



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA-5583-2019 (O&M)
Date of decision : 14.08.2024

Prem Chand Appellant

versus

Anju Rani and others Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Rakesh Gupta, Advocate
for the appellant.

PANKAJ JAIN, J. (Oral)

1. Plaintiff is in second appeal. For convenience, parties hereinafter are referred to by their original position in the suit i.e. the appellant as plaintiff and respondents as defendants.
2. Plaintiff filed suit for separate possession by way of partition claiming 1/6th share of the suit property in a residential house as described in the head note of the plaint and further sought decree of permanent injunction restraining defendants No.1 to 3 from selling, transferring, alienating or creating any charge over the suit property and from dispossessing and interfering in the peaceful possession of the plaintiff over 1/6th share of the plaintiff marked in red colour in the site plan appended to the plaint.
3. Pleaded case of the plaintiff is that the suit property was purchased by Hari Chand in the name of his wife Shanti Devi through registered sale deed dated 14.05.1981 from income and savings of Hari Chand and the plaintiff himself who were together running business of



oil expeller. All the family members jointly contributed for construction of the house i.e. the suit property. After the death of Shanti Devi, mother of plaintiff and defendants No.4 to 6, defendants No.1 to 3 legal representatives of their brother Ramesh Kumar started claiming their right over the suit property whereas this suit property is in form of residential house which is in possession of all the family members. Suit was resisted by defendants No.1 to 3, who claimed that the plot in dispute was purchased by Shanti Devi from her own funds and savings. She was absolute owner of the plot and constructed suit property from her own funds. She was living with Ramesh Kumar-husband of defendant No.1 and father of defendants No.2 and 3. Out of love and affection and in lieu of services rendered by Ramesh Kumar, Shanti Devi during her life time executed registered Will dated 15.06.2005 in favour of Ramesh Kumar. After death of Shanti Devi on 12.02.2009, Ramesh Kumar came in possession of the entire house as absolute owner. Ramesh Kumar died on 26.06.2009. After death of Ramesh Kumar, defendants No.1 to 3 together became owners of the suit property being legal heirs of Ramesh Kumar. Defendants No.1 to 3 were in possession of the entire house. After filing of the suit, defendants No.4 to 6 with intention to grab property broke open the locks of the rooms on 31.03.2010 and threw out the belongings of defendants No.1 to 3 after giving beatings to defendant No.1. Complaint was lodged with SSP, Patiala. It was claimed that on first floor, two rooms were in possession of defendants No.1 to 3 while one room is in possession of their tenants. Defendants No.2 and 3 being minor children, plaintiff and defendants No.4 to 6 want to grab property



left by Ramesh Kumar forcibly. Defendants No.1 to 3 also filed counter claim seeking possession from the plaintiff of the ground floor and further Rs.3,000/- per month as occupational charges from plaintiffs No.1 and 2 for the portion in their possession. Defendant No.5 filed written statement supporting the cause of the plaintiff. Defendants No.4, 6, 7 and 8 were proceeded ex-parte.

4. On the basis of pleadings, the suit was put to trial framing following issues:-

- “i) Whether the plaintiff is entitled for separate possession by way of partition in the suit property left by Shanti Devi? OPP.
- ii) Whether the plaintiff is entitled to the share in the property as claimed for? OPP
- iii) Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
- iv) Whether the suit is not maintainable in the present form ?
OPD (all defendants)
- v) whether the suit is bad for non joinder of necessary parties ?
OPD(all defendants)
- vi) Whether the defendants no.1 to 3 are entitled declaration on the basis of registered will dt 15.6.05 executed by Shanti Devi? OPD (defendants no.1 to 3)
- vii) Whether the defendants no.1 to 3 are entitled for mesne profits granted to plaintiffs no.1 and 2 as used and occupation charges of the portion on the ground floor of the suit property from 1.2.10, if so to that extent? OPD (defendants no.1 to 3)
- viii) Whether the defendants no.1 to 3 are entitled to the permanent injunction against the plaintiff no.1 to 3 and defendants no.4 to 6 from forcible dispossession ? OPD (defendants no.1 to 3)
- ix) Whether the will dt 15.6.05 executed by Shanti Devi is a genuine one? OPD (defendants no.1 to 3) if so to what effect.
- x) Whether the defendants no.1 to 3 are entitled to the possession of 4 rooms, varandha, deodi, flush, bathroom on the ground floor of the house of the suit property? OPD (defendants No.1 to 3)
- xi) Whether the counter claim filed by defendants no.1 to 3 is not maintainable ? OPP & OPD (defendants No.4 to 6)



- xii) Whether Shanti Devi executed a will dt 26.11.01 in favour of defendants no.5, if so its effect? OPD (defendant no.5)
- xiii) Relief;-”

5. Trial Court decided issues No.i, ii, iii, vi, vii, viii, ix, x and xii together and answered the same in favour of defendants No.1 to 3 and against the plaintiff and defendants No.4 to 7. Issue No.vii was decided against defendants No.1 to 3 and in favour of the plaintiffs. Issues No. iv, v and xi were decided as not pressed. Resultantly, issues No. iv and v were decided against the defendants and in favour of the plaintiffs whereas issue No. xi was decided in favour of defendants No.1 to 3 and against plaintiffs and defendants No.4 to 6. Suit filed by the plaintiff was dismissed. Counter claim filed by defendants No.1 to 3 was partly decreed. Defendants No.1 to 3 were declared as owners of the suit property on the basis of registered Will dated 15.06.2005 executed by Shanti Devi in favour of Ramesh Kumar and were held entitled for the possession of four rooms, Varandah, Dehori, Flush, Bathroom on the ground floor of the house no.32/317. However, claim of defendants No.1 to 3 qua mesne profits was declined.

6. Two separate appeals were filed before the Lower Appellate Court. Defendant No.5 filed Civil Appeal No.977 of 11.03.2015. Plaintiffs No.1 and 3 filed Civil Appeal No.982 of 08.12.2015. Defendants No.1 to 3 filed cross objections in appeal preferred by plaintiffs No. 1 and 3. Lower Appellate Court decided the two appeals and cross objections together. Lower Appellate Court while maintaining judgment and decree passed by the Trial Court, dismissed appeals as well as cross-objections filed by defendants No.1 to 3 claiming mesne profit affirming the findings recorded by the Trial



Court.

7. While assailing the impugned judgment passed by the Courts below, counsel for the appellant submits that the Courts below erred in upholding Will dated 15.06.2005 alleged to have been executed by Shanti Devi mother of plaintiffs No.1 to 3 and defendants No.4 to 6. He submits that there are material contradictions between the statement made by attesting witness of the Will as well as scribe which have gone unexplained. All the natural heirs have been excluded by Shanti Devi in the Will propounded by defendants No.1 to 3 in favour of Ramesh Kumar. The same being 'suspicious circumstances', Will was successfully dislodged by the plaintiffs, yet Courts below erred in ignoring the attending suspicious circumstance. In support of his contention, counsel for the appellant has strongly relied upon ratio of law laid down by Supreme Court in the case of ***Bharpur Singh and others vs. Shamsher Singh***, reported as ***2009 (3) SCC 687*** and by this Court in the case of ***Kanwaljit Kaur vs. Gurbax Singh and others, reported as 2023(2) RCR(Civil) 626***.

8. I have heard counsel for the appellant and have carefully gone through the records of the case.

9. The issue in substance in the present *lis* relates to validity of Will dated 15.06.2005 executed by Shanti Devi in favour of her son Ramesh Kumar propounded by defendants No.1 to 3-the legal heirs of Ramesh Kumar. Shanti Devi was married to Hari Chand. They had three sons and three daughters. For convenience, the relationship between the parties is depicted by a pedigree table which reads as under:-



Hari Chand – Wife – Shanti Devi
I
I I I I I I I
Prem Ashok Darsha Ramesh Raj Veena Shakuntla Pawan
Chand Kumar Rani Kumar Kumar Rani Rani Kumar
(plf-1) (plf-2) (plf-3) (deceased) (Def.4) (Def.5) (Def.46) (deceased)

I
Anju Rani, Nikhil, son Chetna
wife (Def.2) (Def.3)
(Def.1)

10. Shanti Devi acquired property by way of registered sale deed dated 14.05.2021. Though in the plaint, it was claimed by the plaintiffs that the plot was purchased and constructed from the income of a joint business carried on by Hari Chand along with sons, but no cogent evidence was led by the plaintiffs to prove the same. Trite it is that in order to prove that the property was a joint hindu family property, the parties asserting so is required to prove a joint nucleus. It is also required to prove that the property was acquired from the funds of such joint nucleus which was created by the contribution of all members of joint hindu family. Thus, in the absence of there being any cogent evidence to prove the property to be joint hindu family property, it is held that Shanti Devi was absolute owner of the property in question.

11. Law with respect to proof of Will is settled. Propounder of the Will is required to prove its execution in terms of Section 63(c) of the Indian Succession Act, 1925 by leading cogent evidence in terms of Section 68 of the Indian Evidence Act. Wherever will is being challenged, claiming the same to be surrounded by suspicious circumstances, onus is upon the propounder to dispel the same as well.

Supreme Court in the case of *Bharpur Singh’s case (supra)* held as



under:-

“11. The legal principles in regard to proof of a will are no longer res integra. A will must be proved having regard to the provisions contained in clause (c) of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872, in terms whereof the propounder of a will must prove its execution by examining one or more attesting witnesses. Where, however, the validity of the Will is challenged on the ground of fraud, coercion or undue influence, the burden of proof would be on the caveator. In a case where the Will is surrounded by suspicious circumstances, it would not be treated as the last testamentary disposition of the testator.”

12. In order to prove the Will Ex. D-1 dated 15.06.2005 executed by Shanti Devi, defendants No.1 to 3 the propounders of the Will examined Jagtar Singh-the attesting witness to the Will as DW-3. Scribe of the Will Yuvinder Kumar Bansal as DW-2. DW-2 the deed writer brought on record register entry Ex.D-2 which bears the signatures and thumb impression of Shanti Devi. The scribe proved that he scribed the Will on the asking of Shanti Devi. After Will was scribed, the same was read over to Shanti Devi who appended her thumb thereon. The attesting witness Jagtar Singh proved execution of the Will. The only contradiction to dislodge testimony of Jagtar Singh pleaded by the appellant is that Jagar Singh in his testimony claimed that the Will was registered on the day of its execution, whereas record shows that the WILL was executed on 15.06.2005 and registered on 29.06.2005. Testimony of DW-3 Jagtar Singh was recorded on 13.02.2015 i.e. almost after 10 years. Thus, prayer to dislodge the



testimony of attesting witness Jagtar Singh merely for this minor contradiction cannot be accepted.

13. In view of above, this Court finds that by examining the scribe as well as the attesting witness to the Will, defendants No.1 to 3 successfully discharged their burden. The execution of the Will in terms of Section 63 of the Indian Succession Act, 1925 stands fully proved in terms of requirements as laid down under Section 68 of the Indian Evidence Act.

14. Coming on to the suspicious circumstances pointed out by the counsel for the appellant, the only suspicious circumstance pointed out is with respect to ailment of Shanti Devi and exclusion of her other natural legal heirs to bequeath the property in favour of her son Ramesh Kumar. So far as ailment of Shanti Devi is concerned, the evidence brought on record relates to the year 2009 and not to the year 2005. Will is dated 15.06.2005. Counsel for the appellant fairly concedes that there is no evidence on record with respect to ailment of Shanti Devi relatable to date of execution of WILL. After executing Will in favour of Ramesh Kumar, Shanti Devi lived for 04 long years.

15. Will by its very nature is in a way deviation from natural succession. Depriving natural heirs in itself is not a suspicious circumstance to dislodge the Will where beneficiary of Will is also one of the natural heirs. Bare perusal of the Will in question shows that Shanti Devi has given cogent reasons for bequeathing property in favour of Ramesh Kumar and for depriving the plaintiffs as well as defendants No.4 to 6. Thus, in the considered opinion of this Court, there is no suspicious circumstance that can be said to have an effect of



creating cloud over the legality of the Will.

16. Taking leaf from the ratio of law laid down by Coordinate Bench in *Kanwaljit Kaur's (supra)* relied upon by the appellant himself, this Court finds that pure finding of fact has been recorded by both the Courts below. Whether a Will is surrounded by suspicious circumstance or not, is an essential question of fact. While exercising jurisdiction under Section 41 of the Punjab Courts Act, this Court finds no reason to interfere in the impugned findings recorded by both the courts below as no perversity much less illegality could be pointed out by counsel for the appellant.

17. While explaining the scope of Section 41, Supreme Court in the case of *Shivali Enterprises vs. Smt. Godawari (Deceased) Thr. Lrs. And Others AIR 2022 SC 438*, held as under:-

“14. This Court, in the case of *Randhir Kaur v. Pritvi Pal Singh and others*, after considering the scope of interference under the old Section 100 of the Civil Procedure Code, 1908 (for short “CPC”) and Section 41 of the Punjab Act, has observed thus:

“15. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact.”

15. It could thus be seen that this Court has held that,



even when a court exercises jurisdiction under Section 41 of the Punjab Act, it cannot interfere with the findings of fact in second appeal on the ground that the said findings are erroneous, howsoever gross or inexcusable the error may seem to be. It has been held that the findings of fact would also include the findings on the basis of documentary evidence. The jurisdiction under Section 41 of the Punjab Act would be available only when there is a substantial error or defect in the procedure provided by the CPC or by any other law for the time being in force.”

- 18. Resultantly, the present appeal is ordered to be dismissed.
- 19. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

14.08.2024
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes