

2024:PHHC:111032



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1151 of 2022 (O&M)
Date of decision : 28.08.2024

Kailash ChandPetitioner

Versus

Asha Rani alias Neelam ...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Aman Priye Jain, Advocate
for the appellant.

PANKAJ JAIN, J. (ORAL)

Plaintiff is in second appeal.

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the appellant as the plaintiff and the respondent as the defendant.

3. Plaintiff filed suit for declaration to the effect that he is absolute owner and in physical possession of the suit property as detailed out in the plaint on the basis of unregistered Will dated 15th of October, 2014 executed by late Smt. Pushpa Devi wife of Late Sh. Kailash Chand in favour of the plaintiff. Further decree of declaration was sought to the effect that the Mutation No.3279 dated 14th of

2024:PHHC:111032



August, 2015 sanctioned on the basis of the order dated 3rd of July, 2015 by Assistant Collector 1st Grade, Raipur Rani is wrong, illegal, null and void and is not binding upon the rights of the plaintiff.

4. Plaintiff filed suit propounding the Will of his late mother. The same was contested by the defendant denying the Will. Defendant claimed that Pushpa Devi was not in sound disposing mind as she was ill and unable to move properly. It is further claimed that the plaintiff was taking care of litigation in the name of executant Smt. Pushpa Devi. He has misused the blank-paper signed by Pushpa Devi to forge a Will in collusion with the alleged attesting witnesses. Prior to death, Smt. Pushpa Devi met with an accident and fractured her leg. She was not able to move properly and remained ill. The Will has been manipulated by the plaintiff with the motive to usurp the property of the defendant. It was further claimed in the written statement that Smt. Pushpa Devi was not competent to execute Will, the property in question, being ancestral which was allotted to Sh. Charan Dass in lieu of the land left at Pakistan. In mutation proceedings, Assistant Commissioner 1st Grade rightly decided the mutation on the basis of inheritance ignoring the Will.

2024:PHHC:111032



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

- “1. Whether the plaintiff is entitled to a decree for declaration to the effect that the plaintiff is in the absolute owner and in possession of the land as described in the head note of the plaint, as prayed for? OPP
2. Whether the plaintiff is further entitled to a decree for declaration to the effect that the Mutation No.3279 dated 14.08.2015 is wrong, illegal, null and void and is not binding upon the legal rights of the plaintiff, as prayed for? OPP
3. Whether the plaintiff is entitled to a decree for permanent injunction restraining the defendant herself or through her agents, servants or assignees from alienating the suit land by way of sale, transfer and mortgage in any manner and further from taking the illegal and forcible possession over the suit land, as prayed for? OPP
4. Whether the suit of the plaintiff is not maintainable? OPD
5. Whether the plaintiff has got no locus standi to file the present suit? OPD
6. Whether the plaintiff has concealed the true and material facts from this court? OPD

2024:PHHC:111032



7. Whether the plaintiff has no cause of action to file the present suit? OPD.
8. Relief'

6. The Trial Court non-suited the plaintiff holding that Pushpa Devi derives title on the basis of Will executed by Charan Dass in her favour. The alleged Will dated 8th of January, 1999 executed by Charan Dass in favour of Pushpa Devi was not produced. Both the attesting witnesses of the Will namely Ramesh Chand and Raj Kumar appeared as PW-2 and PW-3 were disbelieved by the Trial Court. Trial Court further held that there is an over-writing in the typed Will w.r.t. the age of Pushpa Devi which is highly improbable. Trial Court thus finding that the Will was surrounded by suspicious circumstances, dismissed the suit filed by the plaintiff.

7. In appeal preferred by the plaintiff, lower Appellate Court has affirmed the findings recorded by the Trial Court and has held the Will to be suspicious on account of following grounds:

- (a) From the testimony of PW-2 and PW-3 the attesting witnesses to the Will, material discrepancies are evident. None of them were present at the time of execution of the Will.

2024:PHHC:111032



- (b) Ld. Lower Appellate Court found that the Will is computer typed document. As per case of the plaintiff, the same was typed by a typist at Raipur Rani. However, the typist was not produced.
- (c) As per the attesting witnesses, the Will was prepared in Tehsil Office. No effort was made to purchase stamp-papers. Will was not scribed by any such Deed Writer. Despite Sub Registrar being available in the Complex, the Will was not registered.
- (d) Bare perusal of the Will Exhibit P-3 reveals that there is a large gap between the body text matter of the Will and the signatures of Smt. Pushpa Devi. Both the witnesses claimed that they and Pushpa Devi signed with one pen but perusal even with naked eyes reveals that signatures of executant Smt. Pushpa Devi are in different ink.
8. Thus, the lower Appellate Court dismissed the appeal filed by the plaintiff.
9. Ld. Counsel appearing for the plaintiff/appellant while assailing the impugned judgment and decree passed by the Courts

2024:PHHC:111032



below submits that both the Courts erred in enlisting minor discrepancies as major suspicious circumstances to disbelieve the Will. He submits that there is perversity in the findings recorded by the Courts below. The statement of PW-1 Kailash Chand has been misread. He pleads that Kailash Chand in his testimony stated that his mother walked with the help of walker after accident for some time but the lower Appellate Court misread the same to hold that she continued to walk with the support of the walker till her death. It has been further claimed that none of the factors enlisted by the lower Appellate Court can be said to be suspicious circumstance to dislodge a Will which otherwise stands proved by examining attesting witnesses in compliance of Section 68 of the Evidence Act. Counsel further submits that the statements of the attesting witnesses when read proves compliance of Section 63(c) of the Indian Succession Act. In view of the overwhelming evidence on record which goes on to prove the Will executed by Smt. Pushpa Devi, Courts below erred in disbelieving the same.

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

2024:PHHC:111032



11. The dispute is between the siblings. Brother has propounded the Will claiming inheritance of the estate left by the mother to the exclusion of the sister. The Will is being contested by the sister claiming the same to be forged and fabricated. The law w.r.t. Will is well settled. The Will is required to be proved just like any other document by adducing evidence to prove ingredients as envisaged under Section 63(c) of the Indian Succession Act in accordance with Section 68 of the Indian Evidence Act. Propounder of the Will is not only required to prove execution thereof in terms of the requirements of Section 63(c) but also has to prove that the Will is free from any suspicious circumstance.

12. Testing the present case on the aforesaid parameters, the plaintiff examined the attesting witnesses of the Will namely Ramesh Chand as PW-2 and Raj Kumar as PW-3. Will is dated 15th of October, 2014. Executant Pushpa Devi died on 29th of November, 2024. Plaintiff Kailash Chand while appearing as PW-1 stated on oath that:

“my mother used to walk with the help of walker after accident for some time”

13. Pushpa Devi met with an accident about 2 years prior to her death. Thereafter, till her death she could walk only with the help of

2024:PHHC:111032



walker. Ramesh Chand the attesting witness when appeared as PW-2 stated that on the day the Will was executed Pushpa Devi was fully capacitated and was able to walk. PW-3 Raj Kumar claimed that though Pushpa Devi had injury in her leg but was able to walk with little difficulty. Thus, the Courts below have rightly found that from the testimony of PW-2 and PW-3 it is evident that none of them saw Pushpa Devi executing Will in Tehsil Complex as claimed by them. A bare perusal of the Will shows over-writing w.r.t. age of Pushpa Devi. The fact w.r.t. over-writing assumes significance as the Will is a computer typed document. In case, Pushpa Devi was present on the spot and she got her Will typed, there was no reason to overwrite. Second printout could have been easily taken out. More so, when the Will was on blank-paper. Thus, the inference that can be drawn is that there was only one signed paper available with the plaintiff. The Will was typed in the Tehsil Complex as per PW-2 and PW-3 yet no effort was made to get the same registered or to get the same even scribed by a professional deed writer. All these factors show unnatural conduct w.r.t. execution of the Will.

14. In view of aforesaid factors, this Court finds that the plaintiff miserably failed to prove genuineness of the Will which is

2024:PHHC:111032



evidently shrouded by suspicious circumstances. Onus laid heavily upon the plaintiff to dislodge the suspicious circumstances. However, he miserably failed to come out of the clouds. Falsity of the claim of the attesting witnesses is evident from their testimonies.

15. In view of above, this Court finds that there being no perversity in the findings recorded by the Courts below, there is no scope for interference in the instant Second Appeal. Consequently, the same is dismissed without costs.

16. Pending application(s), if any, shall also stand disposed off.

August 28, 2024
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No