

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

103

RSA-919-2016 (O&M)

Decided on : 04.09.2023

SATNAM SINGH

... Appellant

Versus

MAKHAN SINGH

... Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. P.S. Chahal, Advocate with
Mr. Gurjeet Singh Virk, Advocate
for the appellant.

SANJAY VASHISTH, J. (Oral)

1. Present Regular Second Appeal has been filed by defendant-Satnam Singh against the concurrent finding of decreetal of the suit in favour of the plaintiff-Makhan Singh.
2. Plaintiff-Makhan Singh claimed exclusive ownership along with possession of the properties; agricultural land measuring 32 kanal 3 marla comprised in khewat/khatoni No.33/35, 446/528 contained in khasra No.56//13/3(1-8), 17/2(1-6), 56//14(7-18), 15/1(0-17), 17/1(4-19), 18/1(1-1), 18/4(2-0), 23(7-13), 24/1(3-14), 76//3/2(0-9), 4/1(0-10), 198/6(0-4).
3. Consequential relief of permanent injunction was also prayed.
4. It is pleaded in the plaint that in the old age of his father, plaintiff served both the parents namely Bhagwan Singh and Smt. Kaushalya Devi (mother of plaintiff). Said Bhagwan Singh expired on 22.06.2000 and Smt. Kaushalya Devi expired on 18.05.2003.

During their lifetime, registered Will dated 22.12.1999 was executed by Bhagwan Singh in favour of plaintiff-Makhan Singh and similarly, Will dated 12.03.2003 was executed by Smt. Kaushalya Devi in favour of plaintiff-Makhan Singh.

5. In the written statement filed by the defendant-Satnam Singh (real brother of plaintiff) son of Bhagwan Singh, pleadings raised in the plaint was denied and on merits, it was submitted that there was no such Will executed by parents of the parties and rights in the properties are to be succeeded by the legal heirs of their father-Bhagwan Singh. Claiming his own right also in the property, defendant disputed the registered Will dated 22.12.1999 executed by Bhagwan Singh and Will dated 12.03.2003 executed by Smt. Kaushalya Devi.

6. Resultantly, vide order dated 20.01.2012, following issues were framed by the learned trial Court:-

“1. Whether the plaintiff is entitled to decree of declaration as prayed for? OPP

2. Whether the plaintiff is entitled to decree of permanent injunction as prayed for? OPP

3. Whether the suit of the plaintiff is not maintainable in the present form? OPD

4. Whether the plaintiff is estopped from filing the suit by his own act and conduct? OPD

5. Whether the plaintiff has concealed the material facts from the court? OPD

6. Whether the present suit is barred by principle of res-judicata? OPD

7. Relief.”

7. Learned trial Court had examined the pleading in the evidence led by both the parties and reached to the conclusion that the registered Will dated 22.12.1999 is well proved by the plaintiff. However, Will executed by Kaushalya Devi was not held to be proved. Still, it has been held that non-proving of the Will executed by Kaushalya Devi would not be of any

consequence because one acre of the suit property was only for the purpose of maintenance and to look after Kaushalya Devi and which was finally to vest in the plaintiff by virtue of Will dated 22.12.1999. Therefore, the rights in the property are to be succeeded by Makhan Singh from his father Bhagwan Singh only.

8. Finding recorded by learned trial Court in paragraph Nos.23 and 24 are reproduced here below:-

“23. A careful perusal of the case file transpires that the plaintiff has filed the present suit for declaration as well as permanent injunction on the basis of two Wills i.e. one executed by Bhagwan Singh and other executed by Kaushalya Devi in his favour. Now first of all the onus to prove the execution of legal and valid wills in favour of plaintiff was upon the plaintiff and in order discharge the said onus the plaintiff examined one of the marginal witness of Will executed by Bhagwan Singh namely Khushi Masih, who has categorically stated that the said Will dated 22.12.1999 has been executed by Bhagwan Singh in favour of plaintiff Makhan Singh and the same was scribed by Deed Writer Raj Kumar on the asking of said Bhagwan Singh. Bhagwan Singh dictated the Will and after scribing the Will the same was read over to Bhagwan Singh, who after admitted the same to be correct signed the Will in presence of said witness Khushi Masih as well as Parkash Chand Numberdar who also signed the Will in presence of executant Bhagwan Singh. The witness Khushi Masih also identified his signatures on the Will Ex. P-3. Further the plaintiff also examined the legal heir of another witness Puran Chand namely Sukhjit Rai as PW-2, as Puran Chand the second marginal witness has died and his son Sukhjit Rai identified his signatures on the Will in question. Further the Will is registered one as is clear from the evidence of PW-5 Paramjit Singh-HRC Clerk from the office of Sub-Registrar, deposed about the scribing the Will and he also produced the endorsement in his register regarding the same as Ex. PW4/1. So, from the evidence of all these whitenesses the Will in question stands duly proved as all the requirements of Section 68 of the Indian Evidence Act have been fully complied with. All these witnesses were fully cross examined by the counsel for the defendant. However, he failed to shake their credibility. As regards the contradiction in the statements of these witnesses. In this

regard, it is pertinent to mention here that some contradictions with the passage of time are bound to occur between the statement of the witness

as human memories fade away with the passage of time because admittedly the present Will has been executed in the year 1999 and the witnesses have been examined in the year 2011 and 2012 i.e. after more ten years. So, some contradictions are bound to occur and these are not such material contradiction which are capable for falsifying the version of the said witness.

24. *Further as regards the exclusion of the defendant from the property in question. In this regard, it is pertinent to mention here that it is not a suspicious circumstance surrounding the Will as the property has been given to the natural son Makhan Singh by Bhagwan Singh due to the fact that he was serving him in his old age and in the Will itself it has been written that during his life time he has given sufficient property to Satnam Singh, so he excluded Satnam Singh from any further inheritance qua his property and this is not a suspicious circumstance. Moreover the plaintiff has categorically stated that he was serving Bhagwan Singh in his old age and Bhagwan Singh was living with him at Village Dhogri while defendant Satnam Singh was living in Jalandhar along with his own family and this fact has not been disproved by the defendant, as not even a single suggestion to plaintiff Makhan Singh has been put by the counsel for defendant regarding the fact that Satnam Singh was also serving his parents. So, this argument does not hold good.”*

9. Court has also held that the Will dated 22.12.1999 does not seem to be surrounded with the suspicious circumstances because it has also been well proved by the plaintiff that in the old age, his father Bhagwan Singh was residing with him and being his natural son, the Will in question has been executed by his father in his favour.

10. It would also be relevant to consider here that because in the Will itself, there is a stipulation that Bhagwan Singh is being served in his old age by Makhan Singh and on the other hand, sufficient property has already been given to Satnam Singh-defendant.

Therefore, submission addressed that no sound reasoning has been given regarding the exclusion of name of Satnam Singh in regard to the inheritance of the property of his father, carries no weight because the Will itself contains the reason of the exclusion of Satnam Singh-defendant.

11. Findings regarding the Will have been confirmed by the learned First Appellate Court, also.

12. Relevant finding in paragraph Nos.32 and 33 recorded by the First Appellate Court is as under:-

“32. So from the above said discussion, it is clear that to prove the Will, respondent himself stepped into witness box and he reiterated his case. Thereafter, respondent examined PW2 Sukhjit Rai son of deceased Parkash Chand marginal witness. Thereafter, respondent examined PW3 who had proved the Will as per Evidence Act. He stated that deceased Bhagwan Singh had executed the will dated 22.12.1999 in his sound disposing mind in his presence. PW4 stated that he had scribed the Will Ex.P3 at the instance of deceased Bhagwan Singh. So respondent proved the Will. To rebut the evidence of respondent, appellant had examined DW1 Parvinder Pal Singh DSM who had conducted the mutation proceedings regarding the property of deceased Bhagwan Singh. Thereafter, appellant had examined Mohinder Singh who is the marginal witness of the agreement Ex.DW1/A. But it has already been discussed that appellant has failed to prove the agreement as same is beyond pleadings and even DW1 Parvinderjit Singh SDM had not relied upon compromise Ex.DW1/A and he sanctioned the mutation on the basis of natural succession. Thereafter, Satnam Singh himself stepped into witness box and he reiterated his case. So there is bald statement of Satnam Singh and he failed to rebut the evidence of respondent regarding execution, legality and validity of the will Ex.P3. So from perusal of judgment passed by learned lower court, it is clear that learned lower court had passed a well reasoned judgment and there is no illegality or infirmity in the judgment passed by learned trial Court.

33. As a sequel of my above discussion, findings as returned by learned trial court on the issues framed, are hereby affirmed and no ground for interference is made out. Resultantly, this appeal fails and the same is hereby dismissed with costs.

Decree sheet be prepared accordingly. Record of the learned lower court be sent back along with copy of this judgment and appeal file be consigned to the record.”

13. I have heard the learned counsel at length and gone through the impugned judgment and decree.

14. This Court does not find any substantial reason to disturb the findings given by the Courts below and therefore, by maintaining the same, the present appeal stands **dismissed**.

(SANJAY VASHISTH)
JUDGE

September 04, 2023
Lavisha

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