

RSA-1727-2023 (O&M)

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

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**RSA-1727-2023 (O&M)
Decided on : 17.07.2023**

Rajwant Kaur

... Appellant(s)

Versus

Harjit Kaur and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Vishal Gupta, Advocate
for the appellant(s).

SANJAY VASHISTH, J. (Oral)

1. Present Regular Second Appeal (RSA), has been filed against the judgment and decree dated 17.02.2023, passed by the Court of Ld. Addl. District Judge, Patiala (in short 'Ld. Lower Appellate Court'), vide which judgment & decree dated 28.11.2017, passed by Ld. Trial Court was maintained.

Thus, present appeal has been filed by the appellant/plaintiff against the concurrent finding of dismissal of the suit filed by her.

2. Mr. Vikas Gupta, learned counsel for the appellant/plaintiff contends that there was a Will dated 25.08.1993 executed by Sh. Balbir Singh Sekhon, who was related as father of the plaintiff, husband of respondent/ defendant No.1 – Harjit Kaur, and father of respondent/ defendant No.2 - Smt. Amaninder Kaur. Before filing of the suit, respondents/defendants No.1 & 2 had moved an application to the office Commissioner, Municipal Corporation, Patiala (respondent/defendant No.5) for transferring of ownership rights of the house in question i.e. H.No.2110-13/3, Ragho Majra, Near Norian Mandir, Patiala.

3. Learned counsel for the appellant/plaintiff further submits that in fact, as per the recital in the Will dated 28.05.1993, respondent/defendant No.1 was to enjoy the property in question along with household belongings as an absolute owner, and only after her death, said residential house would be inherited in equal share by the two daughters of late Sh. Balbir Singh Sekhon, who are none else, but plaintiff & defendant No.2, respectively, in the suit.

4. Learned counsel further contends that though the application dated 22.01.2010 filed by respondent/defendant No.1 for transferring of the house in question in her name(s), was dismissed by respondent/defendant No.5, on 30th July, 2010 (Ex.P10), yet getting apprehensive of repetition of such act and doing of mischief at the instance of respondents/defendants No.1 & 2, suit for permanent injunction restraining defendants No.1 & 2, was instituted by plaintiff.

5. Learned counsel further points out that mainly suit filed by the appellant/plaintiff has been dismissed on the ground of its maintainability and being premature. Reference of the such observation is found in para No.19 of the judgment dated 28.11.2017, passed by the Ld. Trial Court, which is reproduced hereunder:-

*“19. Though this is rule of pleadings that pleading should be of facts and not of law and more so over before the trial court which is only a court of fact. Even then plaintiff has quoted this judgment which shows that she was fully aware of observation of Hon'ble High Court that withholding the relevant documents from the court amounts to fraud on the court which is truly applicable to the conduct of the plaintiff in this case as she has not disclosed the litigation in which Ex. P13, basis of her present case is under challenge. Similarly, in the pleadings judgment **in 2000 (2) RCR page 483, 2005 (6) SCC page 149 and 2006 (4) SCC page 407** has been referred on fraud which are fully applicable to the conduct of*

the plaintiff in this case. Thus I consider that plaintiff in this case is not entitled to the discretionary relief of permanent injunction, in view of the above facts and above discussion as WILL Ex. P13, is under challenge in other court, so no observation on the basis of the WILL can be given in this case as the plaintiff has failed to prove the same by leading cogent and convincing evidence in this case the genuineness of the WILL Ex. P13. So, it cannot be held that suit of the plaintiff is maintainable. Though the defendants has stated that suit of the plaintiff is premature, but as I have discussed above, suit of the plaintiff is not maintainable. So, this issue is also disposed of accordingly. In view of the discussion made herein above, plaintiff has failed to prove these issues in her favour. Therefore all these issues are decided against the plaintiff and in favour of the defendants.”

6. Apprehension was also shown by the Ld. Lower Appellate Court in the findings recorded in para Nos.13 & 14, which are reproduced here-under:-

“13.Before adverting to the arguments, rendered before this court. The observations made by the trial court while dismissing the suit are requisite to be referred to. While dismissing suit filed by the appellant the trial court observed that the Will dated 25.08.1993 was though admitted by respondents no.1 and 2 but the genuineness of the Will was challenged by respondents no.5 and 6. Therefore, the court observed that in such like circumstances the admission of respondents no.1 and 2 was of no avail to the appellant and therefore the appellant failed to prove the execution of the Will. The court further observed that appellant failed to disclose the material facts regarding the Will dated 25.08.1993 being under challenge in some other court of competent jurisdiction and observed that suit of the appellant was collusive. With these detailed observation the suit was dismissed.

14. Now coming to the grounds raised in appeal. It is the case of the appellant that as per the Will she had right in the property and respondents no.1 and 2 are trying to get the property transferred in the name of respondent no.1 and are therefore prejudicing her right. The appellant did bring on record evidence as well to show that such

efforts were being made by respondents no.1 and 2. This version of the appellant is rather admitted by the respondents no.1 and 2. The respondents no.1 and 2 even admitted that efforts to get the property forming subject matter of Will dated 25.08.1993 transferred in the name of respondent no.1 and 2. However, this court being a court of fact requires to look into the evidence to ascertain if the appellant is entitled to the relief claimed by her. The perusal of the evidence produced on record by the appellant would show that restrained order is sought on account of the fact that respondent no.1 and 2 tried to get the property transferred in their names. The appellant apprehended that the respondent after getting the property transferred in her name will alienate further. However, from the perusal of the record it transpires that there is no evidence to the effect that the respondents no.1 and 2 made any efforts to sell the property being House no.2110/13. No person with whom such negotiations took place was examined. It could not be denied that a litigation as to genuineness of the Will dated 25.08.1993 is pending in other course. The evidence produced by respondents no.5 and 6 in the shape of testimony of DW2 shows that as per Ex.P10 the Municipal Corporation, Patiala has already denied the transfer of property by citing the reason that as per clause-1 of the Will the property cannot be transferred. In such like circumstances there arose no occasion for the appellant to file the present suit. The apprehension of the appellant is not well founded. Once the request made by the respondents no.1 and 2 to transfer the property stood decline the apprehension of the appellant that respondents no.1 and 2 were acting in contravention of the Will no longer remained. No general restrained against respondents no.5 and 6 from issuing TS-1 Form or other documents could be claimed by giving vague and general assertions. The trial court rightly observed that the appellant failed to disclose the factum of litigation qua the Will.”

7. After going through the impugned judgments & decree of the Ld. Courts below, I am of the view that there is no illegality or irregularity in the same, rather, this Court also affirms the view that the suit filed by the appellant/plaintiff was premature, without there being any cause of action to

her.

Thus, findings are perfectly recorded by the Ld. Courts below. No law point has been referred by learned counsel for the appellant/plaintiff also, to proceed with the present regular second appeal. Thus, for the reasons recorded herein-above, instant appeal being devoid of merits, stands dismissed.

(SANJAY VASHISTH)
JUDGE

July 17, 2023
J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No