

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

RSA No. 444 of 2019 (O&M)

Date of decision : December 16, 2019

Smt. Mahender Devi

.....Appellant

Versus

Smt. Kalawati and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. A.D.S. Sukhija, Advocate
for the appellant.

LISA GILL, J.

Appellant – plaintiff is aggrieved of judgment and decree dated 20.07.2015 passed by the learned Additional Civil Judge (Senior Division), Ellenabad whereby the suit for declaration filed by the appellant – plaintiff has been dismissed as well as judgment and decree dated 05.09.2018 passed by the learned Additional District Judge, Sirsa vide which appeal preferred by the appellant was dismissed.

Brief facts necessary for the adjudication of the case are that suit for declaration was filed by the plaintiff - appellant claiming to be the owner in possession of the land as detailed in the plaint, on the basis of Will dated 18.11.2010 by Smt. Reshmi Devi and further declaration that the alleged Will dated 12.11.2010 registered with the Sub Registrar, Ellenabad by Reshmi Devi in favour of the defendants is null, void and not binding upon the plaintiff. Consequential relief for restraining the defendants from interfering in the peaceful possession of the suit property was sought. It is pleaded that Devi Ram had two wives namely Reshmi Devi and Kamla

Devi. Two daughters namely Kalawati and Saroj i.e. defendants were born out of the wedlock of Devi Ram and Reshmi and from the wedlock of Kamla and Devi Ram, one son Atma Ram (husband of the plaintiff) and daughter Savitri were born. All the three daughters of Devi Ram were married. Devi Ram, it is claimed, died somewhere in the year 2005. Devi Ram and Kamla Devi used to reside with the plaintiff and her husband Atma Ram. Therefore, out of love and affection, Reshmi Devi executed a registered Will dated 30.03.2009 bequeathing the property, which she had received from her maternal family in favour of the plaintiff and her husband Atma Ram in equal shares. However, as the daughters of Reshmi Devi were unhappy. Feeling an apprehension of a dispute, Reshmi Devi transferred some property in favour of her son Atma Ram, which is reflected in decree dated 15.10.2010 passed in Civil Suit No. 408-C dated 05.10.2010 titled as Atma Ram versus Smt. Reshmi Devi. Land measuring 155 kanal 03 marlas was transferred by way of this decree in favour of Atma Ram by Reshmi Devi and suit land measuring 30 kanals 17 marlas was left. Plaintiff was assured by Reshmi Devi that the remaining land would be gifted to her, but after some time. Reshmi Devi fell sick. Defendants – Kalawati and Saroj on the pretext of taking Reshmi Devi to a doctor, took her to the office of Sub Registrar, Ellenabad and alleged Will dated 12.11.2010 was prepared and registered in their favour. It is further pleaded that when Reshmi Devi came to know about the same, she expressed her resentment and at the same time secretly got scribed Will dated 18.11.2010 from one Ram Niwas son of Ram Partap. This Will was handed over to Ram Niwas to be delivered to the plaintiff after the death of Reshmi Devi. Reshmi Devi died on 21.11.2010. Mutation of the suit property was sought on the basis of Will dated

18.11.2010 by the plaintiff. The defendants opposed the same and produced the forged and fictitious Will dated 12.11.2010. It is, thus, prayed that the alleged Will dated 12.11.2010 be set aside. Thus, the suit was filed.

Both the defendants contested the suit while filing the written statement. Various preliminary objections were raised. It is admitted that Devi Ram had solemnised two marriages but both the wives are stated to be residing separately without having any relationship amongst them. It is stated that the earlier Will was executed by Reshmi Devi under undue influence of the plaintiff and her husband, the said Will was later cancelled and another Will dated 12.11.2010 was executed by Reshmi Devi in favour of her daughters. Will dated 18.11.2010 is claimed to be a forged and fabricated document based on misrepresentation of facts. Dismissal of the suit was prayed for.

Defendant No. 3 Atma Ram i.e. the husband of the plaintiff was proceeded exparte on 19.01.2011.

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

1. Whether the plaintiff is entitled to a decree of declaration as prayed for?OPP.
2. Whether suit of the plaintiff is not maintainable in the present form? OPD.
3. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD.
4. Whether the plaintiff has concealed and suppressed the true and material facts from the Court?OPD
5. Whether the plaintiff is estopped from filing the present suit by his own act and conduct?OPD
6. Whether the Civil court has no jurisdiction to try the present suit?OPD

7. Whether the suit of plaintiff is bad for non-joinder and mis-joinder of necessary parties?OPD

8. Relief.

Evidence was led by both the parties.

Learned trial Court on considering the evidence on record concluded that Will dated 18.11.2010, an unregistered Will, was surrounded by suspicious circumstances, which could not be dispelled by the plaintiff. It is observed that Reshmi Devi passed away on 21.11.2010. Therefore, it is clear that on 18.11.2010, she was in a very fragile state of health as the plaintiff herself has admitted Reshmi Devi to be sick at that time. Reshmi Devi, it is observed, was unlikely to have picked up people randomly from the neighbourhood and executed Will dated 18.11.2010 and equally strange was held to be the conduct of the three witnesses i.e. two attesting witnesses and the scribe not telling the plaintiff and her husband about the Will. Will dated 12.11.2010, executed and registered at serial No. 102 in the office of Sub Registrar, Ellenabad was held to be the last valid Will of Reshmi Devi. Consequently, the suit was dismissed.

Appeal preferred by the present appellant was dismissed by the learned Additional District Judge, Sirsa. Learned Additional District Judge concluded that Will dated 30.03.2009 in fact was never acted upon, neither is there any pleading or evidence by the plaintiff in this respect. Learned Additional District Judge concluded that both Wills dated 12.11.2010 and 18.11.2010 are not proved on record. Therefore, the property shall be inherited by the respondents - Kalawati and Saroj being the only legal heirs of Reshmi Devi. Appeal filed by the appellants was dismissed by the learned Additional District Judge, Sirsa vide judgment dated 05.09.2018.

Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant argues that both the learned courts below have erred on facts and in law in dismissing the suit filed by the plaintiffs. It is argued that Will dated 12.11.2010 is surrounded by suspicious circumstances even though it is registered. It has come on record that the testator kept sitting in the car all the time. Reference is made to the testimony of DW1 Saroj in this regard. It is further submitted that DW1 has admitted that the scribe had good relations with her mother and they were frequent visitors being neighbours, therefore, there is no question of any suspicious circumstance surrounding Will dated 18.11.2010.

Learned counsel also refers to the testimony of DW1 Saroj to the extent that she accepts being told by her mother about cancellation of Will dated 30.03.2009 executed by her in favour of the plaintiff and her husband – Atma Ram. It is vehemently argued that in case Will dated 12.11.2010 is also proved to be surrounded by suspicious circumstances, Will dated 30.03.2009 in favour of the plaintiff and her husband automatically comes into play. Therefore, in any case, the plaintiff would be entitled to the property in question to the extent as bequeathed upon her by Will dated 30.03.2009. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 20.07.2015 passed by the learned Civil Judge (Senior Division), Ellenabad as well as judgment and decree dated 05.09.2018 passed by the learned Additional District Judge, Sirsa be set aside and suit filed by the appellant be decreed throughout.

I have heard learned counsel for the appellant and have perused the file as well as a photocopy of some of the record furnished by learned counsel in Court today.

The relationship between the parties is not in dispute. The

plaintiff, who is the wife of Atma Ram i.e. son of Devi Ram and Kamla stakes a right to the property in question, on the basis of Will dated 18.11.2010. It is not denied that the property in question is the property which Reshmi Devi had got from her maternal family and not from her husband. Will dated 18.11.2010, admittedly an unregistered Will, has been discarded correctly by the learned Additional District Judge. Reference has been made to the suspicious circumstances surrounding Will dated 18.11.2010 by the learned Additional District Judge in para 21 of the impugned judgment. It is observed that the said will (Ex.P6) reveals that thumb impressions of Reshmi Devi were obtained on blank paper and thereafter the same converted into a Will. Reference is also made to uneven spacing between the lines of the Will. It is a matter of record that the earlier two Wills were registered instruments thereby indicating that Reshmi Devi was very well aware of the process of registration of a Will. Though there is no bar to acceptance of an unregistered Will per se, the attending circumstances in this case indeed point to the Will being shrouded in suspicious circumstances, thereby impinging upon its genuineness.

Learned Additional District Judge has held that the original Will dated 12.11.2010 was not produced by the defendants, neither is it pleaded in the written statement that the same has been lost and no application was moved for proving the Will by way of secondary evidence. The said Will has been ignored on the ground that only certified copy of the same was produced without prior permission of the Court, therefore, examination of the scribe as well as the attesting witnesses of the said Will is irrelevant. In this view of the matter, learned Additional District Judge, Sirsa has rightly proceeded to hold that the property held by Reshmi Devi

would, thus, devolve by way of natural succession upon her only legal heirs i.e. respondents No. 1 and 2. Learned counsel for the appellant is unable to point out any infirmity in this finding.

Argument raised by learned counsel that in any case once both the wills dated 12.11.2010 and 18.11.2010 have been disbelieved, the first Will dated 30.03.2009 in favour of the plaintiff and her husband would come into play and property should devolve as per the said Will. This argument is rejected being untenable as registered Will dated 30.03.2009 cannot be relied upon by the plaintiff to claim title to the property as it is a clear cut case of the plaintiff herself that as certain objections had been raised by the defendants, the said Will dated 30.03.2009 was never acted upon and Smt. Reshmi Devi subsequent thereto herself transferred land measuring 155 kanals 3 marlas to Atma Ram, husband of the plaintiff, by way of decree dated 05.10.2020. This land was admittedly a part of the property allegedly bequeathed by Reshmi Devi vide Will dated 30.03.2009. It is the remaining property of 30 kanal 17 marlas which Reshmi Devi had received from her parental family, which has devolved upon the defendants. The appellant's suit has been rightly dismissed.

In my considered opinion, no question of law much less a substantial question of law, is involved for consideration in this appeal.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 20.07.2015 passed by the learned Additional Civil Judge (Senior Division), Ellenabad as well as judgment and decree dated 05.09.2018 passed by the learned Additional District Judge, Sirsa be set aside which calls for any interference by this Court in second appeal.

No other argument has been addressed.

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

December 16, 2019
rts

(Lisa Gill)
Judge

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