

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

**RSA NO. 751 OF 2013 (O&M)
DATE OF DECISION : 12.02.2020**

**Jogindro @ Joginder Kaur (since deceased)
through legal heirs and others**

...Appellants

versus

Surinder Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. P. S. Chauhan, Advocate,
for the appellants.

Mr. Shoaib Khan Advocate,
for the respondents

ARUN MONGA, J. (ORAL)

Having suffered adverse concurrent findings by both the Courts below, the plaintiffs are in second appeal before this Court to assail the trial Court judgment and decree dated 20.10.2011, as upheld by the First Appellate Court vide judgment and decree dated 21.01.2013, whereby the plaintiffs/appellants' suit seeking declaration that the Will dated 12.04.1994 executed by mother of plaintiff No.1 is illegal, null and void, was dismissed.

2. Briefly stated, the facts of the case as noted by the First Appellate court are that the appellants and defendants No.1 to 5 (respondents No.1 to 5) were/are related to deceased Smt.Dwarki Devi. For better appreciation of the inter-se

relationship, the pedigree table of the family is reproduced as below :

Achhar				
/				
Ram Kishan (died)				
/				
Dwarki Devi wd/o Ram Kishan (died)				
1	2	3	4	5
Surinder Singh (def.No.1)	Mohinder (expired)	Hakam Singh (expired)	Jogindro @ Joginder Kaur	Mahindro @ Mohinder Kaur
	/	/	/	(expired)
	Inderjit (def. No.2)	Prem Kaur (wife) (def. No.4)	(Plaintiff No.1)	/
		/		Ranjit Singh
		/		Sarjit Singh
				Avtar Singh
	Swaran Singh (def. No.3)	Gurcharan Singh (expired)		Amarjit Kaur
		Madhu Saini (widow) (def. No.5)		(Plaintiffs No.2 to 5)

3. The deceased-Dwarki Devi is stated to have inherited the suit land, as detailed in the head note of the plaint from her father late Shri Ram Kishan. She died on 27.05.1994, leaving behind her relations, as detailed in the aforesaid pedigree table. The plaintiffs claim that they are entitled to inherit 1/5th share out of the suit land by way of natural succession being legal heirs of deceased Dwarki Devi. They alleged that defendant No.1-Surinder Singh in collusion with his brother and other legal heirs, had got a mutation sanctioned in his favour on the basis of Will dated 12.04.1994, allegedly executed by deceased Dwarki Devi. The plaintiffs claim that the said will was never ever executed and that Dwarki Devi died intestate and during her life time the

suit land was acquired by the State of Haryana. The execution proceedings qua compensation of the land acquisition were filed by defendants No.1 to 5. Later on, the objections were also filed by the plaintiffs in execution proceedings before the Land Acquisition Court but the payment qua compensation was illegally received by the defendants on the basis of mutation and will. Hence, the suit for declaration, *inter-alia*, seeking entitlement to receive compensation to the extent of 1/5th share qua the acquired land.

4. In the written statement filed by the defendants, defence was taken that Smt. Dwarki Devi was the absolute owner of the suit land and was fully competent to execute her Will dated 12.04.1994, whereby the suit land was bequeathed in favour of her three sons namely Surinder Singh, Mohinder Singh and Hakam Singh. The mutation entries were got carried out based on the testamentary succession in favour of her sons. Since the suit land was acquired and therefore, the compensation was rightly received by the beneficiaries of the Will qua the said acquisition. The suit was, therefore, liable to be dismissed.

5. Replication to the written statement was filed controverting the pleas taken in the written statement and reiterating the contents of the plaint.

6. Based on the rival pleadings of the parties, following issues were framed by the trial Court vide its order dated 02.11.2006 and 27.11.2010 :-

- 1) Whether the Will dated 12.04.1994 alleged to be executed by late Smt. Dwarki Devi wd/o Ram Kishan in favour of defendant No.1, father of defendant No.2 and father of defendant No.3 and husband of defendant No.4 and mutation No.1975 sanctioned on 26.07.1994 are illegal, null and void, forged, fabricated and not binding upon the rights of the plaintiff and liable to be set aside? OPP
- 2) Whether the plaintiff is entitled for the relief of permanent injunction as prayed for ? OPP
- 3) Whether the plaintiff is entitled to get compensation award to the extent of 1/4th share as fully detailed in the head note of the plaint? OPP
- 3-A) Whether the plaintiffs are entitled to get compensation award to the extent of 1/5th share each out of the total award which was decided by the Hon'ble High Court of Punjab & Haryana, Chandigarh on 08.10.2003 vide notification for total and measuring 2 kanals 7 marlas acquired for HSB-Uttari Haryana Bijli Vitran Nigam Limited (defendant No.7) ? OPP
- 4) Whether the suit of the plaintiff is not maintainable in the present form ? OPD
- 5) Whether the plaintiff has not come to the Court with clean hands? OPD

- 6) Whether the plaintiff has no locus standi to file the present suit ? OPD
- 7) Whether the suit of the plaintiff is barred by limitation ? OPD
- 8) Whether the suit is barred under Section 41 (h) of Specific Relief Act, as alleged ? OPD
- 9) Whether the suit is not liable to be stayed under Section 10 of CPC ? OPD
- 10) Whether the suit of the plaintiff has become infructuous, as alleged ? OPD
- 11) Whether the suit of the plaintiff is not properly value for the purpose of court fee and jurisdiction ? OPD
- 12) Whether Smt. Dwarki was the absolute owner in possession of the suit property and she bequeathed all rights of suit property in favour of her three sons, as alleged ? OPD
- 13) Whether the plaintiff is estopped by his own act and conduct to file the present suit ? OPD
- 14) Relief.

7. The parties to suit adduced their respective oral as well as documentary evidence in support of their pleadings and to discharge their onus as per the issues framed *ibid*.

8. Having perused the pleadings and after going through the evidence adduced by the parties, the trial Court dismissed the suit with costs. Appellant also failed in first appeal. The relevant reasoning and findings given by the First Appellate Court are extracted herein below :

"16. In the present case the entire controversy revolves around the Will Ex.D1 dated 12.04.1994 which was said to have been executed by Dwarki in favour of her three sons Hakam Singh, Mohinder Singh and Surinder Singh by excluding her daughter Joginder Kaur. The core issue involved, therefore, is as to whether the aforesaid Will of Dwarki Devi was surrounded by any suspicious circumstance and whether the same was forged, fabricated or it was validly executed by Dwarki Devi. The said Will had been challenged by Jogindro one of the daughter of Dwarki Devi who had been excluded from the said Will and besides her, Surjit Singh and other sons and daughters of her daughter being original plaintiffs No.2 to 5 also challenged the Will being legal heirs of Mahindro one of other daughter of Dwarki Devi.

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18. The Will in the present case was executed by Dwarki who was a female Hindu and as per Section 14 of the Hindu Succession Act, 1956, any property possessed by a Female Hindu whether acquired before or after the commencement of the Act is held by her as full owner thereof. As per original plaintiffs, Dwarki Devi inherited the suit land from her father Ram Kishan and by virtue of provision of Section of 14 of Hindu Succession Act, she was the absolute owner and accordingly was competent of bequeath the suit

property. As far as the execution of the impugned Will is concerned, the same stood proved from the testimony of PW.2 Babu Ram who was one of the attesting witnesses of the impugned Will Ex.D1. He though was examined by the plaintiffs before the trial Court, in his cross examination clearly deposed about due and valid execution of the impugned Will Ex. D1 by Dwarki in favour of her sons. As per provision of Section 68 of Indian Evidence Act, since the Will is required to be attested, hence, at least one attesting witness is required to be examined to establish the due execution of the Will. The said evidence has come on record in the shape of testimony of PW.2 Babu Ram. The impugned Will is also a registered document and though the registration of Will is not compulsory still coupled with the testimony of PW.2 Babu Ram, the registration of the Will adds element of genuineness in the same. Though it was argued by learned counsel for the appellants that daughters were wrongly excluded by Dwarki Devi in the impugned Will but Dwarki Devi being the absolute owner was free to bequeath her property in the manner she liked and due execution of the Will having been proved as per law, the impugned Will cannot be disbelieved merely on the count that Dwarki Devi excluded her two daughters from the Will. In this regard, reliance is also placed upon judgment bearing citation Smt. Sushila Devi v. Pandit Krishan Kumar (supra) relied by learned counsel for respondents No.1 to 5. Though it was also argued that in the application Ex.P8 filed before the Hon'ble High Court, there was no reference to the impugned Will by the sons of Dwarki Devi but it has been rightly observed by learned trial Court that in view of the proof of valid

execution of the Will, the same cannot be doubted merely on the ground that it was not referred in the application Ex.P8 filed before the Hon'ble High Court. The judgments relied upon by learned counsel for the appellants are not applicable to the aforesaid facts of the present case because in the present case, the valid execution of the Will Ex.D1 was satisfactorily established from the evidence on record."

9. I have heard rival contentions of learned counsels for the parties and have perused the judgments passed by the Courts below *vis.a.vis* the evidence adduced by the parties.

10. This Court is of the view that the grounds raised in the present second appeal are not worthy of any interference by this Court with the well reasoned findings returned by the trial Court, which have been rightly affirmed by the First Appellate court.

11. There seems to be no perversity or illegality in the concurrent findings of facts returned by the Courts below by appreciation of evidence. No interference is thus warranted to disturb the concurrent findings of facts recorded by the Courts below.

12. 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 Code of Civil Procedure.

recorded therein, the appeal is dismissed being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by the Courts below are upheld.

- 14. Pending applications, if any, also stand disposed of.
- 15. No order as to costs.

(ARUN MONGA)
JUDGE

FEBRUARY 12, 2020
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- 1. Whether speaking/reasoned : Yes/No
- 2. Whether reportable : Yes/No