

[115] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-640-2023(O&M)

Date of Decision :13.03.2023

Kranti Sharma ...Appellant

versus

Raksha Devi and othersRespondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Harsh Aggarwal, Advocate for the appellant.

B.S. Walia, J. (Oral)

[1] Challenge in the instant regular second appeal is to judgment and decree dated 19.11.2022, dismissing the appeal filed by the appellant-plaintiff against the judgment and decree dated 08.08.2017, passed by the learned trial Court dismissing the suit filed by the appellant-plaintiff.

[2] A perusal of the judgment and decree of the learned trial Court reveals that the appellant-plaintiff had filed a suit for a declaration that he was owner and possession of the properties

A. Kothi constructed in the land measuring 200 Sq. Yards bearing Kothi No.351, DalimaVihar, Rajpura being 200/160295 share out of KhasraNos.235 to 260, 261/2, 262 to 264, 265/2, 267/2, 268 to 272 situated in the revenue estate of Rajpura, Teh. Rajpura Distt. Patiala as per Jamabandi for the year 2006-2007.

B.Land measuring 150 Sq. yards being 150/17600 2 share comprising in Khewat/khata no.129/246 khasra numbers 821, 858 min, 860 and 861 out of the total land measuring 17 Bighas 12

Biswas and 20/267 i.e. 1 Bighas of land out of

Khewat/Khatano.276/555 comprising in Khasra numbers 811, 812, 821 out of total land measuring 13 Bighas 7 Biswas situated in the revenue estate of village Dhakansu Kalan, Teh. Rajpura Distt. Patiala as per Jamabandi for the year 2003-2004.

C.The property measuring 3 Kanal being $\frac{1}{2}$ share of the total land measuring 6 Kanals comprising in Khasra numbers 23//11, 24//15/1 purchased by Sh. Tarlochan Dev Sharma vide registered sale deed dated 18.9.1989 bearing wasika no.2610 on the North Eastern Portion situated in revenue estate of Rajpura, Teh. Rajpura Distt. Patiala.

D.Kothi no. 579/12 measuring 9 Marlas being $\frac{3}{20}$ share out of Khasra No. 8//13/9 situated in Sonia Colony, within the revenue estate of village Singha Wala, Hisar road, Ambala City and defendant no.1 has got no concern with these properties. **And** further Suit for declaration to the effect that the mutation of inheritance of deceased Sh. Tarlochan Dev Sharma father of the plaintiff sanctioned in the name of defendant No.1 to the extent of $\frac{1}{2}$ share with the plaintiff bearing mutation no. 17250 of Rajpura regarding property mentioned in the heading A and mutation no. 9618 pertaining to property mentioned in heading B of village Dhakansu Kalan, Tehsil Rajpura, Distt. Patiala are illegal, null and void and ineffective on the rights of the plaintiff **And** Further suit for declaration to the effect that the sale deeds executed by defendant no.1 bearing wasika no.6184 dated 5.2.2010, WasikaNo. 491 dated 29.4.2010, wasika nos.1214 to 1217 dated 25.5.10 in favour of defendants no. 2 to 9 out of the suit property are wrong, illegal and are not binding upon the rights of the plaintiff over the

suit property and are liable to be ignored **And** Further Suit for permanent injunction restraining the defendant no.1 from selling, alienating, encumbering, demolishing or changing the nature of the suit properties mentioned above.

[3] On the basis of the pleadings, the following issues were framed:-

- “1. Whether plaintiff is entitled for declaration as prayed for? OPP
2. Whether plaintiff is entitled for permanent injunction prayed for? OPP
3. Whether the suit of plaintiff is not legally maintainable? OPD
4. Whether plaintiff has no locus standi to file the present suit? OPD
5. Whether suit is under valued and ad valorem court fee has not been affixed? OPD
6. Relief.”

[4] On the basis of the pleadings and the evidence led by the parties, the learned trial Court decided issue Nos.1 & 2 in favour of the respondents-defendants and against the plaintiff-appellant, while issue Nos.3, 4 and 5 were decided against the respondents-defendants and in favour of the appellant-plaintiff and in view thereof especially in view of the findings on issue Nos.1 and 2, the civil suit filed by the appellant-plaintiff was dismissed.

[5] Sole argument of learned counsel for the appellant-plaintiff is that the Will in question having been proved by examination of Joginder Singh, one of the witnesses, to the execution of the same, the judgment and decree of the Courts below holding the Will to be

[6] Admittedly, Tarlochan Dev Sharma whom the appellant plaintiff claims to be his father died on 06.06.2008. The Will in question which is the subject-matter of the suit filed by the appellant-plaintiff is dated 23.12.2007 but was set-up by him by way of the civil suit out of which the instant appeal arises for the first time on 14.06.2010 after approximately two years from the date of death of Tarlochan Dev Sharma.

[7] The suit in question was hotly contested by respondent / defendant No. 1 who took up the stand that her husband i.e. Tarlochan Dev Sharma, was not the appellant plaintiffs father nor had adopted the appellant plaintiff and had died issueless, that her deceased husband was a very educated person and remained President of the Municipal Council, Rajpura, besides was a prominent figure of Rajpura, and the uneven spacing of the writing of the will revealed that it had been prepared on a blank signed page containing the signatures of deceased Tarlochan Dev Sharma, therefore, the civil suit was liable to be dismissed. Respondent Nos. 2 to 5 on the other hand took up the stand that they had purchased the property in question which was the subject matter of the Will by way of registered sale deed after verifying the ownership and possession of defendant No. 1 as per the revenue record, therefore they were bonafide purchasers for valuable consideration.

[8] Learned trial Court while holding that although Joginder Singh, one of the marginal witnesses of Will dated 23.12.2007 had been examined but the same was an unregistered document and written in Punjabi by one Baljinder Singh upon whose instance and intimation the appellant-plaintiff got to know about its execution, observed that

signatures of the testator were on the lower right side of the Will, there was a difference of margins between the lines of the writing from the top to the bottom of the Will and the last line of the Will appeared to have been written later on besides the margin between the last lines was very less and the same also contained spelling mistakes whereas it was admitted by the parties that the testator was a well educated person and it was not readily believable that an educated person like the testator would execute his Will in Punjabi handwriting and not get the same typed from a regular typist or Deed Writer more so as he was a regular visitor to the Courts, and that in the circumstances, execution of the Will was shrouded in suspicious circumstances, accordingly, dismissed the civil suit.

[9] Learned Appellate Court while holding that no doubt, there was no requirement to examine both witnesses to the Will, observed, that the case was one in which the appellant-plaintiff had put-up the plea that the Will had been disclosed to him by the scribe of the Will, Baljinder Singh, but said scribe had not been examined, besides, a perusal of the Will and spacing of its writing coupled with the signatures of the testator on the extreme right hand side of the Will, coupled with the fact that the Will did not see the light of the day for two years, the Scribe admittedly having attended the Kriya Ceremony of the testator, and the appellant plaintiff having come to know of the Will from said scribe two months prior to the filing of the civil suit, two years after the death of the testator, held that all the circumstances created a suspicion regarding the due execution of the Will in the light of the decision of Hon'ble the Andhra Pradesh High Court in 'Pushpa Charles versus Michael Nicholas and others', Law Finder Doc. ID # 246115. Relevant extract of the same is

“C. Will-Suspicious circumstance – A Will is surrounded by suspicious circumstances when (a) the signatures of the testator on it are very shaky and doubtful or not appear to be his usual signatures; (b) the condition of the testator’s mind was very feeble and debilitated; (c) the dispositions made in the Will are unnatural, improbable or unfair in the light of the relevant circumstances like exclusion of or absence of adequate provision for the natural heirs without reasons; (d) the dispositions do not appear to be the result of the testator’s free will and mind; (e) the propounder took a prominent part in execution of the Will conferring substantial benefit on him; (f) testator used to sign blank papers; (g) Will did not see the light of the day for long; (h) incorrect recitals of essential facts; (I) Unregistered Will challenged as forged comes from the custody of major beneficiary.”

[10] The learned Appellate Court observed that circumstances would be treated as suspicious when the same were not normal or were not expected in a normal situation of a normal person whereas in the case in hand, withholding of the document for a period of close to two years, uneven spacing in the later portion of the alleged Will, signatures on the extreme right besides the person who had disclosed *qua* the existence of the Will not having been examined coupled with there being long silence, all created suspicion with regard to the due execution of the Will.

[11] Learned Appellate Court took into account that as per the evidence on the file, it was crystal clear that Baljinder Singh, who as per the plaintiff had told him *qua* the execution of the Will two months prior to the filing of the civil suit, was on visiting terms with the appellant-plaintiff and further that he, the appellant-plaintiff had searched the Will

circumstances, silence on the part of plaintiff as also Baljinder Singh, was in itself a suspicious circumstance. Besides, perusal of Ex.P1 revealed that there was uneven spacing in the lines on the later portion of the Will and although it was not humanly possible to have exact spacing of the lines on the document in case it was written but apparently, the signatures of the alleged testator were already there on a blank paper and that too on the extreme right hand side and on appreciation of the evidence, it was apparent that from the very beginning an endeavour had been made to reduce the spacing and to cover everything before the space where the signatures had already been appended.

[12] I have considered the submissions of learned counsel.

[13] Admittedly, the testator whom the appellant plaintiff claimed to be his father died on 06.06.2008. However, the aforesaid relationship was vehemently denied and opposed by respondent defendant No. 1 i.e. none else than the widow of the alleged testator. The Will in question is alleged to have been executed on 23.12.2007 but was set-up for the first time in the civil suit out of which the instant appeal arises in the year 2010 by taking the plea that it had been disclosed to the appellant-plaintiff by its scribe Baljinder Singh, only two months prior thereto whereas in the same very breath, the appellant-plaintiff admitted that Baljinder Singh, who had scribed the Will in Punjabi was known to him and was on visiting terms with him and had also attended the testator's Kriya, therefore, in the circumstances, the delay of close to two years in setting up the Will raises a strong suspicion of the due execution of the Will, especially in the background of the fact that the father of the deceased was a well educated person, was a member of the Municipal

Registrar but did not deem it appropriate to get the Will registered, besides allegedly affixed his signatures on the extreme right hand side of the page, moreover, the spacing of the contents of the Will were found by both the learned Courts below to be raising suspicion of entry in respect thereto having been made on the alleged Will pursuant to the signatures already existing on the document. I have also seen the photocopy of the Will as has been produced by learned counsel for the appellant plaintiff and find no reason whatsoever to disagree with the concurrent findings of fact recorded by the learned Courts below of the Will being surrounded by suspicious circumstances on account of the contents of the Will having been written in such a manner as to be suggestive of the writing having been compressed and there being uneven spacing amongst the lines so as to point to the endeavour to incorporate the contents in a pre-given space. Accordingly, no question of law much less substantial question of law arises for consideration nor has any ground whatsoever been made out to warrant interference with the well reasoned judgment of the Courts below.

[14] *Dismissed.*

(B.S. Walia)
Judge

13.03.2023
'Rajneesh'

Whether speaking/ reasoned	:	Yes/No
Whether reportable	:	Yes/No