

RSA-93 of 2019 (O&M)

2023:PHHC:129520

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

RSA-93 of 2019 (O&M)
Date of decision: 04.10.2023

Jangir Singh

.....Appellant

vs.

Major Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. G.L. Bajaj, Advocate,
for the appellant.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 22.03.2018 passed by Additional Civil Judge (Senior Division), Faridkot, whereby suit for declaration filed by the plaintiff-appellant has been dismissed as well as against the judgment and decree dated 06.08.2018 passed by Additional District Judge, Faridkot, whereby appeal filed by the plaintiff-appellant, challenging the judgment and decree dated 22.03.2018, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. The facts relevant for disposal of this regular second appeal are that the plaintiff-Jangir Singh instituted the suit for declaration and permanent injunction to the effect that he is owner in possession 1/4th share out of land measuring 32 kanals 01 marls, as detailed in the head-note of plaint, and he is entitled to get mutation of *tabdil malkiat* entered and sanctioned in his favour on the basis of oral and

documentary evidence of all kinds and that the defendant be restrained from alienating/transferring the land in any way, to some other person, except the plaintiff in due course of law. It is the case of the plaintiff that originally, land in question was owned by Sucha Singh, maternal grandfather (Nana) of the parties to the suit, who expired about 3-4 years back (from the date of filing of the suit). After the death of Sucha Singh, a dispute arose between the plaintiff and the defendant and in order to settle it, they alongwith their maternal uncle had relinquished 1/4th share, out of the suit land, in favour of the plaintiff. However, the plaintiff and the defendant had been jointly cultivating the suit land. The suit land is ancestral and joint Hindu family and coparcenary property and since birth, the plaintiff has every right in it. Sucha Singh had two sons, namely Santa Singh, Sadu Singh and one daughter-Sant Kaur, mother of the plaintiff as well as the defendant and Jangiro (daughter), who has been living in her in-laws' house peacefully after the marriage. Jangiro has already relinquished her share in favour of the plaintiff and the defendant and the plaintiff has become owner of 1/4th share, out of the suit land. The plaintiff requested the defendant to give him 1/4th share alongwith possession, as per the settlement done by their maternal grandfather, but the defendant had refused to do so and even kept away the plaintiff with severe beatings. Hence, this suit.

3. Upon issuance of notice, defendants appeared through counsel and filed written statement controverting all the averments made in the plaint by taking number of preliminary objections on the grounds of maintainability of the suit; locus standi of the plaintiff to file the suit; the suit is not properly valued and the suit is time barred. On merits, the

RSA-93 of 2019 (O&M)

2023:PHHC:129520

relevant averments made in the plaint are denied. It is pleaded that Sucha Singh, who expired about 18 years back, executed a registered Will in favour of the defendant on 08.12.1977, registered on 28.12.1977. After the death of Sucha Singh, mutation of the same land measuring 32 kanals, was sanctioned in faovur of the defendant and since then, he has been owner in possession of the same and rather, the plaintiff has no concern with the same.

4. Replication was filed by the plaintiff wherein he controverted the averments made in the written statement and reiterated those of the plaint.

5. From the pleadings of the parties, the learned trial court framed the following issues :-

1. Whether the plaintiff is entitled to the declaration, as prayed for?OPP
2. Whether the plaintiff is entitled to the permanent injunction, as prayed for?OPP
3. Whether the suit is not maintainable in the present form?OPD
4. Whether the plaintiff has no locus standi to file the present suit?OPD
5. Whether the suit is within limitation?OPP
6. Whether the suit is not properly valued for the purposes of court fee and jurisdiction?PD
7. Relief.

6. It is pertinent to mention here that vide order dated 26.09.2003 passed by the then Addl. Civil Judge(Jr. Divn), Faridkot, following additional issue No.3(a) was framed:

3(a) Whether Sucha Singh registered a legal and valid Will

in favour of defendant?OPD

7. The parties led their respective evidence. The Court of first instance, after appreciating evidence on record dismissed the suit filed by the plaintiff with costs.

8. Feeling aggrieved against the said judgment and decree of the trial Court, plaintiff preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 06.08.2018.

9. Learned counsel for the appellant contended that the judgments and decrees passed by both the Courts below are against law and the evidence on record. He further contended that both the courts below have wrongly relied upon the alleged Will of Sucha Singh, executed on 08.12.1977 and registered on 28.12.1977, rather the same is forged, fabricated and fictitious document and has no value in the eyes of law. He further contended that in fact, Sucha Singh died intestate and had never intended to execute any alleged Will in favour of the defendant.

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

11. It is the case of the appellant that he became owner of 1/4th share of the suit land as his maternal grand-father had relinquished it in his favour. The onus to prove the same was heavily on the plaintiff. To strengthen his case, the plaintiff examined as many as four witnesses. However, the plaintiff has not led any documentary evidence, demonstrating his version. The witnesses may lie, but the documents do not, is a golden rule. No document has been produced by the plaintiff to indicate that his maternal grand-father had relinquished 1/4th share in his favour. As per Section 17 of the Registration Act, when a person

relinquishes his share in part of any property in favour of any person, is required to be registered and there must be non-testamentary instruments.

12. *E converso*, in order to prove that Sucha Singh executed a Will dated 08.12.1977, registered on 28.12.1977, in favour of the defendant and he led oral as well documentary evidence to prove its execution. However, the plaintiff pleaded that the alleged Will is a forged and fabricated document. But he has failed to prove that there was any suspicious circumstance at the time of execution of the Will dated 08.12.1977/28.12.1977 or the executant was not in sound disposing state of mind. A registered document carries with it a presumption that it was validly executed. The documentary evidence would prevail over the oral evidence. Furthermore, the Court of first instance has also rightly recorded the finding that Baljit Singh, Gurdeep Singh, Jagsir Singh and Jagjit Singh were also necessary parties to the suit, but they had not been impleaded as parties and, therefore, the suit was bad for non-joinder of necessary parties.

13. Concurrent findings have been recorded by both the Courts below that the defendant has become owner of the suit land on the basis of Will executed by his maternal grand-father, namely, Sucha Singh and the plaintiff has no concern with the suit land. The plaintiff has failed to prove that the defendant had relinquished 1/4th share in his favour. Learned counsel for the appellant has failed to show that the findings recorded by Courts below are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

14. In view of above, 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.

RSA-93 of 2019 (O&M)

2023:PHHC:129520

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

(NAMIT KUMAR)

JUDGE

04.10.2023

R.S.

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