

RSA-4844-2019 (O&M)

(1)

**Serial No. 122
IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA-4844-2019 (O&M)
Date of Decision: 10.02.2020**

KULVINDER KAUR & ANR.

.... Appellants

Versus

BALDEEP SINGH

... Respondent

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr.Sumit Gupta, Advocate
for the appellants.

ARUN MONGA, J.(ORAL)

1. The present Regular Second Appeal has been filed by the defendants having suffered adverse findings by both the Courts below. Impugned herein are the judgment and decree dated 18.01.2016 passed by the Trial Court and the judgment and decree dated 24.07.2019 passed by the First Appellate Court.

2. The respondent-plaintiff filed a suit for declaration to the effect that the mutation of inheritance dated 28.02.2011 of the suit property owned by the deceased Smt.Chand Kaur in favour of defendant No.1 (appellant No.1 herein) and subsequent release deed dated 15.03.2011 executed by defendant No.1 in favour of defendant No.2 (appellant No.2 herein) is illegal, null and void. The respondents-plaintiff had set up his case on Will dated 26.05.1999 executed in his favour by the deceased Smt.Chand Kaur who expired on 09.12.2008 and her husband pre-deceased her on 19.09.1981. Both the courts below had accepted the claim of the plaintiff-respondent and decreed the suit in his favour.

3. Succinct factual matrix, as noticed by the courts below is that

the deceased Smt.Chand Kaur (nani) was recorded as owner of the suit property. Defendant No.1 (mother of plaintiff) is the only child of the deceased. Plaintiff is the son of defendant No.1 and grandson of the deceased. Plaintiff was brought up by the deceased and even after the marriage of the plaintiff, he alongwith his wife resided with the deceased and she had great love and affection for the plaintiff. Out of love and affection the deceased had executed a Will dated 26.05.1999 in favour of the plaintiff regarding all her properties including the suit land. The same was registered on 26.05.1999, thereafter, the testator Smt.Chand Kaur expired on 09.12.2008. In the year 2012, when the plaintiff approached the patwari to get the mutation sanctioned, he learnt that mutation of inheritance has already been entered in the name of defendant No.1 on 28.02.2011. The plaintiff also came to know that defendant no.1 has transferred the suit property in the name of the defendant No.2 vide registered release deed dated 15.03.2011. The defendants admitted the fact that the deceased had no male issue and defendant No.1 is the only child of the deceased. It was pleaded that after Chand Kaur's death, the property was inherited by defendant No.1 being the legal heir. Defendant No.1 being the rightful owner of the suit property, therefore, she has right to transfer the same to anybody and hence the registered release deed is valid. The defendants denied all the averments execution of will in favour of the plaintiff.

4. Based on the rival pleadings following issues were framed by the trial Court:

1. *Whether the plaintiff is entitled to a decree for declaration with consequential relief of permanent injunction as prayed for? OPP*
2. *Whether the suit of the plaintiff is not maintainable? OPD*
3. *Whether the plaintiff has got no locus standi as well*

as cause of action to file and maintain the present suit? OPD

4. Whether the plaintiff has suppressed the true and material facts from the court?

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

6. Relief.

5. Parties to the suit adduced their respective evidence in support of their pleadings and to discharge the onus of proof as per issues *ibid*.

6. All the issues were decided in favour of the plaintiff and against the defendants by the trial Court, after due appraisal of the evidence led by the parties. In the first appeal, the findings of the trial Court were re-affirmed and the judgment passed by it was upheld and resultantly, the first Appeal filed by the defendants was dismissed.

7. I have heard the learned counsel for the appellants herein and I am of the view that the present Regular Second Appeal is bereft of any merit and is liable to be dismissed.

8. The plaintiff's claim of ownership of the suit property is by virtue of registered Will dated 26.05.1999. The due execution of the Will has been proved through the testimony of PW-3 Arjun Singh, one of the attesting witnesses who appeared in the witness box and identified his signatures on the Will. Defendants failed to point out anything which will bring the registered Will under the web of doubt. The defendant also failed to show that there was no love and affection between testator and the plaintiff and the said will is a procured document or is the result of fraud. Plea of fraud cannot be proved merely on the testimony but can be proved on the basis of cogent evidence. The onus of proving the will is on the propounder. Execution of the will is to be proved and at least one attesting witness is required to be examined for proving the execution of the Will.

propounder to explain them. Also the defendant has not taken the plea to the effect that the testator was not in the disposing or fit state of mind at the time of the execution of the will. Hence, it is presumed that she was sound and disposing state of mind at the time of execution of the registered Will. On the date of the death of Smt.Chand Kaur, plaintiff became the owner of her property but no mutation was sanctioned in his favour as according to him he was living in a far off place and was not living in the village. The mutation was sanctioned in favour of defendant No.1 and on its basis she transferred the suit property subsequently to defendant No.2 on the basis of 'Dastbardari Nama'. The validity of the same was challenged by the plaintiff on the grounds that defendant No.1 mis-stated the fact that she and defendant No.2 are related to each other as real brother and sister and the property in question is a joint Hindu family. However, the property does not constitute joint Hindu family. The defendant No.1 claims herself to be the only child of the deceased and yet she stated that defendant No.2 is her brother. The alleged fact is a wrong statement on the basis of which the defendant No.1 had transferred the property in favour of defendant No.2 by executing 'Dastbardari Nama.'

9. In light of the discussion and reasons contained aforesaid and also having perused the grounds of appeal filed herein, I am of the view that no fresh grounds have been raised warranting interference of this Court in present second appeal.

10. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below on appreciation of evidence.

11. Furthermore, neither any question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal before

this Court is involved in present appeal, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

12. Appeal is, accordingly, dismissed.
13. Pending application, if any, shall also stand disposed of.
14. No order as to costs.

10.02.2020

(ARUN MONGA)

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JUDGE

Whether speaking/reasoned

Whether Reportable

Yes/No

Yes/No