

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

CM-323-C-2020 in/ and RSA-122-2020

Date of Decision: November 07, 2023

HARVINDER SINGH

.....Applicant-appellant

Versus

PRITPAL KAUR AND ANR

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Dhruv Gupta, Advocate for the applicant-appellant.

HARKESH MANUJA, J. (ORAL)

CM-323-C-2020

This is an application filed under Order 41 Rule 27 CPC, seeking permission to produce on record sale deed dated 18.05.2011, executed by respondents-defendants, in favour of one Darshana Devi to the extent of 2/3rd share in the suit property, by way of additional evidence.

Learned counsel for the appellant submits that though, in their written statement, the respondents-defendants set up a Will dated 09.09.2002, allegedly executed by deceased Parbhat Singh in favour of respondent No.2/defendant No.2 i.e. his daughter thereby inheriting the entire suit property whereas, as per the registered sale deed dated 18.05.2011 which has been executed by respondents-defendants in favour of Darshana Devi, they are claiming themselves to be owners to the extent of 2/3rd share only.

In view of the above, learned counsel for the appellant submits that the contents of sale deed go contrary to the Will dated 09.09.2002, set up by respondents-defendants in the written statement which creates a strong suspicion with regard to its execution and thus prays that production of sale deed dated 18.05.2011 by way of additional evidence becomes necessary.

I have heard learned counsel for the appellant and gone through the contents of application as well as paper-book. I am unable to find substance in the submissions made on behalf of the applicant-appellant.

Mere assertion made in the sale deed dated 18.05.2011 to the extent that the vendors i.e. respondents-defendants were owners to the extent of 2/3rd share in the suit property, at best reflects their intention not to create the trouble for their vendee/purchaser. In fact the respondents-defendants made such averment only for the reason that they intended to alienate the undisputed share of the property during pendency of the present litigation which commenced in the year 2008 at the instance of appellant seeking right in the suit property.

Moreover, the factum of possession of Darshana Devi i.e. vendee under the sale deed dated 18.05.2011 came on record even during trial of suit, however, no steps were taken by the applicant-appellant as a prudent man to find out the true and correct transactions under which Darshana Devi happened to be in possession. Had an effort been made on behalf of the applicant-appellant, he would have definitely found out the factum of execution of the sale deed dated 18.05.2011.

Thus, in view of the aforesaid, the sale deed dated 18.05.2011 having no relevance for the adjudication of the present lis besides, the applicant-appellant having failed to act with due diligence,

the prayer made in the application stands declined.

MAIN CASE

By way of present appeal, challenge has been laid to the judgments and decrees dated 15.10.2016 and 04.07.2019 passed by the Courts below whereby, a suit for declaration as well as permanent injunction, filed at the instance of appellant-plaintiff claiming 1/3rd share in the suit property, stands dismissed.

2. Briefly stating, the appellant-plaintiff filed a suit for declaration claiming 1/3rd share in the suit property i.e. house No. 818, measuring 95 square yards, situated in Jawahar Colony, Saran Faridabad stating that the same was purchased by him as well as his deceased father Parbhat Singh, out of joint funds vide sale deed dated 15.02.1971, executed in the name of father. In the alternate, it was pleaded that the appellant-plaintiff being son of Parbhat Singh, after his death, became owner to the extent of 1/3rd share in the suit property along with the respondents-defendants who happened to be his mother and sister. Besides it, the appellant-plaintiff also prayed for grant of decree of permanent injunction, restraining the respondents-defendants from alienating/transferring the title or possession of the suit property.

3. Upon notice, respondents-defendants appeared and filed their separate written statements wherein, a Will dated 09.09.2002 executed by deceased father Parbhat Singh in favour of respondent

No.2/defendant no.2 was set up and it was pleaded that by virtue of the same, respondent No.2/defendant No.2 became exclusive owner of the suit property.

4. The trial Court vide judgment and decree dated 15.10.2016, dismissed the suit filed at the instance of appellant-plaintiff while holding the validity of the Will dated 09.09.2002 (Ex. D-1). Aggrieved thereof, the appellant-plaintiff filed the First Appeal, however, the same was dismissed vide judgment and decree dated 04.07.2019.

5. Impugning the aforementioned judgments and decrees passed by the Courts below, learned counsel for the appellant submits that in the facts and circumstances of the present case as well as from the evidence available on record, the respondents-defendants failed to prove the valid execution of the Will dated 09.09.2002 besides, the same being surrounded by suspicious circumstance. Learned counsel further submits that there was sufficient material on record to adjudge that the Will in question was surrounded by suspicious circumstance. Learned counsel also submits that there were material contradictions in the statements made by the attesting witness i.e. DW2 and defendant No.2/respondent No.2 who appeared as DW-1. He further points out that the name of beneficiary i.e. respondent No.2/defendant No.2 was never typed in the Will but was handwritten and was never counter-signed by the testator which created suspicion about its valid execution. No other argument has been addressed.

6. I have heard learned counsel for the appellant and gone through the paper-book. I am unable to find substance in the submission made on behalf of the appellant.

7. A perusal of judgments and decrees passed by the Courts below show that execution of Will dated 09.09.2002 (Ex.D1) by deceased Parbhat Singh in favour of respondent No.2/defendant No.2, qua the property in question has been validly proved on record in consonance with Section 63 of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872. One of the attesting witness namely Krishan Lal Sikka appeared as DW2 and proved the attestation of Will by both the witnesses i.e. for himself as well as for second attesting witness namely Lumber Singh.

8. As regards, the contradictions in the deposition made by DW2-Krishan Lal Sikka (attesting witness) as well as DW1 i.e. respondent/defendant No.2, having gone through the paper-book in the humble opinion of this Court, the same being not material, needs to be discarded, being not enough to raise any suspicion about the valid execution of the Will in question and to ignore his desire and the mind expressed therein by the testator.

9. Equally important, there is no merit in the contention raised on behalf of the applicant-appellant that the name of the beneficiaries not being typed but handwritten in the Will in question raises suspicious circumstance. In this regard, it may be pointed here that the attesting witness namely Krishan Lal Sikka while appearing as DW2 categorically

deposed that the Will was duly read out to the testator and he signed it after understanding the same thereafter. It means that at the time of attestation of Will, in question, there was no blank space left out in the Will and the name of the beneficiary was already recorded in the Will before the signatures by the testator.

10. In view of the discussion made hereinabove, finding no illegality or perversity with the concurrent findings of fact recorded by the Courts below, there being no overlooking of the material available on record, re-appreciation of pleadings and the evidence being impermissible, the present appeal being devoid of merits is, thus, dismissed.

11. Pending application(s), if any, shall also stand disposed of.

07.11.2023
tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>

