

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 4006 of 2012 (O&M)

Date of Decision: 31.01.2020

Surinderpal Singh

... Appellant(s)

Versus

Raghubir Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Pawan K. Mutneja, Advocate
for the appellant.

Mr. Harsh Bunker, Advocate
for respondents No.1 to 3.

Anil Kshetarpal, J.

The plaintiff/appellant has filed the present appeal against concurrent finding of fact arrived at by the Courts below while dismissing the suit filed by the plaintiff for declaration to the effect that the plaintiff along with defendants No.1 to 6 are owners in possession of the property described as Kothi No. 368-R situated at Model Town, Jalandhar to the extent of 1/4th share each along with prayer for partition of the property as also for passing a decree for permanent injunction restraining the defendants No. 1 to 3 from alienating the suit property.

The plaintiff filed the present suit claiming that the property in dispute was owned and possessed by Smt. Kartar Kaur, mother of defendants No.1 to 3, grandmother of the plaintiff and defendants No. 5 & 6 and mother-in-law of defendant No.4. late Smt. Kartar Kaur died in February/March, 1984, whereas her husband Fauja Singh died in the year

1986 at Jalandhar. The plaintiff is son of late Sh. Surjit Singh son of Fauja Singh. Surjit Singh died on 20.06.2001, whereas Fauja Singh died on 03.07.1986. Thus, the plaintiff claimed that he is co-owner of the property.

Defendants No. 1 to 3 contested the suit and pleaded that Smt. Kartar Kaur was never owner of the property and the plaintiff is residing in village Aithwal, Haridwar and hence, never remained in possession of the suit property. It is also asserted that the plaintiff or his father never claimed ownership before filing the suit. The defendants No.1 to 3 pleaded that the suit property was owned and possessed by Fauja Singh, who had bequeathed the same in favour of defendants No. 1 & 2 by a registered Will dated 24.01.1985. The aforesaid registered Will was read over by defendant No.2 on 17.07.1986 at the final rites of Fauja Singh in the presence of late Surjit Singh, defendants No. 3 to 6 and other relatives, but no one objected thereto. It was further pleaded that the plaintiff is estopped by his act and conduct as he has already sold one acre of land inherited from his grandfather Fauja Singh on the basis of the Will dated 24.01.1985.

The suit was filed after a lapse of 19 years from the date of death of Fauja Singh i.e. on 19.03.2005 .

Since both the attesting witnesses had by then died, therefore, B.N.Chopra son of late Sh.Tirath Ram Chopra (attesting witness who had died) was examined who identified the signatures of his father on the Will. Apart from that, Gurminder Singh, Advocate has been examined, who is son of the Scribe. He also identified the signatures of his father. Balbir Kaur, official from the office of the Sub Registrar has also been examined.

On appreciation of evidence, both the Courts below have

dismissed the suit.

This Court has heard learned counsel for the parties and with their able assistance, gone through the judgments passed by the Courts below and the record.

Learned counsel for the appellant has submitted that since both the attesting witnesses have not been examined, therefore, the Will is not proved. He submitted that under Section 68 of the Indian Evidence Act, 1872 (hereinafter referred to as “the Act”), it is mandatory to examine one witness. On the other hand, learned counsel for respondents No.1 to 3 has pointed out that since the plaintiff has never challenged the registered Will for a period of 19 years and the entire basis on which the present suit has been filed is factually incorrect, therefore, the Courts below have rightly dismissed the suit. He further submitted that even no issue on validity of the Will has been got framed or sought before the Courts below. He further submitted that in view of the facts and circumstances of the case, the Will has been proved in accordance with the provisions of Section 69 of the Act, which provides that if none of the witness is alive or available, subject to the jurisdiction of the Court, the Will can be proved by leading other evidence. He, hence, submitted that the judgments passed by the Courts below are required to be upheld.

On consideration of the matter, this Court is of the considered view that the present appeal is liable to be dismissed for the following reasons:-

- i) The plaintiff has filed the present suit claiming that Smt.

Kartar Kaur was owner of the property, which is found to

be factually incorrect. Thus, the whole case set up in the plaint is factually incorrect.

- ii) The plaintiff never prayed for or got framed an issue with regard to validity of the registered Will. A perusal of the issues framed, which are extracted as under, it is apparent that the plaintiff has filed the present suit on an entirely different ground and now the learned counsel for the appellant is trying to make out a new case.

- “1. Whether the plaintiff is entitled to declaration as prayed for? OPP*
- 2. Whether the plaintiff is entitled for the separate possession by way of partition along with the defendants No. 4, 5 & 6 to the extent of ¼ share in the Kothi in dispute? OPP*
- 3. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP*
- 4. Whether the suit has not been properly valued for the purpose of Court fee and jurisdiction? OPD*
- 5. Whether the Court has no jurisdiction to entertain and try the present suit? OPD*
- 6. Whether the plaintiff has no locus standi to file the present suit? OPD*
- 7. Whether the suit has not been filed within the period of limitation? OPD*
- 8. Whether the plaintiff is estopped by his own act*

and conduct to file the present suit? OPD

9. *Relief”.*

- iii) Still further, even after lapse of 19 years, the defendants have produced B.N.Chopra son of late Sh. Tirath Ram Chopra (attesting witness of the Will). He has identified the signatures of his father late Tirath Ram Chopra on the Will. Apart from that, an official from the office of Sub Registrar, where the Will was registered, has been examined. Gurminder Singh, Advocate has also been examined to prove that the Will was scribed by his father. The defendants have also produced Arvind Sood, Handwriting Expert, who has confirmed the signatures of Fauja Singh on the Will in dispute after comparing it with the standard signatures of the testator. As per his opinion, the standard signatures of late Sh. Fauja Ram are tallying/matching with the signatures on the alleged Will. No doubt, Section 68 mandates the propounder to examine at least one attesting witness if there be an attesting witness alive, subject to the process of the Court and capable of giving evidence. Thus, Section 68 itself provides for exceptions. Still further, Section 69 deals with situation when no attesting witness can be found. In such circumstances, attestation of one attesting witness, at least, in his handwriting, is required to be proved. The signatures of the executant/testator is in the handwriting

of that person is also required to be proved. Both the requirements have been fulfilled in the present case.

Keeping in view the aforesaid facts, there is no ground to interfere.

Dismissed.

The miscellaneous application(s), if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

January 31, 2020
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No