

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 109 of 1994

Date of Decision: 15.03.2024

Swaran Singh (Since Deceased) through his Legal Representatives and Others

... Appellant(s)

Versus

Surinder Kaur alias Chhindo (Since Deceased) through her Legal Representatives and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Avnish Mittal and Ms. Aparna Singhal, Advocates for the appellant(s).

Mr. Baldev Singh Sidhu, Advocate for respondent No.1.

Mr. Ramesh Chand Sharma, Advocate for respondent No.2.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab and Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

2. This is defendants' second appeal against the judgment passed by the First Appellate Court. The Trial Court had partly decreed the plaintiff's suit while reversing the finding, that defendant No.2 to 4 are the bonafide purchasers by virtue of four sale deeds executed by Faquir Chand/Faquir Singh in their favour. However, the First Appellate Court

decreed the suit filed by the plaintiff in entirety.

3. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. Respondent-Surinder Kaur is the daughter of late Smt.Amar Kaur. The dispute is with regard to the property left behind by late Smt.Amar Kaur. Defendant No.1 claims the property of late Smt. Amar Kaur on the basis of the Will dated 01.02.1980. On the basis of the aforesaid Will, which was registered after the death of Smt.Amar Kaur, Faquir chand/Faquir Singh had executed as many as four sale deeds in favour of the appellants (defendant No.2 to 4).

4. The plaintiff claims that late Smt.Amar Kaur never executed any Will bequeathing her property in favour of Faquir Chand/Faquir Singh who is her husband's brother's son. It has been found by the First Appellate Court that the Will dated 01.02.1980 has not been executed in accordance with Section 63 of the Indian Succession Act, 1925 (hereinafter referred to as "the 1925 Act"). Thus, the sale deeds executed by Faquir Chand/Faquir Singh are not valid.

5. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book along with their respective synopsis.

6. The learned counsel representing the appellants contends that the suit was filed by Smt. Surinder Kaur in collusion with her first cousin immediately after the sale deeds were executed in favour of defendant No.2 to 4. He submits that the suit is collusive and both the Courts below have erred in decreeing the suit. He further submits that defendant No.2 to 4 are the bonafide purchasers for valuable consideration and their rights should be protected.

7. Per contra, the learned counsel representing the plaintiff contends that the Will is not attested by two attesting witnesses as required under Section 63 of the 1925 Act and the only attesting witness has also not appeared in evidence before the Trial Court to prove the Will. He further submits that in fact, two sale deeds were executed and registered on 31.10.1986, whereas, the suit was instituted on 30.10.1986.

This Court has considered the submissions of the learned

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counsel representing the parties.

9. The Will is a part of the Trial Court’s record. It is evident that it is allegedly thumb marked by late Smt. Amar Kaur. Malkiat Singh has signed the Will as a Scribe. Jaspal Singh had also appended his signatures. In other words, only Jaspal Singh has appended his signatures as an attesting witness because Malkiat Singh has specifically written that he has scribed the Will . Even Jaspal Singh has not been examined by Faquir Chand/Faquir Singh. Moreover, there is no evidence to prove that the suit was filed by the plaintiff in collusion with Faquir Chand/Faquir Singh.
10. Keeping in view the aforesaid discussion, this Court does not find it appropriate to interfere with the findings of fact arrived at by the First Appellate Court. Hence, the present appeal is dismissed.

(Anil Kshetarpal)
Judge

March 15, 2024
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No