

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

103

RSA No.1369 of 2020 (O&M)

Date of Decision : 23.02.2023

Gurwant Singh and Another

....Appellants

VERSUS

Bakhshish Kaur and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amit Arora, Advocate for the appellants.

ALKA SARIN, J. (Oral)

The present appeal has been preferred by defendant Nos.1 and 5 against the concurrent findings recorded by both the Courts below while decreeing the suit of the plaintiff-respondent No.1.

The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1, daughter of Shingara Singh, filed a suit for declaration to the effect that the land measuring 79 *kanals* and 14 *marlas*, fully described in the plaint, is owned and possessed by the plaintiff-respondent No.1 and defendant nos.3 to 5 and that defendant nos.1 and 2 have got no right or title. It was averred in the plaint that the plaintiff-respondent No.1 along with defendant nos.3 to 5 are the natural heirs of Shingara Singh and have inherited the estate of Shingara Singh in equal proportion upon his death. It was further pleaded that the suit property was ancestral and coparcenary in nature and she further challenged the Will dated 10.10.2011 in favour of defendant Nos.1 and 2 alleged to have been executed by Shingara Singh.

Upon notice, the defendant Nos.1 and 5 filed their written statement averring therein that the plaintiff-respondent No.1 never came in possession of the suit land and as such the suit was not maintainable. It was

further averred that Shingara Singh had executed a valid Will dated 10.10.2011 in a sound disposing mind.

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

1. Whether the plaintiffs are entitled to declaration as prayed for ? OPP
2. Whether the plaintiffs are entitled to permanent injunction as prayed for ? OPP
3. Whether the present suit is not maintainable in the present form ? OPP
4. Whether the plaintiff is estopped by her act and conduct from filing the present suit ? OPD
5. Whether the plaintiffs have suppressed the material facts from the court ? OPD
6. Whether the suit of the plaintiffs is not properly valued for the purpose of court fee and jurisdiction ? OPD
7. Whether court has got no jurisdiction to try and entertain the present suit ? OPD
8. Relief.

The Trial Court decreed the suit and held that the execution of the Will dated 10.10.2011 did not stand proved and that the Will was shrouded by suspicious circumstances. Aggrieved by the said judgment and decree dated 05.04.2017, an appeal was preferred by the defendant Nos.1

and 5 which was dismissed vide judgment and decree dated 29.11.2019.

Hence, the present regular second appeal.

Learned counsel for the appellants would contend that the Will in the present case was a registered Will and though one of the attesting witnesses, who had appeared as PW2, had denied the execution of the Will but had admitted his signatures, in the said scenario recourse would have to be taken to Section 71 of the Evidence Act, 1872 and the Will could be proved by other evidence. Learned counsel for the appellants would further contend that the scribe of the Will had appeared in the present case as DW3 to prove the execution of the document. It is further contended that though the second attesting witness had stepped into the witness-box as DW4, however, he did not come forward for his cross-examination. Thereafter, son of the attesting witness had appeared in the witness-box, who had also been marked as DW4, and admitted the signatures of his father on the Will.

Heard.

In the present case the Will has been discarded by both the Courts below by recording cogent reasons. The Trial Court had noticed the following discrepancies in the Will :

- “1. None of the attesting witness has come forward for deposition regarding the execution of the Will.*
- 2. The attesting witness namely Arjan Singh has specifically denied the contents of the Will and deposed contrary to execution and rather appeared as plaintiff evidence.*

3. *The attesting witness Surjit Singh has though come forward and tendered his examination in chief but has not turned up for cross-examination further no reason of the absence of this witness is explained.*

4. *It is also a fact that the attesting witness Surjit Singh is the maternal grand father of the defendant Gurwant Singh (who even has not come forward for deposition).*

5. *It is also admitted by Gurwant Singh that marriage of the son of his maternal uncle was performed in the 10th month of 2011.*

6. *It is alleged by the defendant that the plaintiffs has deposed before the Tehsildar regarding the execution of the Will, but no such statement except a noting of the jamabandis Ex.P2 dated 25.4.2013 whereby it is so stated. The said document ipso facto loses its significance as the present case has been filed on 27.04.2013 challenging the execution of the said Will which creates the doubt regarding the statement so recorded. Non production of the statement further generates a stronger suspicion.*

7. *With holding the living attesting witness namely Surjit Singh also cause a severe blow to the proving of the execution of the Will in question.*

8. *The Will is alleged to be executed at the time when marriage of grandson of attesting witness namely Surjit Singh was in progress. In this regard, reference has been laid to marked document of marriage place on the day on record.”*

One of the attesting witnesses of the Will had stepped into the witness-box as PW2. Though he had admitted the signatures on the Will but clearly stated that the testator had not signed in his presence. The second attesting witness to the Will had stepped into the witness-box as DW4, however, he did not come forward for his cross-examination. Though it has been argued by learned counsel for the appellants that son of the attesting witness had subsequently appeared in the witness-box and had stated that the witness could not come forward for his cross-examination as he was bedridden, however, it has been candidly admitted that no medical record was produced by the son to show that his father was bedridden and hence he could not come forward for his cross-examination.

Further, it has come on the record that on the day the Will is alleged to have been executed it was the wedding of the grandson of Surjit Singh, the second attesting witness, who stepped into the witness-box initially as DW4. There is no explanation forthcoming as to how a person whose grandson was getting married on the day would be busy attesting a Will on the same day.

In view of the fact that both the attesting witnesses did not support the due execution of the Will and there is no other evidence to prove

the execution of the Will, there is no ground to interfere in the present appeal.

In view of the above, I do not find any illegality or infirmity in the judgments and decrees passed by both the Courts below. No question of law, much less any substantial question of law, arises in the present case. The appeal, which is wholly devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

23.02.2023
jk

**(ALKA SARIN)
JUDGE**

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