

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

RSA-434-2021 (O&M)
Date of Decision: 15.11.2021

BABLI BAI AND ANOTHER

.....Appellants

Versus

SHEELA BAI

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Rajesh Lamba, Advocate
for the appellants.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are addressed as per recitals
before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts
below, the defendants are in second appeal before this Court assailing the
trial Court judgment and decree dated 18.07.2017, as upheld by learned First
Appellate Court vide its judgment and decree dated 05.02.2021.

3. Briefly stated, facts as noticed by Courts below are that
plaintiff-respondent instituted a suit for permanent injunction on the
averments that suit property situated in Village Chhainsa, as detailed in para
No.1 of the plaint, was the ancestral property in the hands of Sohail Singh,
father of plaintiff. The mother of plaintiff, namely, Mange Bai was the first
wife of Sohail Singh. He had also solemnized marriage with defendant No.2-

Maya Bai and defendant No.1-Babli Bai was born out of said wedlock. Sohail Singh died on 09.05.2013, leaving behind the plaintiff and defendants as legal heirs. He allegedly executed his last Will dated 19.12.2008 qua the suit property and other properties only in the name of defendants in the equal shares. The mutation of succession on the basis of impugned Will was also sanctioned in favour of the defendants. The impugned Will is illegal, mala fide and contrary to the provisions of Hindu Succession Act and is not binding upon the rights of the plaintiff in the suit property. Upon notice, the defendants appeared and filed their written statement, stating therein, that the suit property was ancestral property in the hands of Sohail Singh. The plaintiff was not given any share in the said Will as Sohail Singh in his life time solemnized marriage of the plaintiff and gave sufficient dowry to her. Said Will dated 19.12.2008 is a registered document and was legally executed by Sohail Singh.

4. Based on the rival pleadings, following issues were framed:

1. Whether the plaintiff is entitled for a decree of permanent injunction as prayed for? OPP.

2. Whether the plaintiff is entitled for a decree of declaration as prayed for? OPP.

3. Whether the suit of the plaintiff is not maintainable? OPD

4. Whether the plaintiff has no locus standi and no cause of action to file the present suit? OPD

5. Whether the plaintiff has not come to the court with clean hands and has concealed true and material facts before this Court? OPD.

6. Whether the suit is liable to be rejected as required under Order 7 Rule 11CPC? OPD

7. Whether the plaintiff has stopped by his own act and conduct by filing the present suit? OPD

8. Relief.

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

6. On appraisal of evidence vis-a-vis pleadings, trial Court decided issue No.1 to 7 in favour of plaintiff and against the defendants.

7. First Appellate Court dismissed the appeal. Hence Regular Second Appeal before this court.

8. I have heard the learned counsel and perused the judgments of both the Courts below. To my mind, judgments under challenge have been rendered after due and correct appreciation of evidence adduced by the respective parties. Learned First Appellate Court while re-appreciating the cogent evidence gave valid reasons as below :-

“15. Case of the appellants-defendants is based upon the Will Ex.P20 and claimed that the same was executed by Sohail Singh on his own will and there was no pressure upon him. It is admitted fact that the Will Ex.P20 is registered one and on the basis of Will Ex.P20, mutation Ex.PW5/I was also sanctioned in favour of the appellants-defendants. As the appellants-defendants are the propounder of the Will Ex.P20, therefore, they have to prove the due execution of the Will. However, the appellants-defendants had not produced any evidence on the file to prove that the Will Ex.P20 was executed by Sohail Singh from his own and there was no pressure upon him. No attesting witness was produced by appellants-defendants in order to prove the due execution of the Will Ex.P20. Two attesting witnesses are required to execute the Will and in order to prove the said Will in the Court, at-least one witness has to be examined. The appellants-defendants had not examined any attesting witness. Even, the appellants-defendants had themselves not appeared in the witness box in order to claim that there was no pressure upon Sohail Singh at the time of execution of the Will Ex.P20. The appellant Sheela Bai has claimed that the Will Ex.P20 was executed under pressure by

Sohail Singh and the appellants-defendants had not led any evidence in order to prove that the Will Ex.P20 was executed by Sohail Singh without any pressure. In these circumstances, the Will Ex.P20 is surrounded by suspicious circumstances and the appellants-defendants had failed to dispel those suspicious circumstances.

16. The learned lower Court had also observed that the Will Ex.P20 is surrounded by suspicious circumstances. Admittedly, the Will Ex.P20 was executed but there is no evidence on the file that the same was executed by Sohail Singh without any pressure or the same was executed by Sohail Singh on his own. The learned lower Court had ignored the Will Ex.P20 and partly decreed the suit of the appellant Sheela Bai. After the death of Sohail Singh, the appellant Sheela Bai and the appellants-defendants became owners of the property in dispute of the deceased Sohail Singh in equal shares. The learned lower Court had considered the evidence led by both the parties in a correct manner and rightly partly decreed the suit of the appellant Sheela Bai.”

9. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. Apart from merits of the case, even otherwise, I am of the opinion that both the Courts below have taken an equitable view. Even otherwise, there is no ground to interfere on merits to disturb the said concurrent findings of the trial Court and the First Appellate Court. No fresh ground worthy of interference in the appellate jurisdiction of this Court is made out.

10. Furthermore, no question of law, much less a substantial question of law, a *sine qua non* for entertaining regular second appeal, is involved herein, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code, 1908.

11. In view of my discussion above and the reasons aforesaid, this appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

12.

Pending application/s, if any, shall also stand disposed of.
13.

No order as to costs.

November 15, 2021

gurpreet

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No

(ARUN MONGA)

JUDGE