

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1274-2020 (O&M)

Date of Decision : 10.05.2022

Kanwaljit Kaur

.....Appellant

Versus

Gurbax Singh (deceased through his LRs) & Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Mandeep S. Bedi, Senior Advocate with
Ms. Gagandeep Kaur, Advocate for the appellant.

ALKA SARIN, J.

The present regular second appeal has been preferred by the defendant No.1-appellant against the judgments and decrees passed by both the Courts below.

Brief facts relevant to the present *lis* are that the plaintiff-respondents filed a suit for declaration to the effect that the plaintiffs and defendants Nos.2 to 4 are co-owners co-sharers in joint possession over the property marked by letters ABCD situated at Vishkarma Road, Ajit Singh Wali Gali, near Dr. Marwaha Hospital, Batala, District Gurdaspur with the consequential relief of permanent injunction restraining the defendant no.1 from interfering with the plaintiffs or defendants Nos.2 to 4 in the suit property or alienating, transferring or mortgaging the suit property illegally, unlawfully, forcibly and in any manner what so ever. As per the plaintiffs, the suit property belonged to Sh. Ajit Singh son of Sh. Sant Kartar Singh who purchased the same from one Sh. Chet Singh vide registered sale deed dated 01.04.1971 and the possession of the suit property was also handed

over to Sh. Ajit Singh at the time of execution of the sale deed. Sh. Ajit Singh died on 18.08.2002 leaving behind the plaintiffs and defendant Nos.2 to 4 as his legal heirs and representatives to inherit his estate, including the suit property, to the extent of 1/6 share each. The wife of Sh. Ajit Singh had predeceased him. It was averred that the defendant No.1, who is the wife of the defendant No.2 (son of Sh. Ajit Singh), has got no right, title or interest of any nature in the suit property but defendant No.1 was threatening to dispossess the plaintiffs and defendant Nos.2 to 4 from the suit property and alienate the same on the basis of a forged and fabricated Will of Sh. Ajit Singh. Sh. Ajit Singh did not execute any legal or valid Will during his lifetime and the alleged Will is false, fabricated, forged, manufactured and bogus.

On notice, written statement was filed by the defendant Nos.1 and 2, who denied that the plaintiffs and defendant Nos.3 and 4 have inherited the suit property or they have any right, title and interest in the suit property after the death of Sh. Ajit Singh. It was averred that Sh. Ajit Singh was residing with the family of the defendant Nos.1 and 2 who were looking after and serving Sh. Ajit Singh and that after the death of Sh. Ajit Singh the suit property had been inherited by the answering defendants on the basis of a Will dated 18.06.2002 duly executed by Sh. Ajit Singh in favour of the defendant No.1. It was denied that the plaintiffs or the defendant Nos.3 and 4 are in possession of the suit property and it was denied that the plaintiffs along with defendant Nos.2 to 4 are co-sharers, co-owners in joint possession of the suit property to the extent of 1/6 share each. It was denied that the Will executed by Sh. Ajit Singh is false or fabricated or forged or manufactured or bogus and rather the Will is legal, valid and genuine and is

binding upon the plaintiffs and the other defendants.

Defendant Nos.3 and 4 filed a written statement supporting the case of the plaintiffs.

The plaintiffs filed a replication controverting the stand taken in the written statements and reiterating the contents of the plaint.

On the pleadings of the parties, the following issues were framed :

- (i) Whether the plaintiff are entitled for declaration as prayed for ? OPP
- (ii) Whether plaintiff are entitled for permanent injunction as prayed for ? OPP
- (iii) Whether Ajit Singh executed a Will dated 18.08.2002 in favour of defendant No.1, if so its effect ? OPD
- (iv) Whether suit of the plaintiffs is not maintainable ? OPD
- (v) Relief.

The Trial Court, vide judgment and decree dated 25.11.2016, decreed the suit of the plaintiffs and passed a decree of declaration to the effect that the plaintiffs along with defendant Nos.2 to 4 are co-owners, co-sharers in joint possession over the suit property and restrained the defendant No.1 from interfering with the plaintiffs or defendant Nos.2 to 4 from the suit property or alienating, transferring or mortgaging the same illegally, unlawfully, forcibly and in any manner. The Trial Court enumerated seven reasons as to why the Will dated 18.06.2002 was shrouded in suspicious circumstances and discarded the same. Aggrieved by the said judgment and

decree passed by the Trial Court, an appeal was preferred by the defendant No.1 which was dismissed vide judgement and decree dated 28.01.2020. Hence, the present regular second appeal.

Learned senior counsel for the defendant No.1-appellant has contended that the Courts below have erred in decreeing the suit of the plaintiff-respondents and in not accepting the Will dated 18.06.2002 set-up by the defendant No.1-appellant. He argued that the said Will was duly proved and ought to have been accepted by the Courts below. According to learned senior counsel, since the defendant No.1-appellant and her husband (defendant No.2) were looking after and taking care of Sh. Ajit Singh, the execution of the Will by Sh. Ajit Singh in favour of his daughter-n-law i.e. defendant No.1-appellant was a natural act out of love and affection.

The case set-up by the defendant No.1-appellant is on the basis of the Will dated 18.06.2002. It has come in evidence that the Will is alleged to have been executed on 18.06.2002 and the defendant No.1-appellant was married to defendant No.2 on 22.02.2002 i.e. four months prior to execution of the Will. The Courts below found that this was a suspicious circumstance particularly when the case set up by the defendant No.1-appellant and her husband (defendant No.2) was that the Will had been executed on the basis of the services rendered by them. The learned counsel has not been able to satisfactorily explain as to what services could be rendered in a short span of four months for a Testator to bequeath his immovable property in favour of the beneficiary. It was further held by the Trial Court that the attesting witness, DW-5 Tarinder Singh, had failed to testify qua the genuineness and correctness of the Will (Ex.D2) since he has stated in his cross-examination that he did not read the Will in question and even failed to disclose the name

of the scribe. Further, it has been held that there were many discrepancies in the evidence of this witness.

Whether a Will is surrounded by suspicious circumstances or not is essentially a question of fact. In the present case the Courts below have noticed that there were a large number of suspicious circumstances some of which appear on the face of the Will dated 18.06.2002. Even the statutory requirements for proof of the Will have not been complied with. It is trite law that execution of a Will must be held to have been proved not only when the statutory requirements for proving the Will are satisfied but the Will is also found to be ordinarily free from suspicious circumstances. The Will was held to be surrounded with suspicious circumstances and both the Courts below have returned findings of fact rejecting the Will. In **Jaswant Kaur vs. Amrit Kaur [1977(1) SCC 369]** it was inter-alia held by the Supreme Court that :

“9. In cases where the execution of a will is shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What, generally, is an adversary proceeding becomes in such cases a matter of the Court’s conscience and then the true question which arises for consideration is whether the evidence led by the propounder of the will is such as to satisfy the conscience of the Court that the will was duly executed by the testator. It is impossible to reach such satisfaction unless the party which sets up the will offers a cogent and convincing explanation of the suspicious circumstances surrounding the making of the will.”

Learned counsel for the defendant No.1-appellant has not been able to point out any evidence to establish the genuineness of the Will or remove the suspicious circumstances surrounding it.

No question of law, much less, any substantial question of law arises in the present case. Both the Courts below have recorded concurrent findings of fact warranting no interference by this Court.

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

10.05.2022
jk

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
 Whether reportable : Yes/No