

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

RSA No.4358 of 2005 (O&M)

Reserved on: 23.01.2024

Date of Decision: 08.02.2024

Gurnek Singh & Others

....Appellants

VERSUS

Darshan Singh & Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Kanwaljit Singh, Senior Advocate with
Mr. Sarju Puri, Advocate for the appellants.

Mr. M.L. Saggar, Senior Advocate with
Ms. Armaan Saggar, Advocate for the respondents.

ALKA SARIN, J.

1. The present appeal has been preferred by the defendant-appellants against the judgment and decree dated 03.11.2004 passed by the Trial Court and the judgment and decree dated 18.10.2005 passed by the First Appellate Court decreeing the suit filed by the plaintiff-respondents.

2. The plaintiff-respondent No.1 filed a suit for declaration and permanent injunction averring that he is the owner in possession of the estate of his real brother, Parkash Singh, who died issue-less and widow-less. As per the plaintiff-respondent No.1, Parkash Singh son of Basant Singh son of Atra resident of Haripur was owner in possession of 1/5 share out of Khewat No.61, 116, 284 and 1/10 share out of Khewat No.308 and 1/15 share out of Khewat No.317 and 1/5 share out of Khewat No.449. Parkash Singh died on 22.03.1995 leaving behind the plaintiff-respondent No.1 and defendants No.4 and 5 as his only legal heirs. The plaintiff-respondent No.1 and defendants No.4 and 5 are the real brothers of Parkash Singh. Parkash Singh

died intestate and never executed any will and thus after the death of Parkash Singh the plaintiff-respondent No.1 and defendants No.4 and 5 are owners in possession of the estate of Parkash Singh in equal shares. It was averred that the defendant-appellants came to the suit land and threatened to dispossess the plaintiff-respondent No.1 forcibly and illegally and declared that defendant-appellant No.1 as attorney of Parkash Singh allegedly sold the land measuring 6 Kanals 4 Marlas to defendant-appellant Nos.2 and 3. As per the plaintiff-respondent No.1, the defendant-appellant No.1 was never the attorney of Parkash Singh and the alleged attorney deed dated 02.03.1995 is a forged and fabricated document and it does not bear the thumb impression of Parkash Singh nor Parkash Singh authorized defendant-appellant No.1 to sell his land during his life time. It was pleaded that in case the defendant-appellants succeed in proving the valid execution of the alleged power of attorney and sale deeds then the same might have been prepared fraudulently and by mis-representation and that the power of attorney dated 02.03.1995 and the alleged sale deeds dated 16.03.1995 are forged and fabricated documents and are without consideration and the mutations sanctioned on the basis of the said sale deeds are also illegal, null and void. It was further pleaded that the defendant-appellants are also illegally declaring about a Will dated 01.03.1995 alleged to have been executed by Parkash Singh in favour of defendant-appellant No.2 and defendant Nos.6 and 7 and infact Parkash Singh never executed any Will nor the alleged Will bears his thumb impressions and the same is surrounded by suspicious circumstances. The defendant-appellants have got no right, title or interest in the suit land. The defendant-appellants contested the suit and

filed a written statement, raising preliminary objections of locus-standi, maintainability, valuation, mis-joinder and non-joinder of necessary parties. On merits it was submitted that Parkash Singh during his life time through his attorney defendant-appellant No.1 sold the land measuring 32 Kanals 8 Marlas to defendant-appellant Nos.2 and 3 by way of two sale deeds dated 16.03.1995 and regarding the remaining land he executed a Will on 01.03.1995 in favour of defendant-appellant No.2 and defendant Nos.6 and 7 in equal shares, regarding which after the death of Parkash Singh mutation has been sanctioned in favour of the beneficiaries. It was stated that Parkash Singh died on 23.03.1995 and not 22.03.95 as alleged by the plaintiff-respondent No.1. According to the defendant-appellants Parkash Singh during his life time executed a valid power of attorney dated 02.03.1995 in favour of defendant-appellant No.1 and on the basis of the said registered power of attorney land measuring 16 Kanals 4 Marlas was sold to defendant-appellant No.3 by way of registered sale deed dated 16.03.1995 which was registered on 22.03.1995 for a consideration of Rs.1,86,000/- and possession was also delivered and similarly defendant-appellant No.1 as attorney of Parkash Singh executed another registered sale deed dated 16.03.1995 qua land measuring 16 Kanals 4 Marlas in favour of defendant-appellant No.2 for a consideration of Rs.1,86,000/- and the possession was also delivered. Since then the defendant-appellant Nos.2 and 3 are owners in possession of the land to the extent sold to them vide two aforesaid sale deeds. Regarding the remaining land it was pleaded that Parkash Singh executed valid a registered Will dated 01.03.1995 in favour of defendant-appellant No.2 and defendant Nos.6 and 7 in equal shares due to the services rendered by them

towards the deceased and due to love and affection and the mutation on the basis of the said Will has also been sanctioned in favour of defendant-appellant No.2 and defendant Nos.6 and 7. Replication was filed by the plaintiff-respondent No.1 controverting the assertions made in the written statement and reiterating the averments of the plaint.

3. The Trial Court framed the following issues :

1. Whether Parkash Singh executed a valid general power of attorney dt. 02.03.1995 in favour of defendant No.1 as alleged in the written statement ? OPD
2. Whether Gurnek Singh defendant No.1 being attorney of Parkash Singh executed a valid sale deed dated 16.03.95 in favour of defendant No.2 for consideration ? OPD
3. Whether Gurnek Singh defendant No.1 being attorney of Parkash Singh executed a valid sale deed dt. 16.03.95 registered on 22.03.95 in favour of defendant No.3 for consideration ? OPD
4. If issues No.1 to 3 are proved, whether the alleged sale deed dated 16.03.95 and alleged power of attorney dt. 02.03.1995 are false, forged, fabricated, wrong and illegal as alleged in the plaint ? OPD
- 4-A. Whether deceased Parkash Singh executed a valid will dated 01.03.1995 in favour of defendants No.2, 6 and 7 ? OPD

5. Whether the plaintiff is entitled to declaration and injunction prayed for ? OPD
6. Whether the plaintiff is entitled to possession of the suit land as claimed in the alternative ? OPD
7. Whether plaintiff has no locus-standi to file the present suit? OPD
8. Whether the suit is not maintainable in the present form? OPD
9. Whether the plaintiff is barred by his act and conduct from filing the present suit? OPD
10. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
11. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD
12. Relief.

4. The Trial Court vide it's judgement and decree dated 3.11.2004 decreed the suit of the plaintiff-respondent No.1 holding that the power of attorney and sale deeds set-up by the defendant-appellants were illegal, null and void. The Will dated 01.03.1995 was rejected. The defendant-appellants challenged the findings of the Trial Court by filing an appeal. However, vide judgement and decree dated 18.10.2005 the First Appellate Court dismissed the said appeal. Hence, the present regular second appeal.

5. Learned senior counsel appearing for the defendant-appellants has contended that the judgements and decrees of the Courts below are illegal and erroneous and are based upon conjectures and surmises. It is

contended that the power of attorney dated 02.03.1995 and Will dated 01.03.1995 were fully proved and therefore the Courts below ought to have dismissed the suit of the plaintiff-respondent No.1. Per contra, learned senior counsel appearing for the respondents has submitted that the Courts below have reached concurrent findings of fact which warrant no interference in second appeal. According to counsel, the defendant-appellants have undertaken a clandestine exercise by manufacturing power of attorney and Will to grab the property of Parkash Singh.

6. I have heard learned counsel for the parties and perused the record.

7. The power of attorney purportedly executed by Parkash Singh is dated 02.03.1995 Ex.DW7/A while the Will allegedly executed by him is dated 01.03.1995 Ex.DW5/A. While the power of attorney was got registered the Will was not. No explanation is forthcoming as to why if the executant Parkash Singh could have got registered the power of attorney Ex.DW7/A on 02.03.1995 he could not get the Will registered on the same day especially when the Will was allegedly executed a day earlier i.e. on 01.03.1995. The stamp papers for both the documents were purchased on the same day i.e. 01.03.1995. The defendant-appellants did not examine the scribe or the attesting witnesses of the power of attorney Ex.DW7/A. It may be noted here that one of the witnesses (Suresh Kumar Goel, Advocate) was the counsel for the defendant-appellants before the Trial Court. The First Appellate Court rightly held that *“From the discussion made above, the trial court has rightly observed that the power of attorney Ex.DW7/A not proved, not it is proved that the same is the result of fraud. The trial court has*

further relying upon the findings of the above said attorney has held that the sale deeds Ex.DW5/A and Ex.DW5/C are null and void. Parkash Singh never desired to execute the land in favour of defendants No.2, 6 and 7”.

8. Coming to the Will Ex. Set-up by the defendant-appellants, the same has been discarded by the Courts below. It's scribe is unknown and the witness Surinder Singh deposed that he does not know who was the scribe. There is no mention about the real brothers of Parkash Singh in the Will nor any reason has been given for disinheriting them. The beneficiaries are minors who allegedly served the Testator. Counsel for the defendant-appellants has been unable to show anything on the record to substantiate that the minors served or looked after the Testator. The First Appellate Court has rightly held that *“From the evidence led by the parties, it is proved that the Will in question is unregistered one and the beneficiaries have only examined Surinder Singh and not examined the other witness Gurdip Singh. Further more, it has come in evidence that Gurnek Singh appellant has played major role in the execution of the said Will. Moreover, there are two wills on the file, out of which one is Ex.DW5/A, while the other is also on the file which unexhibited and both the said wills are lying on the file, though the wording of both the Wills is equal, but the way of writing and space covered in both the Wills is altogether different. Furthermore, the date mentioned upon the stamp paper is also different. It cannot be said that the second one which is un-exhibited is the carbon copy of the original Ex.DW5/A. The inference comes out that the beneficiaries have prepared several copies of the Will to produce the same according to their convenience. So, the Will due to its non-registration is itself a ground to*

discard the same. It has also been proved that father of the beneficiaries has played active role for its execution. Further more, the beneficiaries are minors, which is not denied by the appellants. The question of rendering the services to the deceased by them is not believable. Executing the Will dated 01.03.1995 and the power of attorney dated 02.03.1995 and further executing the sale deeds dated 16.03.1995 and 22.03.1995 itself is point to disbelieve the point of the appellant, as the appellants have not been able to prove that Parkash Singh died on 23.03.1995". Learned counsel for the defendant-appellants has not been able to convince this Court that the findings recorded by the Trial Court and the First Appellate Court are erroneous in any manner. No other point was argued.

9. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

08.02.2024

Aman Jain

**(ALKA SARIN)
JUDGE**

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