

RSA-1385-2023 (O&M)

- 1 -

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

135

RSA-1385-2023 (O&M)
Decided on : 21.09.2023

Amarjit Kaur and Ors.

. . . Appellant(s)

Versus

Manjit Singh (now deceased) through LR's and Ors.

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Rajinder Singh Rangpuri, Advocate
for the appellant(s).

SANJAY VASHISTH, J. (Oral)

1. Present Regular Second Appeal (RSA) has been filed by defendants No.1 to 3 (appellants herein), against the concurrent finding of decretal of suit in favour of the deceased plaintiff – Manjit Singh (respondent herein).

2. Brief facts, necessary for adjudication of the case are that plaintiff filed a suit for seeking decree of declaration to the effect that plaintiff and defendants No.4 & 5 are owners of land measuring 41 Kanals 5 Marlas $\frac{1}{4}$ share of 164 Kanals - 16 Marlas in equal shares and defendant No.1 to 3 are owners of land measuring 13 Kanals – 15 Marlas $\frac{1}{16}$ th share of land measuring 164 Kanals – 16 Kanals comprised in Khewat No.25, Khatoni No.53, Rect. No. 89, Killa No. 2(8-0), 3(8-0), 8(4-2), 9(8-0), 10(8-0), 11(8-0), 11(8-0), 20(3-13), 12(4-0), 1(8-0), Rect. No.88 Killa No. 13 (4-2), 14(8-0), 17(8-0), 19(3-18), 21/2 (3-2), 22(8-0), 23(7-8), 5(8-16), 6(8-0), 7(5-19), 15(8-0), 16(7-19), 18(7-8), Rect. No.90 Killa No.1(7-18), 2(8-0), Rect. No.91, Killa No.5(2-9), situated within the revenue limits of village Beedowali, Tehsil Gidderbaha, District Sri Muktsar Sahib as per Jamabandi

for the year 1995-96 being the legal heirs of deceased Angrej Kaur.

Another decree of declaration is prayed to the effect that Will dated 06.01.2003 alleged to be executed by deceased – Angrej Kaur, in favour of deceased – Gurmeet Singh, is forged and fabricated document, and mutation No.1788 regarding estate of deceased – Angrej Kaur is illegal, null & void, and not binding upon the rights of the plaintiff.

3. Defendants No.2 & 3 were minors at the time of filing of the suit, therefore, their interest was looked after by defendant No.1 (their real mother).

Facts pleaded in the plaint are that Angrej Kaur w/o Babu Singh, mother of plaintiff, respondents No.4 & 5, and mother-in-law of defendant No.1, grandmother of defendants No.2 & 3, was owner in possession of suit property, who died intestate without executing any Will in favour of the deceased – Gurmeet Singh. So, alleged Will dated 06.01.2003 in favour of said Gurmeet Singh by Angrej Kaur is forged and fabricated document. Even otherwise, Angrej Kaur was not competent to execute the Will, as the suit property was only joint Hindu Family property.

Even otherwise, Will is not a genuine Will, because, one of the attesting witness i.e. Gurcharan Dass, is mentioned as r/o Village Beedowali, but actually, he is not residing there, because, he has been working as Veterinary Pharmacist at Village Singhewala Fatuhiwala. There is another reason to doubt the said Will, because, at one point of time Gurmeet Singh, husband and father of defendants No.1 to 3, had filed a suit for declaration, challenging the ownership of Angrej Kaur (his mother), and said suit is still pending in the Civil Court at Gidderbaha. However, in connivance with the revenue officials, defendants succeeded in getting the mutation entered, and then sanctioned on the basis of the alleged 'Will'.

4. After issuance of notice in the suit, defendants No.1, 4 & 5 did not appear despite service through publication, and thus, they were proceeded against *ex-parte* vide order dated 18.02.2009, by the learned Trial Court. Later on, defendants No.1 to 3 appeared and filed written statement, in which, apart from taking the formal objection, defendants pleaded that Angrej Kaur was the absolute owner, and property was neither the ancestral nor Joint Hindu Formal property. Defendants No.1 to 3 relied upon the registered Will dated 06.01.2003 executed by Angrej Kaur in favour of Gurmeet Singh, who died on 12.05.2005, leaving behind his natural heirs i.e. defendants No.1 to 3. Thus, defendants claimed that after the death of Angrej Kaur, Gurmeet Singh became owner in possession of the suit property, and after his death, property was inherited by his natural heirs through natural succession.

5. On the basis of pleadings raised by the parties, learned Trial Court vide order dated 02.02.2016, framed the following ten issues:-

- “i. Whether plaintiff is entitled to seek declaration, as prayed for? OPP*
- ii. Whether plaintiff the Will dated 6.1.2003 executed by Angrej Kaur in favour of Gurmeet Singh is forged, fabricated document and mutation no.178 is illegal, null and void? OPP*
- iii. Whether plaintiff is entitled for joint injunction ? OPP*
- iv. Whether plaintiff is entitled for permanent injunction? OPP*
- v. Whether suit of the plaintiff is not maintainable? OPD*
- vi. Whether suit is time barred? OPD*
- vii. Whether the plaintiff has no locus standi and cause of*

action to file the suit? OPD

viii. Whether plaintiff has not come to the court with clean hands and suppressed material facts? OPD

ix. Whether suit is bad for mis-joinder of necessary parties? OPD

x. Relief.”

6. Basic question before the Courts below was that whether the registered Will dated 06.01.2003 in favour of Gurmeet Singh, is valid and genuine one or not ?

7. Court examined the allegation of the plaintiff *qua* the Will that one of the attesting witness namely; Gurcharan Singh is not resident of village Beedowali, and in the Will (Ex.D1), there is addition of one note which as per the plaintiff is afterthought, but no evidence in that regard has been pleaded on record by the plaintiff.

It is admitted fact on record that the property in dispute, was inherited by Babu Singh, father of plaintiff and husband of Angrej Kaur, and said Babu Ram inherited the same from his father Daleep Singh. Therefore, nature of property is ancestral.

8. After the death of Babu Singh, as per Section 8 of the Hindu Succession Act, 1956, Angrej Kaur became sole owner of the property in question. Enough evidence is available on record that Angrej Kaur was having cordial relations with all her children. Will (Ex.D1) does not contain the details of the property owned by Angrej Kaur, which has been bequeathed to Gurmeet Singh, by virtue of the disputed Will. Ink of the typewriter by which body of the Will, has been typed, is different from the ink typed last two lines i.e. note regarding the exclusion of plaintiff and

defendant No.4, has been added.

Another discrepancy left by defendant No.1 to 3 is that scribe – Krishan Lal Midda of the said Will, has also not been examined by the concerned defendant(s). Resultantly, learned Trial Court held that defendants could not prove the issues in their favour, thus, Will is considered to be surrounded with suspicious circumstances. Accordingly, property in question is held to have devolved upon the natural legal heirs of Angrej Kaur as per natural succession i.e. 1/4th share of each and every legal heirs i.e. Manjit Singh, Gurmeet Singh, Daljit Singh and Amarjit Kaur.

9. When the issue went before the learned First Appellate Court in the appeal filed by defendants No.1 to 3, it was also found that though original Will has been brought on record, and certified copy of the same has been proved by DW1 – Mewa Singh, who never stepped into the witness-box for cross-examination. Said witness also never deposed that after the presentation of Will for its registration, it was read-over to the executant, so much so, Sub-Registrar has also not been examined. Even, there is no reason given during the course of evidence that as to why, instead of giving a note about the exclusion in the last two lines, nothing was mentioned in the body of the alleged Will.

There is another angle to doubt the execution of the Will, as the plaint proved as Ex.P1, of the civil suit preferred by Gurmeet Singh for seeking declaration of joint ownership of the properties including the suit property, in para No.7 of the same, title of Angrej Kaur along with other defendants had been denied in the suit land by Gurmeet Singh.

This fact mentioned in para No.7 of the plaint (Ex.P1) clearly depicts a situation that the relationship between Gurmeet Singh and Angrej Kaur were not cordial, and also therefore, execution of Will only in favour

RSA-1385-2023 (O&M)

- 6 -

of Gurmeet Singh, is highly doubtful, and does not appeal to the common-sense of a normal human being.

10. I have heard the arguments addressed by learned counsel for the appellants (defendants No.1 to 3), and also examined the findings recorded by learned Courts below in the impugned judgments & decree.

The reasoning given in the judgments of both the Courts below appears to be supported with the proposition of law and is more near to the probability. Therefore, without addressing any substantive argument, worth to interfere with the judgments & decree passed by the Courts below, same cannot be disturbed.

Even also, no question of law, much less, any substantial question of law arises for consideration in the present appeal for interference in the impugned judgments & decree passed by the Courts below.

Thus, the instant appeal *sans* merits, stands **dismissed** accordingly. The judgments & decree passed by both the Courts below are affirmed.

Pending misc. application(s), if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

September 21, 2023

J.Ram

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