

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

RSA-1542-2020 (O&M)
Date of Decision:- 17.9.2020

Kanwal Sandhu

... Petitioner

Versus

Kanwaljeet Kaur and another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Vijay Lath, Advocate, for the appellant.

(Proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J.

1. The appellant/plaintiff Kanwal Sandhu has preferred this appeal challenging judgment dated 3.3.2020 passed by learned District Judge, Chandigarh whereby an appeal filed by the appellant against judgment dated 20.11.2017 passed by Civil Judge (Jr. Division), Chandigarh has been dismissed.
2. The appellant had filed a civil suit against his brother's wife Ms. Kanwaljeet Kaur, seeking a declaration to the effect that WILL dated 3.4.2002 executed by the appellant's brother Sh. Madan Mohan Singh Sandhu was genuine and valid and that as per the said WILL

the ownership of dwelling unit No.3035, Sector 47-D, Chandigarh devolved upon the appellant/plaintiff. The plaintiff also sought a permanent injunction restraining respondent No.2 i.e. Chandigarh Housing Board from transferring the aforesaid property in favour of respondent/defendant Ms. Kanwaljeet Kaur. The case set up by the plaintiff was that his brother Sh. Madan Mohan Singh Sandhu had been keeping unwell due to some heart ailment and had even resided with him in Delhi and that the plaintiff had been serving him and on account of which Sh. Madan Mohan Singh Sandhu had executed WILL dated 3.4.2002 bequeathing his 1/4th share in the ancestral property i.e property bearing No.42, Sandesh Vihar, Pitampura, Delhi in favour of plaintiff's son namely Charan Kamal Sandhu while bequeathing Flat No.3035, Sector 47-D, Chandigarh, in favour of the plaintiff. The plaintiff averred that the said WILL was in fact even signed by defendant Kanwaljeet Kaur as an attesting witness. Plaintiff averred that on 19.5.2002 the defendant/respondent Kanwaljeet Kaur informed her that Sh. Madan Mohan Singh Sandhu has expired. Subsequently when the plaintiff, on the basis of WILL dated 3.4.2002 called upon the tenant of the property i.e. Flat No.3035, Sector 47-D, Chandigarh to pay the rent, the tenant informed that there was in fact a WILL of Sh. Madan Mohan Singh Sandhu, executed in the month of May, 2002 bequeathing the property in favour of the defendant/respondent and that it is the defendant who had been claiming rent from the tenant.

3. On the other hand, the respondent in a reply denied the case set up by the appellant/plaintiff wherein the assertion of the plaintiff that defendant's husband had been residing with the appellant in Delhi was specifically denied. The defendant took a stand that in fact the plaintiff and his son have also filed a suit for declaration and permanent injunction in May, 2005 which was still pending. The defendant while denying the factum of execution of WILL dated 3.4.2002 took a stand that in fact there is a WILL executed by the deceased Sh. Madan Mohan Singh Sandhu which was registered on 11.9.2002. Defendant No.2, Chandigarh Housing Board also filed its written statement wherein it took a stand that Chandigarh Housing Board has received a legal notice from Mr. Jasbir Tyagi, Advocate that WILL dated 16.5.2002 in favour of the defendant is a forged WILL and that a civil suit i.e. Civil Suit No.151/2005 was already pending in a Civil Court at Delhi. The parties were put to proof on the following issues:

- “1. Whether plaintiff is entitled for declaration as prayed for? OPP
2. Whether plaintiff is entitled for permanent injunction as prayed for? OPP
3. Whether suit is not maintainable? OPD
4. Whether this Court has no jurisdiction and entertains the present suit? OPD.
5. Relief.”

4. The appellant/plaintiff Kanwal Sandhu, in order to substantiate her case, herself stepped into the witness box as PW-1 and also examined

PW-2 Kiranjeet Kaur, Jr. Assistant, Chandigarh Housing Board and
PW-3 Jasbir Tyagi, Advocate.

5. On the other hand defendant Kanwaljit Kaur herself stepped into witness box as DW-1 and also examined DW-2 Mohinder Dhawan, DW-3 Parveen Kumar Rana, UDC, Office of Sub Registrar, Kashmiri Gate, Delhi and DW-4 Baljit Kaur, Sr. Assistant, Chandigarh Housing Board.
6. Learned trial Court upon appraisal of the evidence on record returned its findings on issues No.1 and 2 against the plaintiff and in favour of the defendants. Issue No.3 as regards the maintainability was also decided against the defendants. Issue No.4 was decided against the defendants and consequently the suit was dismissed by learned Civil Judge (Jr. Division), Chandigarh vide its judgment and decree dated 20.11.2017. The said judgment was challenged by plaintiff/appellant by way of filing an appeal before the District Judge, Chandigarh, but the same was also dismissed vide judgment and decree dated 3.3.2020 which has been impugned by way of filing the present appeal.
7. Learned counsel for the appellant while assailing the impugned judgments and decrees has submitted that the learned trial Court as well as lower Appellate Court fell in error in discarding the testimony of PW-3 Jasbir Tyagi on the ground that the same could not be treated at par with the testimony of an attesting witness although the said witness was very much present at the time of the attestation and registration of the WILL in question. Learned counsel has further

submitted that the Courts below also fell in error in holding that the suit was filed beyond limitation whereas the cause of action for filing the present suit accrued to the plaintiff on 6.11.2012 when defendant No.1 attempted to get the property transferred in her name from Chandigarh Housing Board, Chandigarh in her favour and the suit came to be filed in the year 2014.

8. I have considered aforesaid submissions addressed before this Court. A perusal of WILL dated 3.4.2002, which has also been annexed with this appeal as Annexure A-1 would show that while Davinder Singh Sandhu and Kanwaljeet Kaur (defendant) are shown to have signed as attesting witnesses, Sh. Jasbir Tyagi has signed below their signatures and has also affixed his rubber-stamp apparently in the capacity of a scribe. While one can appreciate that the plaintiff would not have been able to get Kanwaljeet Kaur (defendant) depose in her favour but it remains unexplained as to why the plaintiff could not examine the other attesting witness namely Devinder Singh Sandhu. No doubt the plaintiff has examined the scribe Sh. Jasbir Tyagi, but the testimony of the scribe cannot be substituted for testimony of an attesting witness especially when it is not the case that the attesting witness Devinder Singh Sandhu had expired or was otherwise not available at all. In these circumstances, this Court does not find any reason to differ with the concurrent findings of the Courts below to the effect that the plaintiff has been unable to prove the genuineness of the WILL as he had been unable to examine any of the two attesting witnesses.

9. As regards the issue of limitation, while the appellant has taken a stand that it is in the year 2012 that the cause of action accrued with him for filing the instant suit when the defendant tried to get the property in question transferred in her name from Chandigarh Housing Board, but the said contention cannot be accepted inasmuch as the appellant had earlier filed a civil suit in Civil Courts at Delhi, based on same WILL, which was subsequently withdrawn by him and thus the instant suit filed in the year 2014, based on same WILL dated 3.4.2002 is time-barred. The suit, in any case has also been dismissed on merits by the trial Court and the findings to said effect have been affirmed by lower Appellate Court and as already discussed above, the same do not call for any interference.
10. Finding no merit in the appeal, the same is hereby dismissed.

September 17, 2020

mohan

**(GURVINDER SINGH GILL)
JUDGE**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No