

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**114****RSA No.507 of 2020 (O&M)****Date of Decision: 26.04.2022**

Varinder Singh

....Appellant

VERSUS

Harinder Kaur and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. R.S. Sidhu, Advocate for the appellant.

ALKA SARIN, J.

The present regular second appeal has been filed by the defendant-appellant challenging the judgements and decrees dated 10.07.2018 and 20.11.2019 passed by the Trial Court and the lower Appellate Court, respectively whereby the suit for declaration filed by the plaintiff-respondent nos.1 and 2 has been decreed.

The brief facts relevant to the present *lis* are that the plaintiff-respondent nos.1 and 2 are the daughters of Sarabjit Singh, the defendant-appellant is the son of Sarabjit Singh while defendant-respondent no.3 is the widow of Sarabjit Singh. Sarabjit Singh died on 24.09.1984 leaving the parties as his heirs. The plaintiff-respondent nos.1 and 2 filed a suit for declaration that they are co-sharers to the extent of ½ share in the suit land left by Sarabjit Singh, he having died intestate. It was pleaded that a Will dated 19.07.1984 being propounded by the defendants was a forged and fictitious document.

The claim of the plaintiff-respondents nos.1 and 2 was resisted by the defendant-appellant by alleging that Sarabjit Singh had executed a Will dated 19.07.1984 in favour of both the defendants i.e. the defendant-appellant (son) and defendant-respondent no.3 (wife) on the basis of which

mutation *qua* the estate of Sarabjit Singh had already been sanctioned in their favour.

Defendant-respondent no.3 filed a written statement submitting that Sarabjit Singh had died intestate and had not executed any Will and that defendant-respondent no.3 was entitled to inherit the estate of Sarabjit Singh along with the other natural heirs i.e. the plaintiff-respondent nos.1 and 2 and the defendant-appellant.

The following issues were framed for trial :

1. Whether the plaintiffs are entitled to the relief of declaration as prayed for ? OPP
2. Whether the suit of the plaintiffs is not legally maintainable in the present form ? OPD
3. Whether the plaintiffs have not come to the Court with clean hands and suppressed material facts from this Court ? OPD
4. Whether the plaintiffs have no cause of action to file this suit ? OPD
5. Whether the plaintiffs have no *locus standi* to file the suit ? OPD.
- 5A. Whether the suit of the plaintiffs is not within limitation ? OPD
- 5B. Whether Sarabjit Singh deceased had executed a Will dated 19.7.1984 in favour of defendants? If so, its effect? OPD
6. Relief.

Vide judgment and decree dated 10.07.2018 the Trial Court decreed the suit of the plaintiff-respondent nos.1 and 2. The Trial Court found that the Will being propounded by the defendant-appellant was never produced before the Court for being proved in accordance with law and it was held that Sarabjit Singh had died intestate. The defendant-appellant filed an appeal challenging the decree dated 10.07.2018 of the Trial Court. However, vide judgement and decree dated 20.11.2019 his appeal was dismissed. Hence, the present regular second appeal.

Learned counsel for the defendant-appellant has contended that the Courts below have erred in decreeing the suit of the plaintiff-respondent nos.1 and 2 and in holding that Sarabjit Singh had died intestate. According to counsel since the mutation Ex.D1 was sanctioned on the basis of the Will dated 19.07.1984 left by Sarabjit Singh hence the existence of the Will stood established. He further contended that the mutation Ex.D1 was proved by DW2 Balwinder Singh, Kanungo and this mutation was not challenged by the plaintiff-respondent nos.1 and 2.

I have heard learned counsel for the defendant-appellant.

Both the Courts below have concurrently found that Sarabjit Singh had died intestate. As such, his estate was to devolve on all the parties to the suit in equal shares. The defendant-appellant has propounded a Will dated 19.07.1984 allegedly executed by Sarabjit Singh. However, this Will has not been produced before the Courts below. Nobody knows what the contents of this alleged Will are, who signed it and who witnessed it. Once the defendant-appellant had set-up a Will, he ought to have produced the same before the Courts in his evidence. Though counsel for the defendant-appellant has laid much stress on the fact that mutation Ex.D1 was

sanctioned on the basis of the Will dated 19.07.1984 which proved the existence of the Will, this argument does not impress the Court. The mutation Ex.D1 was proved by DW2 Balwinder Singh, Kanungo. The mutation entry ought to have been made after a copy of the Will was submitted to the revenue authorities. However, DW2 Balwinder Singh, Kanungo came to Court as a witness without the relevant record though he stated that the documents relating to mutation of Will and death certificate of Sarabjit Singh are lying in the office. In the absence of material evidence this Court is unable to accept that a Will dated 19.07.1984 was executed by Sarabjit Singh. In any event, a mere mutation cannot substitute the provisions of the Evidence Act, 1872 regarding mode of proof of a Will.

The defendant-appellant had to stand on his own feet and prove the case set-up by him. In the present case, besides the mutation Ex.D1, not an *iota* of evidence was produced by the defendant-appellant to show that Sarabjit Singh had executed and left behind a Will dated 19.07.1984. Counsel for the defendant-appellant could offer no explanation as to why the Will or even its copy was not produced in evidence. Even the mother of the defendant-appellant and the widow of Sarabjit Singh did not support the stand taken by him. During the course of hearing, learned counsel for the defendant-appellant failed to point out any patent illegality or perversity in either of the judgments rendered by both the Courts below. He also could not refer to any question of law, much less a substantial question of law, which arose in the present regular second appeal.

No other point has been argued. No question of law, much less any substantial question of law, arises in the present case.

In view of the above, I do not find any illegality and infirmity in the judgments and decrees passed by the Courts below. The regular second appeal is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

**(ALKA SARIN)
JUDGE**

**26th April, 2022
jk**

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO