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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-673-2020 (O&M)

Date of decision: April 24, 2023

Surjit Singh and another

....Appellants

versus

Swarn Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Sachin Mittal, Advocate,
Ms. Seemantika Jindal, Advocate for appellants.

Mr. Vivek Suri, Advocate for caveator/respondent No.1.

ARUN MONGA, J. (ORAL)**CM-2066-C-2020**

Allowed as prayed for, subject to all just exceptions.

Main case (O&M)

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

2. Having suffered concurrent adverse findings by the two Courts below, appellants/plaintiffs are in second appeal before this Court assailing learned trial Court judgment and decree dated 26.07.2016, as upheld by learned First Appellate Court vide its judgment and decree dated 18.11.2019, dismissing the suit for declaration filed by plaintiffs to the effect that on the basis of Regd. Will dated 20.01.2000 executed by late Sh. Mewa Singh son of Sh. Mangal Singh, plaintiffs and defendants No.1 and 2 are co-sharears/ co-owners in joint possession in equal shares of suit property.

3. Briefly stated, facts, as noticed by learned Courts, are as below:

“2. The brief facts as alleged by the plaintiffs in the plaint are that previously the suit land was owned and possessed by Mewa Singh son of Mangal Singh. Mewa Singh was real uncle of the plaintiffs and was husband of defendant no.1 and father of defendant no.2. It is submitted that Mewa Singh had no male issue

and Mewa Singh and his real brother Modan Singh (father of plaintiffs) were members of Joint Hindu Family and were living jointly with the plaintiffs. It is further submitted that since deceased Mewa Singh was not having his legitimate son and he was being served and looked after by plaintiffs since long and in lieu of services rendered by the plaintiffs to Mewa Singh and defendants, Mewa Singh (now deceased) with his own will executed valid registered Will dated 20.1.2000 in favour of plaintiffs as well as in favour of defendants no.1 and 2 and bequeathed his land situated in villages Kailon and ChapperChiri Khurd in favour of plaintiffs and defendants no.1 and 2 in equal shares. It is further submitted that the said Will dated 20.1.2000 was got executed by Mewa Singh deceased with his own free will in sound disposing mind in the presence of marginal witnesses and was thumb marked by him after admitting the same to be true and the witnesses also attested the said Will in presence of Mewa Singh. The said Will was also got registered from Sub Registrar, Mohali on the same day. Mewa Singh had died on 8.3.2012 and plaintiffs performed all the last rites of deceased Mewa Singh in their house at Kailon. It is further submitted that the original Will was in possession of Modan Singh real brother of deceased Mewa Singh and now the same has been found to the plaintiffs from his luggage few months back. It is further submitted that plaintiffs came to know after obtaining copies of revenue record that defendants no.1 and 2 have got the mutation no.2141 regarding the land situated in village Kailon and mutation no.2388 regarding the land situated in village ChapparChiri sanctioned in their names in equal shares by playing fraud and by concealing and suppressing the factum of execution of above referred registered Will of Mewa Singh and in-collusion and in connivance with the revenue officials. The plaintiffs requested the defendants no.1 and 2 to admit their claim of ownership and possession to the extent of 3/5 share in equal shares of suit land on the basis of Will in question and to get the revenue record corrected in their names, but they refused to do so. It is further submitted that defendants no.1 and 2 are threatening to alienate the entire suit land and are also intending and threatening to interfere into the peaceful possession of the suit land, for which they have no right to do so. Hence, the present suit.”

4. Upon notice, defendants No.1 and 2 appeared and filed written statement taking preliminary objections that suit was not maintainable; plaintiffs had no *locus standi* to file suit and it was barred by limitation.

4.1. On merits, it was admitted that suit property was owned and possessed by Mewa Singh, who was in cultivating possession of suit property during his lifetime. It was submitted that Mewa Singh husband of defendant No.1 and father of defendant No.2 was residing separately from Modan Singh. Even Mewa Singh was cultivating his own land from the very beginning and he was separate for all the

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purposes from his brother Modan Singh and was not on good terms with him from the very beginning.

4.2. It was further submitted that Mewa Singh was not having male child, but he was residing separately from the family of Modan Singh and was being looked after by the answering defendants being his wife and daughter. The family of Modan Singh never looked after Mewa Singh. It was submitted that the Will, if any, was a forged and fabricated document created by plaintiffs with mala-fide intention. It was submitted that Mewa Singh was illiterate and simpleton person and was not having much knowledge about the worldly things. Plaintiffs might have created some documents without the knowledge of Mewa Singh, otherwise Mewa Singh was not in a position to understand about his good or bad being simpleton.

4.3. It was further submitted that the property situated in village Kailon was ancestral property in the hands of Mewa Singh and from the earnings of ancestral property, he purchased the land in village Chapper Chiri. Therefore property purchased from the income of ancestral property became ancestral property of Mewa Singh and after the death of Mewa Singh, his property was inherited by answering defendants being his legal heirs and mutation of suit property had been sanctioned in favour of answering defendants with the full knowledge of plaintiffs immediately after the death of Mewa Singh.

4.4. It was further submitted that Mewa Singh never executed alleged Will dated 20.1.2000 and the same was result of fraud and misrepresentation and plaintiffs in connivance with witnesses and his father forged and manipulated document to grab property of answering defendants. All other averments made in the plaint were denied and prayed for dismissal of suit.

5. Replication to written statement was filed denying preliminary objections and other averments and reiterating contents of plaint.

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

- “1. Whether the plaintiffs are entitled to declaration, as prayed for? OPP
2. Whether the suit is not maintainable in the present form? OPD
3. Whether the plaintiffs have no locus standi to file the present suit? OPD
4. Whether the present suit is barred by provisions of Limitation Act? OPD
8. Relief.”

7. 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*.

8. On appraisal of evidence vis-à-vis pleadings, learned trial Court decided issue No.1 against plaintiffs. Issues No.2 to 4 were decided in favour of plaintiffs. Consequently, suit filed by the plaintiffs was dismissed.

9. Feeling aggrieved against the said judgment and decree dated 26.07.2016, appellants-plaintiffs preferred first appeal.

10. Learned First Appellate Court below dismissed the appeal, resulting in Regular Second Appeal before this Court.

11. In its judgment, learned First Appellate Court, *inter alia*, observed, as under:

“Therefore from the evidence of the plaintiffs, it is clear that Mewa Singh was an illiterate person, whereas his brother Modan Singh was taking care of all the affairs of the family. The plaintiffs are sons of Modan Singh, brother of Mewa Singh and Mewa Singh had wife and daughter i.e defendants No.1 and 2. As per Will Ex.P1, Mewa Singh had executed the said Will whereby he had bequeathed the landed property at the Villages Kailon and Chapparchiri in favour of his nephews i.e plaintiffs as well as his wife and daughter in five equal shares, where he had bequeathed the house and other house hold articles, machinery and moveable property in favour of plaintiffs i.e his nephews Surjit Singh, Nirmal Singh and Sukhdev Singh. However it is not understandable as to how and why Mewa Singh will not bequeath the house hold articles and house in favour of his wife Swaran Kaur when he knew that there is no one to take care of his wife after his death except his married daughters. Further the attesting witness Karnail Singh himself had admitted in his cross examination that the plaintiffs had accompanied Mewa Singh for execution of the Will and Modan Singh and his sons were aware of the execution of Will even prior to its execution. He also admitted that the daughter and wife of Mewa Singh had not accompanied them at the time of execution of Will. This witness had specifically deposed that the Will was taken by Modan Singh and his sons from the office of Sub Registrar. Another fact has been disclosed by

this witness, where he had stated that Mewa Singh had not mentioned about his house hold articles, machinery etc., in his Will and he only made mention about his entire property and he wanted that his entire property should go to all five persons i.e his wife, daughter and nephews, whereas this fact is completely contrary to the averments of the Will. Counsel for the appellants had submitted that the attesting witness can not depose regarding the contents of the Will, but this arguments raised by Counsel are not acceptable as in the present case, executant Mewa Singh was illiterate and the Will was dictated by Nanak Singh Scribe PW2 and this Will was read over to Mewa Singh and as per the attesting witness PW1 Karnail Singh, Mewa Singh wanted that his entire property be inherited by all the five persons which shows that he never intended to disinherit his wife and daughter from the moveable property as well as House situated in Abadi deh. But the averments in the Will are contrary, which raises serious suspicion regarding voluntariness of execution of Will by Mewa Singh. Moreover, as per this witness, the plaintiffs and their father Modan Singh were aware of the execution of Will by Mewa Singh prior to the execution of the same and it is them who had taken the Will from the office of Sub Registrar and the Will was handed over to one of the son of Modan Singh i.e Sukha, which shows that the Will executed by Mewa Singh was not voluntary, rather it was executed under the influence of Modan Singh elder brother of Mewa Singh. Moreover even the plaintiff Surjit Singh himself had admitted in his cross examination that Mewa Singh had disclosed the execution of Will in their favour during his life time, but they never produced the same after the death of Mewa Singh, rather they had not disputed the mutation in favour of widow and daughter of Mewa Singh of the suit property. Even Surjit Singh had also admitted that his father had also told them about the execution of Will in their favour and further stated that their father had kept the Will in his safe custody, which clearly shows that the Will was got executed on the behest of Modan Singh in favour of his sons and Will was kept by Modan Singh in his own safe custody, which shows that Mewa Singh never had any say in the execution of the Will. Moreover Surjit Singh PW4 had also admitted that after the death of Mewa Singh, Swaran Kaur started residing with his daughter, which also shows that plaintiff were not taking care of Swaran Kaur. This witness has also admitted that Mewa Singh was illiterate person and that it is his father who was managing the crops and crop proceeds and other affairs of the family being elder.

Thus, from the entirety of the evidence discussed above, it is clear that the disputed Will ex.P1 has been executed by Mewa Singh under the undue influence of Modan Singh and not from his own free Will and otherwise, there was not reason for Mewa Singh to disinherit his wife from inheriting the residential house after his death.

Further the defendants had appeared through Balwinder Singh son-in-law of Mewa Singh in the witness box as DW1, who had reiterated the averments of the written statement and in cross examination, he admitted that his marriage took place on 17.2.2000 i.e after the execution of Will. In detailed cross examination, this witness had denied the averments of the plaint as well as Will. Counsel for the appellants had raised objections that defendants themselves had failed to step into the witness box, but it need to mention here that the plaintiffs can not seek the benefit of the weaknesses of defence evidence, rather onus was upon the plaintiffs to prove their case, but taking into account the evidence on record, the plaintiffs had miserably failed to prove on

record that the Will Ex.P1 has been executed by deceased Mewa Singh with his own free will and in sound disposing mind, as no person with his own volition will leave his wife without a house while executing the Will. Moreover, it is not understandable as to why Modan Singh had not produced the Will after the death of Mewa Singh, when it was in his safe custody, which also raises suspicion to the execution of the Will, as the same has seen the light of day only after the mutation was sanction in favour of defendants No.1 and 2, when it is an admitted fact of Surjit Singh plaintiff that his father had disclosed them about the Will immediately after the death of Mewa Singh. The Will has seen the light of day after 13 years from its execution and that also from the custody of the father of beneficiaries, which itself raises suspicion. It is not understandable as to why Mewa Singh will not keep his Will in his own custody, rather will handover the same to the father of the beneficiaries. Thus, the plaintiffs have failed to explain the suspicious circumstances surrounding the Will and as such the conscious of this Court is not satisfied that disputed Will has been executed by Mewa Singh voluntarily. Moreover joint ration card Ex.PW5/1 of the plaintiff along with Mewa Singh and his wife do not prove the fact that Mewa Singh had love and affection for the plaintiffs as immediately after the death of Mewa Singh, his wife Swaran Kaur had started residing with her daughter and therefore, the plaintiffs had failed to discharge the onus upon them and hence, the trial Court had rightly dismissed the suit of the plaintiffs.”

12. On a Court query, it transpires that executant of the Will deceased-Mewa Singh was completely an illiterate person and he did not even have elementary education in any School, though the same is disputed by learned counsel for appellants. Be that as it may, thumb marking of the Will (Exhibit P-1) by its executant seems to suggest that he was indeed illiterate, notwithstanding that Will was written in Punjabi and the fact that he did not know how to write Punjabi. No doubt, the document may have been read over to him, but one does not know what was read over to him was actually reduced in writing since it is merely thumb marked, which he was asked to put at the appropriate place at the time of execution of Will. Furthermore, contents of the Will also do not inspire any confidence, to say the least. On one hand the reasons are given for bequeathing the property to his nephew by bequeathing the only house he had, where his wife would have stayed after his death, stating that he did not have any son and on the other hand, it is not stated why would he leave his widow totally homeless without giving any reason that he had any matrimonial

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discord and/ or she had any alternative house to live in. More particularly, it is not stated in the Will as to what else had been done to secure his wife after his death.

12.1. Furthermore, it is rather intriguing that Mewa Singh would oust his widow from the only house he had, but at the same time give her a part of the agricultural land knowing-fully well that his wife was ill-equipped to be an agriculturist to earn any income for her livelihood and day-to-day survival. Nor is there any provision made for her that in case, agricultural land is to be bequeathed to his nephew, as is the import of the Will, then he shall look after the testator's widow after his death by providing her either alternative house and maintenance during her lifetime from the proceeds of the agricultural income.

13. In the premise, I am in agreement with the findings returned by learned Courts below that Will is shrouded with suspicious circumstances which were not explained by the plaintiffs. The executant did not even know how to write his signatures in Punjabi and had put his thumb mark, which has though been proved, but the Will has been rightly discarded and not believed by the Courts below.

14. Shorn of unnecessary details, the submissions in this Regular Second Appeal are that the findings returned by learned Courts below are against the facts of the case and are based on conjectures and surmises; and are contrary to law and evidence on record.

15. Having perused the impugned judgments, my considered opinion is that the same submissions made before learned Courts below were duly considered and repelled and the concurrent findings of fact recorded by the two Courts below were correctly recorded by giving sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same. There seems no substance in the submissions that the impugned judgments are based on conjectures and surmises.

15.1 No new arguments have been raised other than reiteration of the stand taken before the courts below.

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16. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.
17. 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.
18. 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 100 of Civil Procedure Code.
19. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.
20. Pending application(s), if any, shall also stand disposed of.
21. No order as to costs.

(ARUN MONGA)
JUDGE

April 24, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No