

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

RSA No. 933 of 2020 (O&M)

Date of decision: 11.05.2023

Bacchater Singh

..... Appellant

Versus

Sarwan Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. Kanwal Goyal, Advocate, for the appellant.

ANUPINDER SINGH GREWAL, J. (ORAL)

The appellant has challenged the judgments and decrees of the courts below whereby the suit filed by him for declaration and permanent injunction has been dismissed.

2. Learned counsel for the appellant-plaintiff submits that the appellant-plaintiff had been able to prove the execution of the Will dated 22.02.2012 (Ex.P3) through the evidence of the appellant-plaintiff himself and three attesting witnesses, who were examined as PW2 to PW4. He further submits that respondent-defendant No.1 could not satisfactorily prove the execution of the Will dated 08.12.2011 (Ex.D1), which is mandatory even though the appellant-plaintiff had admitted its execution. The courts below have erroneously relied on minor discrepancies in the evidence inasmuch as the photographs on the two Wills were different. The Will dated 22.02.2012 (Ex.P3) was an unregistered document and, therefore, there was no requirement of the photograph. The Will dated 08.12.2011 (Ex.D1) had been executed, but later their mother had executed another Will dated 22.02.2012 (Ex.P1) and the Will, which has been executed at later point of time especially when it duly mentions the previous Will, would supersede the previous Will.

3. Heard. The appellant-plaintiff had filed a suit for declaration to the effect that he is owner in possession of the property bearing Khasra No.26979/197/8 measuring 7 marlas situated at Laxmipura, District Jalandhar City, on the basis of Will dated 22.02.2012, which was executed by his mother, namely, Balwant Kaur, with a consequential relief of permanent injunction. He had examined three attesting witnesses and only one of those attesting witnesses is stated to be Lambardar of the village but the other witnesses were from another place and it could not be established as to how they were known to the testatrix.

4. The scribe of the Will dated 22.02.2012 (Ex.P3) had not been examined. On the contrary, the execution of the Will dated 08.12.2011 (Ex.D1) had been admitted by the appellant-plaintiff himself. This Will (Ex.D1) was a registered document. The scribe, namely, DW5 Gopal Krishan as well as the attesting witnesses of the Will dated 08.12.2011 (Ex.D1) were duly examined and there was no material contradiction in their evidence. It was also stated in this Will (Ex.D1) that the property is being bequeathed to respondent-defendant No.1, as she did not have good relations with the other sons, including the appellant-plaintiff, who had been disowned by her. Moreover, respondent-defendant No.2, namely, Satnam Singh, who is the brother of the appellant-plaintiff and respondent-defendant No.1, had admitted that his mother Charan Kaur @ Balwant Kaur during her lifetime had only executed a registered Will dated 08.12.2011 in favour of respondent-defendant No.1. The lower appellate court has also recorded a finding that there was explicit difference in the thumb impression of testatrix Balwant Kaur on both the Wills. Therefore, I do not find any illegality in the judgments and decrees passed by the courts below.

5. Consequently, the appeal stands dismissed.
6. Pending application(s), if any, shall also stand disposed of accordingly.

11.05.2023
Ramesh

(ANUPINDER SINGH GREWAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No