

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-1303-2021(O&M)

Date of decision:-8.5.2023

Parkash Devi @ Parkasho Devi

...Appellant

Versus

Ramesh Kumar and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Aarav Gupta, Advocate
for the appellant.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Parkash Devi claiming herself to be adopted daughter of Ran Singh had brought a suit for grant of declaration against defendants i.e. Ramesh Kumar and his son Rinku, both residents of village Amani, Tehsil Tohana, District Fatehabad challenging the judgment and decree dated 17.2.1994 passed by the Court Sub-Judge Ist Class, Tohana in Civil Suit No.46 of 18.1.1994 titled as 'Ramesh Kumar Versus Ran Singh' said to have been suffered by Ran Singh in favour of Ramesh Kumar and mutation sanctioned on the basis thereof. She had also challenged registered Will No.15 dated 20.5.1997 alleged executed by Ran Singh in favour of defendant No.2 – Rinku and mutation sanctioned on the basis thereof.

2. According to the plaintiff, the impugned judgment and decree and impugned Will were not legal and valid documents but illegal, null and void, result of fraud and undue influence as well as misrepresentation, therefore liable to be set aside and revenue entries are required to be corrected in the name of the plaintiff. As a consequential relief, the plaintiff had craved for permanent injunction restraining the defendant from alienating/transferring the suit property in any manner.

3. As per the version of the plaintiff her adoptive father Ran Singh was owner in possession of land measuring 16 kanals 1 marla being $\frac{1}{2}$ share out of total land measuring 32 kanals 3 marlas situated at village Bhodia Khera, Tehsil Tohana, District Hisar (now Fatehabad) and Ran Singh also owned 9 kanals 1 marla of land situated at village Amani, Tehsil Tohana, District Fatehabad; Ran Singh had expired on 20.10.2001 and after that the land was inherited by plaintiff and her mother Smt.Ramde in equal shares by natural succession; Smt.Ramde expired in the year 2002 and after her death her share was inherited by the plaintiff being only legal representative; in last week of December, 2012, defendants came to the spot and tried to take forcible possession of this land from the plaintiff, however, their attempt was warded off; subsequently plaintiff made inquiries from Halqa Patwari and came to know about the impugned judgment and decree dated 17.2.1994 in favour of defendant No.1 Ramesh Kumar and impugned Will allegedly executed by Ran Singh in favour of defendant No.2 Rinku as well as mutations sanctioned on the basis of impugned judgment and decree and impugned Will. According to the plaintiff when the defendants refused to admit the

claim of the plaintiff, she brought the suit in question.

4. On notice, the defendants appeared and filed a written statement contesting the suit raising various legal objections further denying that the plaintiff was ever adopted by Ran Singh and his wife Smt.Ramde. According to the answering defendants, Ran Singh and his wife Smt.Ramde had adopted Ramesh Kumar defendant No.1 before his marriage in the year 1994 as per Hindu religious rites and marriage of the plaintiff was performed by Jeet Singh son of Nanda, who was father of the plaintiff; defendant No.1 was nephew of Ran Singh and was adopted in the year 1994; the property of Ran Singh was self acquired; Ran Singh had suffered a decree dated 17.2.1994 in favour of the defendant No.1 and executed a Will in favour of defendant No.2 on 20.5.1997. The defendants defended both the documents as legal and valid stating that the plaintiff has no concern with the property in question, of which the defendants are owners in possession. They prayed for dismissal of the suit.

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

1. Whether the plaintiff is owner in possession of land as detailed in the head note of the plaint, as alleged? OPP
2. Whether the judgment and decree dated 17.02.1994 passed by the court of Sh. M.C.Mehra, the then Sub Judge Ist Class, Tohana in civil suit no.46 dated 18.01.1994 and subsequent mutation no.1143 dated 28.02.1996 are illegal, null and void, against law, facts, without authority, without jurisdiction, undue influence, based on fraud, misrepresentation, inoperative and not binding on the rights

of the plaintiff and are liable to be set aside as alleged? OPP

3. Whether the Will wasika no.15 dated 20.05.1997 and subsequent mutation no.1869 dated 13.03.2008 are wrong, incorrect, illegal, null and void against the law and facts, without authority and jurisdiction, based on undue influence and fraud and are not binding on the rights of the plaintiff and liable to be set aside, as alleged? OPP
4. Whether the subsequent entries in the revenue record are liable to be corrected in the name of the plaintiff, as alleged? OPP
5. Whether the defendants are liable to be restrained from alienating, transferring, mortgaging the land in dispute in any manner to anybody, as alleged? OPP
6. Whether the suit of the plaintiff is not maintainable in the present form? OPD
7. Whether the suit of the plaintiff is false, frivolous and based on fictitious ground and liable to be dismissed, as alleged? OPD
8. Whether the plaintiff has no locus standi and or cause of action for filing the present suit? OPD
9. Whether the plaintiff have not come to the court with clean hands and have concealed the true and material facts from this Hon'ble Court, if so . Its effect? OPD
10. Relief.

6. The parties led evidence in support of their respective claims.

7. After hearing learned counsel for the parties, the trial Court

of Civil Judge (Jr.Divn.), Tohana by giving issue-wise findings dismissed the suit of the plaintiff with costs. This was so done vide judgment and decree dated 11.1.2017.

8. Feeling aggrieved by the said judgment and decree, the plaintiffs had filed an appeal in the Court of District Judge, Fatehabad, who vide judgment and decree dated 13.1.2021 dismissed the same upholding the judgment and decree passed by the trial Court.

9. Still feeling dissatisfied, the plaintiff has knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and his suit be decreed.

10. I have heard learned counsel for the appellant besides going through the record.

11. In this case the trial Court considering the pleadings of the parties, the evidence brought on record by them as well as the legal position on the subject has come to the conclusion that neither the plaintiff is adopted daughter of deceased Ran Singh nor she is in possession of the suit land. The impugned judgment and decree suffered by Ran Singh in favour of defendant No.1 Ramesh Kumar as well as Will executed by Ran Singh in favour of Rinku – defendant No.2 were found to be legal and valid documents so were the mutations sanctioned on the basis thereof. As such, the claim of the plaintiff was rejected.

12. The First Appellate Court of District Judge, Fatehabad has affirmed such conclusion drawn by the trial Court.

13. I find that the verdicts given by the Courts below are based

upon proper appraisal and appreciation of evidence and correct interpretation of law. Both the Courts had rejected the claim of the plaintiff. I do not see any reason to disagree with the Courts below and take a different view and further to interfere with the impugned judgments and decrees. Those judgments and decrees are upheld.

14. No substantial question of law or fact arises in this appeal.

15. The appeal stands dismissed accordingly.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

8.5.2023

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No