

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

RSA No. 1573 of 2021 (O&M)

Date of decision: 22.12.2021

Shakti

...Appellant

vs

Parwati

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Ms. Sonia G. Singh, Advocate, for the appellant.

(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

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

2. Having suffered concurrent adverse findings by the two Courts below, the defendant is in second appeal before this Court assailing the trial Court judgment and decree dated 05.11.2018, as upheld by the learned First Appellate Court vide its judgment and decree dated 12.10.2021.

3. Briefly stated, facts as noticed by Courts below are that plaintiff -Parwati filed a suit for declaration to the effect that the alleged Will dated 20.8.2015 registered on 25.8.2015 is illegal and fraudulent. The husband of the plaintiff i.e Sh Hari Pal @ Hari Dutt was the owner of 4/5 share in 51K 4M land, 1/15 share in land measuring 140K 5M and 3/43 share in land measuring 2K 3M. The plaintiff is Widow of the owner of land and no child was born out of the wedlock. She is the only legal heir. After the death of Hari Pal @ Hari Dutt, defendant got entered the

mutation no. 1519 on the basis of the alleged Will. The plaintiff after coming to know about this fact objected the same by filing an application before Tehsildar, Assandh. On 27.05.2016, the defendant along with some musclemen, who were armed with deadly weapons, came to the suit land and tried to take possession of the suit land forcibly and also threatened to alienate the suit land, but his act was timely frustrated by the plaintiff and her relatives. Thereafter, the suit was filed. The defendant contested the suit by filing written statement. He submitted that he has served Hari Pal @ Hari Dutt in his old age being son. Hari Pal @ Hari Dutt was happy and satisfied with the services rendered by him and therefore he bequeathed his property in his favour.

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

1. *Whether a decree for declaration can be passed in favour of the plaintiff declaring Will bearing registration no. 71/3 of 25.8.15 registered with Sub-Registrar, Assandh on the basis of grounds mentioned in the plaint ? OPP*
2. *Whether deceased Hari Pal has executed the Will 71/3 dated 25.8.15 validly in favour of the defendant? OPD*
3. *Whether suit is not maintainable in the present form? OPP*
4. *Whether plaintiff has no locus standi to file the present suit? OPD*
5. *Whether plaintiff has not come to this Hon'ble Court with clean hands? OPD*
6. *Whether the suit is time barred? OPD*
7. *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, issues No.1 and 2 were decided in favour of the plaintiff and against the defendant. The Will dated 25.08.2015 was termed as null and void. Issues No. 3 to 6 were not pressed by the defendant and decided against him and the suit was decreed in favour of the plaintiff.

7. First Appellate Court dismissed the appeal, hence Regular Second Appeal before this Court.

8. Relevant part of First Appellate Court judgment, with which, inter alia, I am in agreement, is as below:

“XXX XXX XXX

“19. In the light of what has been discussed above, learned Civil Judge committed no error in holding that since Hari Pal alias Hari Dutt had no child or other legal heir to look after his wife after his death and except the suit land there was no source of income for her sustenance, depriving her of the property was a suspicious circumstances, which the defendant had not been able to explain. It is reiterated that the very purpose of execution of Will is to disinherit a legal heir, but there has to be some reason or explanation. There is nothing on record to prove that the plaintiff and Hari Pal alias Hari Dutt were not on good terms. If Hari Pal alias Hari Dutt was in a sound disposing mind and he was not manipulated, he would not have disinherited the plaintiff. It is altogether a different matter that as per recital in the Will, the plaintiff had been paid in cash in lieu of the property, whereas according to DW4, Hari Pal alias Hari Dutt had told him that he wanted to bequeath the entire property in favour of the defendant as he feared that the plaintiff will lose it. Even this appears to be a cooked up version. If Hari Pal alias Hari Dutt actually thought so, he would have made some provision for the plaintiff for her sustenance. Leaving her high and dry is indicative of the fact that either Hari Pal alias Hari Dutt was not in sound disposing mind or, he was under undue influence of the defendant or, he was manipulated. From all angles, the execution of the Will is surrounded by suspicious circumstances. Resultantly, the findings of the learned Civil Judge on issues No. 1 and 2 are affirmed.

20. Time now to take up the argument of the defendant that the plaintiff having admitted that the

subject land is being cultivated by the defendant, she was bound to ask for possession and; that the suit for declaration simplicitor was not maintainable.

21. The argument appears attractive but lacks substance. Hari Pal alias Hari Dutt was one of the co-sharers in the land. So was the defendant in his individual capacity. Therefore, when the plaintiff says that he is cultivating the subject land, she does not mean to say that it is in his exclusive possession. The law is settled that possession of one co-sharer is that of the others. Therefore, the plaintiff was not required to pray for possession. Suffice it was for her to ask for relief of permanent injunction restraining the defendant from alienating the land on the strength of the Will. Therefore, the suit as framed was maintainable. Resultantly, issue No. 3 is answered against the defendant.

22. Issues No. 4 to 6 were pressed neither before the Civil Judge nor in appeal.

23. In view of the discussion foregoing, the appeal is dismissed with costs.....”

9. 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.

10. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

11. Furthermore, no question of law, much less substantial one, a sine qua non for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

12. 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.

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

14. No order as to costs.

22.12.2021

vs

**(ARUN MONGA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No