

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

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**RSA-5348-2018 (O&M)
Decided on : 23.08.2023**

DARWARA SINGH

. . . Appellant

Versus

MOHINDER SINGH AND ORS

. . . Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Jatinder Singla, Advocate
for the appellant.

SANJAY VASHISTH, J. (Oral)

1. Present Regular Second Appeal has been filed by the plaintiff against the concurrent findings of the fact and law recorded by both the Courts below.

2. Suit for declaration, joint possession and permanent injunction filed by the plaintiff - Darwara Singh, was dismissed.

3. In the suit, plaintiff challenged the registered Will (Ex.DW-6/A) dated 22.07.1997 executed by his brother-Harpal Singh, who died issueless on 26.07.2008. He further challenged the registered transfer deed No.2205 dated 05.09.2008 executed by Tej Kaur widow of Pritam Singh, who died on 27.01.2011. By way of registered Will, Harpal Singh transferred the rights in his property in favour of Satgur Singh and Balkar Singh (defendants No.2 and 3) respectively, who are sons of his brother-Mohinder Singh. Similarly, Tej Kaur had transferred her rights in the property in favour of defendant No.1-Mohinder Singh, who is the father of defendant Nos.2 and 3. Plaintiff pleaded that registered Will dated 22.07.1997 and transfer deed dated 05.09.2008 are illegal, null and void.

4. In the written statement filed by the defendants, although, all the

facts have been admitted *qua* the relation as well as the death of transferor Tej Kaur, who transferred her rights in the property in favour of defendant No.1, however, it is pleaded that the Will in question and the mutation thereupon and also the transfer deed are legally valid, same being registered documents.

5. After going through the pleadings, learned trial Court framed total 8 issues which are reproduced herebelow:-

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

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

3. Whether the plaintiff has no cause of action or locus standi to file the present suit?OPD

4. Whether the suit is not maintainable in the present form?OPD

5. Whether the plaintiff is estopped from filing the present suit by their own act and conduct?OPD

6. Whether plaintiff has not come to the court with clean hands?OPD

7. Whether suit has not been properly valued for the purpose of court fee and jurisdiction?OPD

7-A Whether Harpal Singh executed a Valid Will dated 22.07.1997 in favour of the defendant no. 2,3, if so, its effect?OPD 2 & 3

7-B Whether Tej Kaur executed a valid transfer deed no. 2205 dated 05.09.2008 in favour of defendant no. 1, if so its effect. OPD no. 1

8. Relief.”

6. Both the Courts below have found that the registered Will was executed on 22.07.1997 and Harpal Singh died on 26.07.2008 and during his lifetime, there was never any complaint against the defendants by Harpal Singh or anybody else that their signatures and thumb impressions have been taken

forcibly or some fraud was played. It is also observed that Tej Kaur had executed registered transfer deed on 05.09.2008 and she expired on 27.01.2011, but during her lifetime, never any such complaint was moved by anybody.

7. Therefore, taking note of both the documents being registered and the same being valid besides keeping in view Section 68 of the Indian Evidence Act, 1872, suit filed by the plaintiff was dismissed. Not only this, even Courts below have held that the plaintiff himself has failed in bringing any evidence on record to prove his pleadings, although, he has pleaded in his complaint that the Will as well as the transfer deed are all fabricated, illegal, null and void documents, however, also nothing has been pleaded thereafter, that how the said documents can be called as illegal, void or prepared by playing fraud. Even, no evidence to corroborate his allegation has been led on record during the course of evidence.

8. While dealing with the said issue, learned 1st Appellate Court has given its findings in paragraph No.14 and 15 of the impugned judgment which are reproduced herebelow:-

“14. *The learned counsel for the plaintiff has argued that the transfer deed in question was never executed by Tej Kaur in favour of defendant no.1 and same is the result of fraud. He argued that Tej Kaur was taken to Tehsil Complex by defendant no.1 where her thumb impressions were obtained by fraud. Perusal of the transfer deed Ex.D2 shows that it is a registered document. It was executed on 05.09.2008. PW1 Darwara Singh has admitted in his cross examination that Teja Kaur died on 27.01.2011. Now the question is that if thumb impressions of Tej Kaur were taken by defendant no.1 under some fraud, then Tej Kaur must have reported the matter to the police or filed a civil suit in the Court and it is not expected from her that she would remain silent during her life time. Moreover, there is endorsement of Sub Registrar on the transfer deed in question that it was read over and explained to Tej Kaur. Law is well settled that a registered document carries presumption of genuineness unless rebutted. In this regard reliance has been placed by the learned trial court on the observations made in **Govind Anant Goltekar and ors Versus Dashrath Deoba AIR 2006 Bombay 174** where it*

has been held that a registered sale deed carries presumption of genuineness and this presumption is rebuttal. The burden is on the person who alleges that it is not genuine. Thus, the burden was on the plaintiff to prove that the said transfer deed was illegal, null void. Only by examining himself as PW-1 and Harish Kumar Inspector Food Supply as PW-2, the plaintiff cannot be said to have discharged his burden especially when it has been admitted by the plaintiff himself that transfer deed was executed by Tej Kaur. Thus, the execution of transfer deed is also duly proved on the record. It is settled law that the party cannot lead any evidence beyond pleadings. From the perusal of the plaint the plaintiff, Darwara Singh, averred in para no.3 of the plaint that the alleged Will dated 22.07.1997 alleged to be executed by Harpal Singh in favour of defendants no.2 and 3 is illegal null and void and is bogus, forged, fictitious and fabricated one. He has not averred in the plaint as to how the same is illegal, null and void and is bogus, forged, fictitious and fabricated one. Even during the course of the evidence he has examined himself as PW1, but apart from simply deposing that the Will is null and void has not led any evidence to show as to how the same is null and void. Same is the case with the transfer deed in question. It is settled law that whenever a person claims fabrication or forgery then onus is upon him to prove the same, but in the present case the plaintiff has miserably failed to discharge the onus. While, on the other hand, the defendants have duly proved the execution of the Will as well as transfer deed in question by examining the scribe as well the attesting witness of the said documents. It is not the case of the plaintiff that the handwriting of Harpal Singh on the said Will and Tej Kaur on the transfer deed is forged and these do not bear their signatures. The other aspect in the present case is that why the plaintiff remained mum till the death of Tej Kaur and never challenged the alleged transfer "deed at the earlier occasion. Had it been forgery, fabrication or any force upon Tej Kaur she would have definitely reported the matter to Darwara Singh as well as to the police. The plaintiff has also not proved in evidence that he ever filed any criminal complaint against the defendants in the present case, though it is not necessary to file the criminal complaint, but this solely speaks volume about conduct of the plaintiff.

15. *As far as version of the appellant that proper issues have not been framed, is concerned, there is not an iota of evidence on record to show that he moved any application with regard to the framing of the additional issue at any stage during the pendency of the suit or this appeal. There is a provision in CPC whereby issues can be re-framed at any time before the judgment is pronounced. Otherwise also the contention of learned counsel for*

the appellant seems vague as the issue which he needs to be framed has not been specified in the grounds of appeal and has not mentioned that which issue is to be framed and its non framing has caused prejudice to him. so, the argument of learned counsel for the appellant on this point is not sustainable and is repelled.”

9. I have heard and considered the submissions.

10. There is no answer with the learned counsel for the appellant that once, the plaintiff himself levels the allegations against the defendants that they have played fraud and the instruments/documents through which they have succeeded the rights in the property are obtained by playing fraud, and thus, same are illegal, null and void, then to prove the same, how the burden can be shifted upon the defendants.

Otherwise also, it is settled proposition of law that a registered document/registered sale deed carries presumption of genuineness unless rebutted. It is also not out of place to note here that execution of both the registered documents/instruments died much after the executors of the Will and transfer deed but within their lifetime, they never made complaint about any such incident of wrong act committed against them by the defendants.

11. Considering the well reasoned findings given by both the Courts below, I do not find any need to interfere with the same.

12. Accordingly, the impugned judgments and decrees are maintained and the present Regular Second Appeal stands **dismissed**.

(SANJAY VASHISTH)
JUDGE

August 23, 2023

Lavisha

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