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

RSA-2245-1995 (O&M)

Date of Decision : 10.09.2024

Zora Singh (deceased) through LRs

... Appellant(s)

Versus

Botta Singh and Ors.

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. M.L. Saggar, Senior Advocate with
Mr. Gurcharan Dass, Advocate and
Ms. Armaan Saggar, Advocate for the appellant.

Mr. R.K.S. Brar, Advocate and
Mr. A.P. Kaushal, Advocate for the respondents.

ALKA SARIN, J. (Oral)

1. The present regular second appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 03.08.1995 passed by the First Appellate Court whereby the judgment and decree dated 15.11.1994 passed by the Trial Court has been set aside.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellant filed a civil suit seeking a declaration that he was exclusive owner of land measuring 4B-2B-11B being 1/3rd share out of land measuring 12B-7B-11B as detailed in the headnote of the plaint situated in Village Kaind, Tehsil and District Ludhiana on the basis of an unregistered Will dated 17.02.1964 executed in his favour by Gurdit Singh. In the alternative he claimed joint possession of the land. It was the case set up in the plaint that Gurdit Singh in his sound-disposing mind had executed a Will on 17.02.1964 in favour of the plaintiff-appellant for the services rendered by him. It was

further pleaded that Gurdit Singh had died about 11 years prior to the filing of the suit. After the death of Gurdit Singh the mutation was entered in favour of the plaintiff-appellant on the basis of the Will. The appeal against the order of the Assistant Collector 1st Grade was allowed by the Collector on 10.06.1987. Hence, the present suit. In the joint written statement filed by the defendant-respondents, preliminary objections were raised regarding the act and conduct of the plaintiff-appellant as well as a plea was taken that the plaintiff-appellant had made a statement before the Collector wherein he relinquished his rights in the suit land on the basis of the Will and consented to the sanction of the mutation in accordance with natural succession. On merits, the execution of the Will dated 17.02.1964 was denied and the same was alleged to be forged and fabricated. It was further averred that the plaintiff-appellant in the presence of public and revenue authorities had consented to the sanction of the mutation on the basis of natural succession on 11.04.1972 and never propounded any Will of Gurdit Singh in his favour. Subsequently, after forging the Will, he got a new mutation No.1423 entered regarding the property of Gurdit Singh but the same was challenged before the Collector wherein the plaintiff-appellant gave up his right under the Will and the mutation was set aside and on the basis of the observations made by the Collector an FIR No.32 dated 12.03.1987 was registered under Sections 420/463 of the Indian Penal Code, 1860 against the plaintiff-appellant, scribe and the attesting witnesses of the Will. Replication was filed wherein the plaintiff-appellant denied having made any statement before the Collector. Further, the averments made in the written statement were denied and those in the plaint were reiterated.

3. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether Gurdit Singh deceased executed a valid will dated 17.02.1964 in favour of the plaintiff ? OPP
2. Whether the plaintiff is owner in possession of property in suit ? OPP
3. Whether the plaintiff is barred by his act and conduct in filing of present suit ? OPD
4. Whether the plaintiff is entitled to the declaration prayed for ? OPP
5. If issue No.4 is not decided in favour of the plaintiff, whether the plaintiff is entitled to joint possession of property? OPD
6. Relief.

4. The Trial Court decreed the suit vide judgment and decree dated 15.11.1994. Aggrieved by the same, the defendant-respondents filed an appeal before the First Appellate Court which appeal was allowed vide judgment and decree dated 03.08.1995. Hence, the present regular second appeal by the plaintiff-appellant.

5. Learned senior counsel appearing for the plaintiff-appellant would contend that though the Will dated 17.02.1964 is an unregistered Will, however, the scribe of the Will appeared as PW1 and the attesting witnesses appeared as PW2 and PW3. It is further the contention of the learned senior counsel that the deceased - Gurdit Singh - was living with Zora Singh (plaintiff-appellant herein) who was serving him and hence the Will was

executed in favour of Zora Singh (plaintiff-appellant herein). It is further the contention of the learned senior counsel that the Will was thumb-marked and the thumb-impression had not been disputed and hence the Will ought to have been upheld by the First Appellate Court. The learned senior counsel would further contend that Karnail Singh, legal representative, did not enter the witness-box and it was only the husband of Harbans Kaur who entered the witness-box. The learned senior counsel would further contend that the Will was produced after 20 years as the plaintiff-appellant was not aware of the Will and it was only when Bahi was opened at the time of a wedding in the family to note the Shagans received that the Will was found lying in the Bahi and that is when the mutation was sought to be got sanctioned. Regarding the statement made by the plaintiff-appellant before the Collector, the learned senior counsel would contend that the statement was made only because the Collector had stated that a criminal case would be registered against the plaintiff-appellant and the scribe as well as the attesting witnesses for forging the Will and that the Lambardars would lose their *lambardari*.

6. *Per contra*, the learned counsel for the defendant-respondents would contend that the First Appellate Court has rightly appreciated the evidence on the record and reversed the judgment and decree passed by the Trial Court. It is further the contention of the learned counsel that initially the plaintiff-appellant while filing the suit did not refer to the statement made by him before the Collector and it was only when the said issue was raised in the written statement that the plaintiff-appellant in his replication denied ever having made the statement. The learned counsel would further contend that once the statement had been given by the plaintiff-appellant before the

Collector that he would not be claiming on the basis of the Will, the same was not required to be put to the plaintiff-appellant in his cross-examination.

7. I have heard the learned counsel for the parties.

8. In the present case the dispute is regarding the estate of Gurdit Singh who died on 18.04.1964 and is alleged to have left behind a Will dated 17.02.1964. The Will is an unregistered Will which was scribed by PW1-Tarak Singh and attested by PW2-Gurcharan Singh and PW3-Harnam Singh. Initially, in 1972, mutation No.1093 (Ex.DD) was got sanctioned on the basis of natural succession in the presence of the plaintiff-appellant and at that stage no Will was produced by the plaintiff-appellant. Subsequently, in 1985, a Will was set up by the plaintiff-appellant who got mutation No.1423 sanctioned in his favour on the basis of the Will on 28.11.1986. It is to be noticed that the said mutation was sanctioned behind the back of the defendant-respondents and without any notice to them. The defendant-respondents filed an appeal challenging the mutation in favour of the plaintiff-appellant which was allowed vide order dated 10.06.1987 (Ex.DY) and the mutation was set aside. Before the Collector the plaintiff-appellant made a statement (Ex.D2) wherein he stated that he does not wish to claim inheritance on the basis of the Will and would be satisfied if the property went by way of natural succession. Thereafter, the present suit was filed. In the plaint the plaintiff-appellant though mentioned about the Collector's order dated 10.06.1987, however, chose not to mention regarding the statement made by him. There is not an averment in the plaint that the said statement was recorded under duress. The defendant-respondents averred in para 3 of the written statement regarding the statement made by the plaintiff-appellant before the Collector that he wanted

to relinquish his rights on the basis of the Will and wanted the property to be distributed on the basis of natural succession. Copy of the statement and the order dated 10.06.1987 was attached with the written statement. In the replication the plaintiff-appellant merely denied that any such statement was ever recorded and took a stand that the mutation was wrongly sanctioned by the Collector/Deputy Commissioner, Ludhiana. It was further the stand that even if the statement was proved, the same was not an answer to the case of the plaintiff-appellant as laid in the plaint.

9. The argument of the learned senior counsel for the plaintiff-appellant that Zora Singh (plaintiff-appellant herein) was living with the deceased and serving him and hence the Will in his favour and that the Will was thumb-marked and since the thumb-impression was not disputed, therefore, the Will ought to have been accepted, deserves to be rejected for the reason that the Will dated 17.02.1964 is shrouded by the suspicious circumstances which are enumerated hereinbelow :

1. Though the testator of the Will died on 18.04.1964, the Will did not see the light of the day till 1985 i.e. for almost 20 years.
2. When mutation No.1093 (Ex.DD) was sanctioned on 29.03.1972 on the basis of natural succession in the presence of the plaintiff-appellant, no Will was produced by the plaintiff-appellant and no objection was also raised.
3. In 1985 the plaintiff-appellant for the first time produced a copy of the Will dated 17.02.1964 and got mutation No.1423 sanctioned in his favour on 28.11.1986. The said

mutation was sanctioned without any notice to the defendant-respondents. In an appeal preferred by the defendant-respondents the mutation was set aside vide order dated 10.06.1987 (Ex.DY). The Collector separately recorded a statement of the plaintiff-appellant (Ex.D2) wherein it was recorded that the plaintiff-appellant did not wish to press the claim on the basis of of the Will and was agreeable to the property being divided between the legal representatives of Gurdit Singh by way of natural succession.

4. A criminal case was registered against the plaintiff-appellant, attesting witnesses and the scribe. It has also been noticed by the First Appellate Court that both the attesting witnesses, who were Lambardars, lost their *lambardari* on the ground for having forged and fabricated the Will.
5. Though a categorical statement was made by the plaintiff-appellant before the Collector and the argument now raised is that the same was made under duress, however, there was no challenge laid to the same in the plaint. Rather, the plaint was totally silent regarding the said statement. Had the said statement been made under duress, that itself would have been a ground of challenge in the plaint.

10. It is trite that in order to uphold a Will the propounder of the Will has to dispel all the suspicious circumstances which were shrouding the Will. In the present case the plaintiff-appellant has not been able to dispel the suspicious circumstances shrouding the Will.

11. In view of the above, no fault can be found with the judgment and decree passed by the First Appellate Court. No question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

10.09.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO