and thereafter, the defendants closed their evidence.

10. After hearing both the sides, the lower court decreed the suit of respondent No.1/plaintiff to the effect that all the legal heirs of late Sh. Bihari Lal and Smt. Leelawanti are entitled to 1/4th share in the immovable and movable property left by their deceased parents. Aggrieved against the

decision of the lower court, the appellant/defendant No.1 filed an appeal, which stood dismissed by the Addl. District Judge, Chandigarh. Now both the judgments and decrees passed by the courts below are under challenge in this regular second appeal.

11. Mr. Gautam Diwan, learned counsel appearing on behalf of the appellant/defendant No.1 argues that both the courts below failed to consider and appreciate the document Ex.P5/1 in a judicious manner under which respondent No.1/plaintiff had withdrawn his objections regarding transfer of the properties situated at Panchkula left by deceased late Sh. Bihari Lal. It is contended that both the courts below have erroneously discarded the registered Will executed by late Sh. Bihari Lal and failed to take into consideration the evidence of DW3 Jagdish Chander, who is one of the attesting witness of the Will. It is argued that in the Will, it has been specifically mentioned that the appellant/defendant No.1 would be the only beneficiary and all other legal heirs have been divested from any right or claim in the properties i.e. House No.358, Sector 16, Panchkula and Booth No.51, Sector 4, Panchkula.

12. On the other hand, Mr. R.D. Vinayak, learned counsel appearing on behalf of the caveator-respondent No.1/plaintiff argues that judgments and decrees passed by the courts below are well reasoned and no ground is made out to interfere with the current findings recorded by them.

13. I have heard learned counsel for the parties and have gone through the case file.

14. The lower court, while allowing the suit of respondent No.1/plaintiff, has observed as under;-

“13. In the present case from the pleadings of the parties as well as evidence put forth by them it is clear that the clinching point involved in the present case is whether the WILL in question dated 3.2.2006 allegedly to be executed by Sh. Bihari Lal had been duly proved by the defendant or not and in order to ascertain this fact, I would like to go through the evidence of DW3 Jagdish Chander one of the attesting witness of the WILL and this witness in his examination in chief had stated that he had seen WILL Ex.P5 and it bears his signature as witness no.2 and except this he had not stated anything else and as per Evidence Act as well as Indian Succession Act, it is necessary for the attesting witness to depose that he had seen the original WILL in the court at the time of evidence and further he had to depose specifically that the WILL had been signed by him in the presence of executor as well as another attesting witness and executor as well as other attesting witness had signed the WILL in his presence but this fact had not been deposed by this witness in his examination in chief. So, it means that this witness has not proved the WILL as per provisions of Indian Succession Act and it is also settled law that any document which has not been proved as per the provisions of law cannot be taken into consideration.

14. Further in the WILL in question at para no.5 it is specifically stated that 'I am the sole & exclusive owner of all the assets mentioned in para no.1(i) & (ii) which I shall enjoy during my lifetime and after death my wife Leelawanti shall enjoy life interest in the above immovable property and she shall not be entitled to make a WILL or alienate or transfer the assets in any other manner. If, however, she is called by the Almighty before me, then the entire property mentioned in para no.1 shall be devolved only upon my second son Bhupinder Singh after my death and none of my other children and further their children would have any claim on my properties mentioned in no.1(i) & (ii).' So, from the perusal of this clause it is clear that the bequest in the present case is contingent upon specified uncertain event and the law upon this is clear that where a legacy is given if a specified uncertain event shall happen and no time is mentioned in the WILL of the occurrence for that event, the legacy cannot take effect unless such event happens before the period when the fund bequeathed is payable or distributable. So, from the above discussion as well as after going through this clause of the WILL, it is clear that in the present WILL the property has been bequeathed under certain condition and after the death of executor his wife Smt. Leelawanti would have enjoyed the

property having life interest and she will not entitle to make a WILL or alienate or transfer the property in any manner and if she predeceased the executor then the entire property will go to Bhupinder Singh defendant No.1 but in the present case this is an admitted fact that Smt. Leelawanti had expired 15 days after the death of executor Bihari Lal. So, it means that after the death of Bihari Lal property vested to Leelawanti having limited interest but in the WILL it is not mentioned that if Leelawanti is survived then after the death of Leelawanti where the property will go, so it means that in case Leelawanti survived the executor then after the death of Leelawanti all the legal heirs of Bihari Lal will have right in the property as Leelawanti was only having limited interest in the property and she had not been made absolute owner and this is proviso of Section 141 of Hindu Succession Act as such it is clear that in view of the provisions of the WILL itself the property did not devolve upon defendant no.1, after the death of Leelawanti. On the other hand after the death of Leelawanti all the legal heirs of Bihari Lal had become the co-owner of the property mentioned in WILL Ex.P5. So, from the above discussion it is clear that defendant no.1 who alleged that he is owner by virtue of WILL is carrying no weight as WILL itself did not give any right to defendant no.1 exclusively and further this is an admitted fact that plaintiff as well as defendants No.1 to 3 are the legal heirs of Bihari Lal and when this fact has come out on record that plaintiff had failed to prove the oral settlement and defendant no.1 had failed to establish the WILL and further conditions mentioned in the WILL had also not been fulfilled so it means that the WILL had become inoperative and all the legal heirs i.e. plaintiff as well as defendants No.1 to 3 are entitled to inherit the property of Bihari Lal to the extent of 1/4th share each and as such both these issues are decided in favour of plaintiff”

15. The first Appellate Court dismissed the appeal filed by the appellant/defendant No.1, while affirming the findings recorded by the lower court.

16. In the instant case, the appellant/defendant No.1 set up a Will in his favour, allegedly executed by late Sh. Bihari Lal, father of the parties.

In order to prove the same, he examined DW3 Jagdish Chander, one of the

attesting witness, however, this witness failed to prove the execution of the Will. In his statement, DW3 Jagdish Chander did not state anything about the fact; that the Will was executed in his presence; that it was read over to the executant; that the executant accepted its contents in his presence; and that he and executant signed the Will in the presence of each other. DW3 Jagdish Chander has failed to prove the Will in question as per law. The appellant/defendant No.1 has also failed to establish on record that the deceased was in sound disposing mind at the time of the execution of the Will and thus, the Will is surrounded by suspicious circumstances. Under these circumstances, the Will in question, as set up by the appellant/defendant No.1, cannot be looked into and the parties in the present case, being Class I heirs of late Bihari Lal, are entitled to inherit the property left by him in equal shares.

17. In view of the above, this court finds no illegality or perversity in the concurrent findings so recorded by both the courts below. As such, no question of law requiring determination arises in this regular second appeal filed by the appellant/defendant No.1, which has no merit.

18. Dismissed.

April 11, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No