

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

RSA No.562 of 2018(O&M)
Date of decision: 18.11.2019

Amrik Singh

... Appellant

Versus

Amardeep Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

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

ARUN PALLI, J. (Oral)

Suit filed by the appellant-plaintiff was dismissed by the trial Court vide judgment and decree dated 30.11.2015, and as even the appeal preferred against the said decree failed and was dismissed on 19.01.2017, appellant-plaintiff is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff prayed for possession on the basis of title acquired through a registered Will dated 11.01.1982, alleged to have been executed by his late father Tehal Singh son of Mehma Singh, qua the suit property measuring 22 kanals 13 marlas, situated in village Chak Sarai, Tehsil Khanna, District Ludhiana, by setting aside sale deed dated 11.12.2003 as also the compromise dated 02.02.2005.

In brief, the case set out by him was that Tehal Singh was the owner of the suit land. He married Gurdev Kaur and from the said wedlock plaintiff-Amrik Singh and Manjit Kaur (defendant No.6) were born.

However, post death of mother of the plaintiff, namely, Gurdev Kaur, Tehal

Singh contracted second marriage with Balwant Kaur (defendant No.2) and from the said wedlock defendants No.3 to 5 were born. Later Tehal Singh suffered a paralytic attack and the left side of his body was crippled. He could not speak and function or even put his left thumb impression on any document. Amardeep Singh (defendant No.1) fraudulently and without payment of any consideration managed to get a sale deed dated 11.12.2003, by Tehal Singh in his favour, qua the suit property. Balwant Kaur (defendant No.2) challenged the said sale deed vide Civil Suit No.19 of 18.01.2004 being illegal, null and void. Whereafter, even Tehal Singh filed a Civil Suit No.75 of 11.02.2004 assailing the sale deed dated 11.12.2003 and for a declaration that he was the owner in possession of the suit property and the said sale deed was a sham transaction. In fact, Balwant Kaur (defendant No.2) and her daughter Prabhjot Kaur had filed Civil Suit No.173 of 21.07.1999 against Tehal Singh in the Court of ACJ SD Khanna. And, vide judgment and decree dated 04.10.2002, Tehal Singh was restrained from alienating or creating any charge over the suit property. Even the appeal preferred against the said decree failed and was dismissed on 22.07.2003. Therefore, Tehal Singh was not competent to execute the sale deed dated 11.12.2003, in favour of Amardeep Singh (defendant No.1). Tehal Singh passed away on 06.02.2005 and just a few days before his death, he was alleged to have entered into a compromise dated 02.02.2005 with defendant No.1. The said document was alleged to have been thumb marked by Tehal Singh, which was not possible considering his health conditions. Thus, the compromise dated 02.02.2005 was liable to be ignored. Hence, plaintiff having clear title on the basis of the Will dated 11.01.1982 was entitled to possession of the suit property. Thus, the suit.

In the written statement filed by defendant No.1, it was pleaded, *inter alia*, that sale deed dated 11.12.2003 was executed by late Tehal Singh after receiving full sale consideration. The Will dated 11.01.1982 was alleged to be a forged and fabricated document. However, owing to escalation in the real estate prices, Tehal Singh and Balwant Kaur filed a suit against defendant No.1, which was eventually compromised in Lok Adalat. Thus, the suit was liable to be dismissed.

In a separate written statement filed by defendants No.2 to 5, the Will propounded by the plaintiff was alleged to be a forged and fabricated document. Further, post death of Tehal Singh his estate was liable to devolve upon his heirs by natural succession.

Defendant No.7 in his written statement pleaded, *inter alia*, that vide agreement to sell dated 18.11.2003, Tehal Singh had agreed to sell a land measuring 14 bighas in his favour. As post death of Tehal Singh, defendant No.1 claimed to be the owner of the suit property pursuant to a sale deed dated 11.12.2003, defendant No.7 had filed Civil Suit No.92 dated 01.03.2005 seeking specific performance of the agreement to sell. Therefore, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record both the Courts concurrently concluded that concededly the alleged Will was attested by Bhagat Singh and Lambardar Ujjagar Singh, but none of the attesting witnesses was examined by the plaintiff. Though one of the attesting witnesses to the Will had passed away, but Lambardar Ujjagar Singh was still alive. This was not the case of the plaintiff either that Ujjagar Singh was physically disabled or for any other reason he could not be examined. Though he was alleged to have connived with other party and was

given up, but still plaintiff was obliged to examine him and plaintiff, could always cross-examine him to elicit the truth. As regards Sadhu Singh (PW3), he merely identified the thumb impression of late Bhagat Singh, which was not sufficient to conclude that the alleged Will was duly and validly executed. Even otherwise, plaintiff failed to examine any expert to prove that alleged Will was indeed thumb marked by late Tehal Singh. The plaintiff also examined the Scribe of the Will Raghbir Singh (PW4) and his case was that even statement of the Scribe could be considered and read as statement of an attesting witness to the Will. Accordingly, it was observed that testimony of the Scribe could also be considered as that of the attesting witness provided he personally knew the parties and his statement was required to be critically analyzed as is the testimony of any attesting witness. Whereas, an analysis of the statement of the Scribe (PW4) revealed that he did not know even the testator Tehal Singh. He also conceded that he was neither related to deceased nor knew that he had contracted a second marriage after the death of his first wife Gurdev Kaur. He did not know even the date when Tehal Singh had passed away. Thus, the statement of the Scribe could not be considered and read as the testimony of an attesting witness to the alleged Will. Even otherwise, the Will was alleged to be surrounded by suspicious circumstance as at the time of execution of the said Will, Tehal Singh was just 50 years old and plaintiff Amrik Singh was aged about 26 years, and as admitted by the plaintiff himself, he left India in the year 1990 and since then was residing abroad. Thus, in the given situation, it could not be inferred that a person, who was aged about 50 years, would execute a Will particularly when he did not suffer from serious ailment or disease. Not just that, Sukhdev Singh (defendant No.7) had filed a

suit against Balwant Kaur and others, wherein plaintiff and the defendants were also parties. Though the plaintiff filed the written statement in the said suit, but he never claimed inheritance of late Tehal Singh on the basis of the alleged Will dated 11.01.1982. Therefore, the only conclusion that could be reached: the plaintiff failed to prove execution of the Will.

Further, the evidence on record showed that Tehal Singh assailed the sale deed dated 11.12.2003 vide Civil Suit No.75 of 11.02.2004 and in the said proceedings a compromise dated 02.02.2005 (Ex.D7) was arrived at between Amardeep Singh (defendant No.1), Tehal Singh and Balwant Kaur. Pursuant to compromise Ex.D7, defendant No.1 paid Rs.2,00,000/- to Tehal Singh and Rs.4,00,000/- to Balwant Kaur. Statement of Tehal Singh was separately recorded in this regard as Ex.D10 and statement of Amardeep Singh (defendant No.1) was recorded as Ex.D11. As a result, the suit filed by Tehal Singh challenging the sale deed dated 11.12.2003 was dismissed as withdrawn. The plea set out by the plaintiff that alleged compromise was a result of fraud as Tehal Singh was confined to bed, remained unproved for lack of evidence. Nothing was brought on record to show that on the date when the compromise was executed i.e. 02.02.2005, he was suffering from any such disability. Even otherwise, the alleged Will, dated 11.01.1982, would have come in the operation post death of Tehal Singh, but vide compromise (Ex.D7) he admitted the execution of the sale deed and settled all disputes qua the suit property with defendants No.1 & 2 during his life time. In the given situation, the only and inevitable conclusion that could be reached: the suit was liable to be dismissed.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at

were either contrary to the record or suffered from any material illegality.
No ground is made out to interfere with the findings recorded by both the Courts.

The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

18.11.2019
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO