

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

**RSA No.4483 of 2019 (O&M)
DATE OF DECISION : 19.01.2023**

Singh Ram and AnotherAppellants

versus

Dharambir Singh and OthersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Mandeep Nehra, Advocate for
Mr. Sanpreet Sandhu, Advocate for the appellants

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ALKA SARIN, J. (Oral):

The present regular second appeal has been filed by the plaintiff-appellants against the judgments and decrees dated 31.05.2017 and 26.04.2019 passed by the Trial Court and the First Appellate Court, respectively dismissing their suit for possession and consequential relief of permanent injunction.

The brief facts relevant to the present *lis* are that the plaintiff-appellants filed a suit for possession with consequential relief of permanent injunction on the basis that they were owners in possession of the suit property on the basis of a Will dated 07.09.1988 executed by Nanha Ram. It was further averred that Nanha Ram died issueless and had willed his

entire property in favour of the plaintiff-appellants. However, they found out that the property is in the illegal and unauthorized possession of the defendant-respondents and hence the suit was filed.

The defendant-respondents, on notice, appeared and took preliminary objections qua *locus standi*, maintainability, estoppel, mis-joinder and non-joinder of parties. On merits it was pleaded that the Will was a bogus and fabricated document. It was further averred that Ramdia, who was father of the defendant-respondents, was in possession of the suit property since 1965 and had raised construction over it.

On the basis of the pleadings of the parties, the following issues were framed :

Issue no.1: Whether the plaintiffs are entitled to a decree for possession as prayed for ? OPP

Issue no.2: If issue no.1 is proved, then, whether plaintiffs are entitled to decree with consequential relief of permanent injunction, as prayed for ? OPP

Issue no.3: Whether suit is not maintainable in the present form ? OPD

Issue no.4: Whether the plaintiffs have no locus-standi and cause of action to file and maintain the present suit ? OPD

Issue no.5: Whether the plaintiff has not come to the court with clean hands and has suppressed the true and material facts from the court ? OPD

Issue no.6: Whether the suit of the plaintiff is hopelessly time barred ? OPD

Issue no.7: Whether the suit of the plaintiffs is bad for mis-joinder and non-joinder of necessary parties ? OPD

Issue no.8: Whether the plaintiffs are estopped by their own act and conduct to file and maintain the present suit ? OPD

Issue no.9: Whether the suit is not properly valued for the purpose of court fee and jurisdiction ? OPD

Issue no.10: Relief.

The sole basis by the plaintiff-appellants for claiming possession was the Will (Mark-A). None of the attesting witnesses of the said Will were examined nor was the Will proved in accordance with the provisions of the Indian Evidence Act, 1872. Rather, the Sarpanch Ranjit Singh, who was one of the attesting witnesses, stepped into the witness box as DW3 and deposed that Nanha Ram had never executed a Will and that he had never stood as a witness. He further deposed that the defendant-respondents had been in settled possession of the suit property for the last 60-65 years.

Learned counsel appearing on behalf of the plaintiff-appellants has contended that the witness DW3 was won over and hence he deposed against the plaintiff-appellants. It is contended that the Courts below have erred in dismissing the suit.

There is not an iota of evidence on the record to prove the Will Mark-A. The learned counsel appearing on behalf of the plaintiff-appellants has not been able to explain as to why none of the attesting witnesses of the Will were produced. Further still, even in the plaint there is no averment as to how the plaintiff-appellants were related to the Testator. The lower Appellate Court *inter-alia* held that :

“The plaintiffs have claimed their ownership over the property in question on the basis that Nanha Ram was the owner of the property in question and during the life time Nanha Ram, a Will was executed by Nanha Ram in favour of plaintiffs. It is settled preposition of law that the Will has to be proved in accordance with the provisions mentioned in Section 63 of the Indian Succession Act besides the Section 68 of Indian Evidence Act. Neither the attesting witness has appeared in the witness box nor the other witnesses have appeared in the witness box to prove the due execution of the Will in pursuance of the provision mentioned in Section 68 of the Indian Evidence Act. When such is a situation, the plaintiffs have abundantly failed to prove the Will on the file as per the provision

*of Section 63 of the Indian Succession Act, besides
under Section 68 of Indian Evidence Act.”*

Learned counsel for the plaintiff-appellants has been unable to point out anything on the record to dispel the findings recorded by the Courts below.

In view of the above, I do not find any illegality or infirmity in the judgments and decrees passed by both the Courts below. No question of law much less a substantial question of law arises in the present appeal. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

19.01.2023
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(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
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