

RSA-3668 of 2018 (O&M)

2023:PHHC:126674

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

RSA-3668 of 2018 (O&M)

Date of decision: 25.09.2023

Balwant Kaur

.....Appellant

Versus

Jit Singh and others

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Raman Mohinder Sharma, Advocate,
for the appellant.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 21.11.2016 passed by the Court of learned Additional Civil Judge (Senior Division), Zira, whereby suit of the respondent-plaintiffs for declaration with consequential relief of joint possession and permanent injunction was decreed as well as against the judgment and decree dated 09.01.2018 passed by the Court of learned Additional District Judge, Ferozepur, vide which the appeal filed by the appellant-defendant against the judgment and decree of the trial Court, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Brief facts of the case are that plaintiffs filed a suit for declaration to the effect that Smt. Bisso

deceased was owner of 6 kanals 15 marlas land being 1/7 share of land measuring 47 kanals 5 marlas as fully detailed in the head note of the plaint. Smt. Bisso was married with Inder Singh at village Chirag Shah Wala and after her marriage, her name was kept as Balwant Kaur by her in-laws. Smt. Bisso alias Balwant Kaur died on 26.06.1978 at village Chirag Shah Wala, leaving behind plaintiffs No.1 to 3 as her sons, plaintiffs No.4 to 6 as her daughters and her husband Inder Singh, who died in the year 1984. Plaintiffs are only legal heirs of Smt. Bisso. Defendant, in collusion with witnesses and scribe, has forged unregistered Will dated 20.01.1999 and also forged death of Smt. Bisso on 05.07.2002. At the time of entering and sanctioning of mutation, plaintiffs have not been shown as heirs of Smt. Bisso intentionally. No notice was issued to them before entering and sanctioning mutation of inheritance of Smt. Bisso. Plaintiffs are entitled to inherit the estate of Smt. Bisso being her sons and daughters in equal shares and are also entitled to joint possession of the land. That alleged Will is illegal, null and void. A.C.Ist grade Zira has wrongly sanctioned mutation No. 834 on the basis of alleged forged Will and the said mutation is also liable to be set-aside. It was further pleaded that cause of action accrued to the plaintiffs on 04.03.2011, when plaintiffs approached Halqa Patwri to get land partitioned. Then the plaintiffs came to know about the unregistered Will and sanctioning of mutation in favour of defendant on the basis of said forged Will. Defendant is threatening to alienate the land in favour of third person, of which she has no right. It was finally prayed that a decree for declaration be passed that plaintiffs are owners

in equal shares of land measuring 6 kanals 15 marlas being 1/7 share of land measuring 47 kanals 5 marlas, being legal heirs of Smt. Bisso and that Smt. Bisso never executed any Will as alleged by the defendant as the same is forged and fabricated and mutation No. 834 is illegal, null and void with consequential relief of joint possession as owner and for injunction restraining the defendant from alienating the suit land.

3. On notice, defendant appeared and filed written statement, contesting the suit. Preliminary objections regarding maintainability of the suit, same being false and frivolous, plaintiffs having no *locus standi* to file the suit and plaintiffs being estopped by their act and conduct from filing the suit and having concealed material facts were taken. It was contended that Narain Singh son of Jawahar Singh was owner of land measuring 47 kanals 5 marlas. He died, leaving behind Smt. Bisso, Smt.Kisso, Smt.Tejo, Smt. Dialo and Smt. Dato daughters and Naranjan Singh and Pala Singh sons. So, mutation of his inheritance was sanctioned in favour of his aforementioned daughters and sons to the extent of 1/7 share. Smt. Bisso was suffering from Polio of both legs since childhood and was unable to walk. She was unmarried. She was residing with her brother Naranjan Singh, father-in-law of defendant. During whole life, she remained in the house of Naranjan Singh, Tarlok Singh and the defendant. She executed a Will dated 20.01.1999 in favour of defendant, due to love and affection as defendant used to serve her. She executed Will dated 20.01.1999 in sound disposing mind with her free Will. She died on 05.07.2002.

Thereafter, mutation No.834 was duly sanctioned in favour of

defendant. Suit land was in possession of defendant and her husband before the death of Smt. Bisso and after her death, defendant is in possession of the same as owner. Smt. Bisso never married and plaintiffs are not her sons and daughters. Plaintiffs are children of Smt. Kisso, another daughter of Narain Singh. Smt. Bisso never resided in village Chirag Shah Wala. Smt. Kisso was married at village Chirag Shah Wala with Inder Singh. Plaintiffs were born out of wedlock of Inder Singh with Smt. Kisso. After marriage of Smt. Kisso, her name was kept by her in-laws as Balwant Kaur. After marriage of Tejo, her name was kept by her in-laws as Tej Kaur and after marriage of Dato, her name was kept as Pritam Kaur by her in-laws. That suit of the plaintiff is false and deserves dismissal. While replying on merits, aforementioned pleas were reiterated. It was prayed that the suit be dismissed.

4. Replication was filed. It was denied that Smt. Bisso was unable to walk due to Polio or that she remained unmarried. It was contended that Smt. Kisso was married with Dhara Singh at village Morey Kalan, Tehsil Guruharsahai. She died, leaving behind one daughter Balbir Kaur and four sons namely Sucha Singh, Kala Singh, Sardool Singh and Jaswant Singh. Smt. Bisso was mother of plaintiffs and died on 26.06.1978. Another daughter Tejo alias Tej Kaur was wife of Sajjan Singh and was married at village Chirag Shah Wala. Later on, family of Tej Kaur shifted to Mallanwala, Tehsil Zira. Tejo alias Tej Kaur died leaving behind Surat Singh, Gurcharan Singh and Balbir Singh and six daughters. Another daughter Dialo alias Dial Kaur is

widow of Gajjan Singh and was married at village Sadiq Patti and has one son Balwant Singh and one daughter Balwinder Kaur. Another daughter Dato was married with Balkar Singh of village Pehal Tehsil Ludhiana and she died leaving behind Jit Kaur daughter, Zora Singh, Karnail Singh sons and another daughter who pre-deceased her. So, all the daughters of Narain Singh were married and it is wrong that Bisso remained unmarried and lived in the house of Naranjan Singh. Denying other averments of written statement and reiterating the averments of the plaint, prayer for decreeing of the suit was made.

5. From the pleadings of the parties, following issues were framed by the learned trial Court on 01.05.2014:-

1. Whether the plaintiffs are entitled to relief of declaration as prayed for in the plaint? OPP.
2. Whether the plaintiffs are entitled for consequential relief of joint possession as owner and for permanent injunction as prayed for? OPP.
3. Whether the suit of the plaintiffs is not maintainable in the present form ? OPD.
4. Whether the plaintiffs have no cause of action and locus standi to file the present suit? OPD.
5. Whether the plaintiffs have concealed the true and material facts from the court? OPD.
6. Whether the suit of the plaintiffs is not within limitation? OPD.
7. Whether the Will placed on record is legal and valid document and the same is free from any suspicion? OPD.
8. Relief

6. Parties led oral as well as documentary evidence in support of their respective contentions.

7. After hearing arguments and after appreciating evidence on record, trial Court decreed the suit of respondent-plaintiffs vide judgment and decree dated 21.11.2016.

8. Aggrieved against the judgment and decree of the trial Court, appellant-defendant preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 09.01.2018.

9. Learned counsel for the appellant contended that judgments and decrees of both the Courts below are based on conjectures and surmises. He further contended that both the Courts below have not properly appreciated the evidence on record. He further contended that respondent-plaintiffs have not produced any document to prove their relationship with Smt. Bisson. He further contended that suit of the plaintiffs has wrongly been decreed by wrongly discarding the will executed by Smt. Bisso in favour of the respondent-defendant.

10. I have heard learned counsel for the appellant and perused the record.

11. Perusal of the record shows that respondent-plaintiffs filed a suit for declaration claiming themselves to be children of Inder Singh and Smt. Bisso (Balwant Kaur). In support of their claim plaintiffs produced on record Death Certificate Ex.P-3 of Balwant Kaur wife of Inder Singh of Village Chirag Shah Wala, wherein date of death of

Smt. Bisso has been mentioned as 26.06.1978. Appellant-defendant in her cross-examination stated that one daughter of Narain Singh was married with Inder Singh and plaintiffs are her children. She further admitted that said daughter of Narain Singh died about 37-38 years ago. Defendant was examined on 16.05.2016. Thus, from the statement of appellant-defendant it transpires that wife of Inder Singh died in the year 1978. Hence, respondent-plaintiffs have proved on record that Death Certificate Ex.P-3 was that of Smt. Bisso. Appellant-defendant has failed to prove on record 'will' Ex.D1, which was alleged executed by Smt. Bisso much after her death on 20.01.1999. Moreover, appellant-defendant has not produced on record original 'will' and did not examine attesting witness of the said 'will'. Appellant has further failed to prove on record that Smt. Bisso was unmarried and she resided with the appellant during her lifetime. Therefore, this Court is of the opinion that 'will' allegedly executed by Smt. Bisso in favour of the appellant is surrounded by suspicious circumstances.

12. Concurrent findings have been recorded by both the Courts below and learned counsel for the appellant has failed to show that the same are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

13. No question of law, muchless substantial question of law has been raised or arises for consideration in the present appeal. No other point has been urged.

14. In view of the above, present appeal is dismissed.

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15. Pending application(s), if any, stand disposed of accordingly.

25.09.2023
R.S.

(NAMIT KUMAR)
JUDGE

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