

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

Sr. No.113

RSA No.2538 of 2022 (O&M)

Date of Decision: 10.02.2023

Nishan Singh and another

.... Appellants

Versus

Sach Khand Sri Harminder Sahib
(Sri Darbar Sahib) Sri Amritsar

... Respondent

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Atul Jain, Advocate for the appellants.

Dr. Puneet Kaur Sekhon, Advocate and
Mr. M.S.Virk, Advocate for the caveator-respondent.

TRIBHUVAN DAHIYA, J.

This is defendants' second appeal against the concurrent findings of both the Courts below.

2. The facts in brief as pleaded by the parties are, the respondent/plaintiff (hereinafter referred to as the 'plaintiff') filed a suit for declaration and possession claiming that on the basis of Will dated 29.11.2007 (Ex.PW2/B) executed by Kishan Kaur, he is the owner of the suit property. The suit was contested by the appellants/defendants by pleading that the Will dated 29.11.2007 was outcome of fraud and misrepresentation. It was cancelled by Kishan Kaur of her free will during her lifetime, and a Will dated 26.01.2008 was executed by her in favour of her grandsons (defendants herein). The suit property was situated at

Kapurthala but the alleged Will dated 29.11.2007 was executed and registered in the office of Sub Registrar, Amritsar-I.

3. Both the Courts below have concurrently held that the Will dated 29.11.2007 was validly executed and stood duly proved on record as a registered document. At the same time, the subsequent Will dated 26.01.2008 (Ex.D1) in favour of the defendants cannot be relied upon as it was shrouded by suspicious circumstances. Now the defendants are in regular second appeal before this Court challenging the findings of both the Courts below.

4. Learned counsel for the appellants has contended that the only ground on which plaintiff's suit has been decreed is that the Will dated 29.11.2007 was a registered document. The Courts below have ignored the fact that this Will stood rescinded by the subsequent Will in the defendants' favour executed by Kishan Kaur on 26.01.2008, which stands duly proved on record by examining the scribe, DW4, as well as the attesting witnesses, DW2 and DW3. Learned counsel has further argued that the plaintiff's suit was time barred as they approached the Court only in 2016 on the basis of a Will dated 29.11.2007, its executant also died on 28.07.2008.

5. *Per contra*, learned counsel for the respondent/plaintiff has argued that findings of both the Courts below are well reasoned and need to be upheld as the defendants have not been able to prove the execution or genuineness of the subsequent Will propounded by them dated 26.01.2008.

6. A perusal of the findings recorded by the Courts below establish that the Will, dated 29.11.2007, was a registered document and the attesting witnesses, PW4 and PW7, have duly proved its due execution.

They confirmed in cross-examination that on 29.11.2007 Kishan Kaur came

and asked them to accompany her to the Tehsil complex as she wanted to execute the Will in question in favour of Shri Harmandir Sahib/plaintiff. PW5-scribe of the Will was also examined. The registration of Will was duly proved by PW6-Junior Assistant from the office of Sub Registrar, Amritsar. I. In fact, the defendants have also admitted execution of the Will dated 29.11.2007. Their stand is that the Will was a result of fraud played upon them as her signatures were taken on the pretext of getting papers signed for claiming monthly pension from the Shiromani Gurdwara Prabhandhak Committee, Amrtisar. But ingredients of the alleged fraud could not be proved on record; no evidence to that effect was led by the defendants. Therefore, the plea has been rightly discarded by both the Courts below.

7. With regard to the subsequent Will dated 26.01.2008 (Ex.D1) in favour of the defendants', the case is that it was executed in their favour by Kishan Kaur as she was pleased by their services and used to reside with them too. They were the ones who used to look after her. This assertion also stands belied by the testimony of DW3 itself, who stated in the cross examination that Kishan Kaur used to reside with her daughter Satnam Kaur. No document, like ration card or Aadhaar card of Kishan Kaur, could be proved on record to establish that she was residing with the defendants. It could not even be shown by the defendants that they performed last rites of Kishan Kaur. On the other hand, the attested copy of Will dated 29.11.2007 (Ex.PW2/B) shows it has been recorded therein that Kishan Kaur had already given her property to both her sons. She used to visit Shri Harmandir Sahib for paying obeisance to get peace of mind, and she intended to give her remaining property, i.e., suit property, to Shri Harmandir Sahib at Amritsar. That is the reason the Will in question was executed and was got

registered by her there. Further, there is no proof on record that Will dated 29.11.2007 was cancelled, as no cancellation deed or even a notice of cancellation has been proved on record.

8. On the basis of this evidence, both the Courts below have concurrently held that the Will in question, dated 29.11.2007, stood duly proved in favour of the plaintiff and decreed its suit. Therefore, the findings are based on cogent evidence and suffer from no error of law.

9. The last argument of learned counsel for the appellant regarding the suit being time barred, is also not sustainable in view of the settled proposition of law that limitation to file a suit for possession on the basis of title is twelve years. In case one of the reliefs sought is that of declaration, it will not mean that the prescribed period of limitation will not be applicable. To seek possession, title over the property is to be proved. Declaratory relief for title of the property is *sine qua non* for seeking possession over it. The former, therefore, cannot be held to take away the essential characteristics of a suit for possession. It has been so held by the Supreme Court in the case *Sopanrao and another v. Syed Mehmood and others*, 2019(7) SCC 76. The *ratio* of judgment as reflected in the para 9, reads as under:

In a suit filed for possession based on title the plaintiff is bound to prove his title and pray for a declaration that he is the owner of the suit land because his suit on the basis of title cannot succeed-unless he is held to have some title over the land. However, the main relief is of possession and, therefore, the suit will be governed by Article 65 of the Limitation Act, 1963. This Article deals with a suit for possession of immovable property or any interest therein based on title and the limitation

is 12 years from the date when possession of the land becomes adverse to the plaintiff. In the instant case, even if the case of the defendants is taken at the highest, the possession of the defendants became adverse to the plaintiffs only on 19.08.1978 when possession was handed over to the defendants. Therefore, there is no merit in this contention of the appellants.

10. It is apparent on record that the instant suit is for declaration as well as possession of the suit property, therefore, limitation to file the same is twelve years. The suit was filed on 18.08.2016 on the basis of Will dated 29.11.2007 executed by Kishan Kaur, who statedly died on 28.07.2008. Accordingly, it is clearly within the prescribed period of limitation.

11. In view of the aforesaid, there is no ground to interfere with the concurrent findings of the Courts below and the same do not suffer from any error of law. No substantial question of law arises for consideration either.

12. Appeal stands dismissed.

13. Pending miscellaneous application(s), if any, stand disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

10.02.2023
Maninder

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes