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

RSA-1845-2024 (O&M)

Date of Decision: September 16, 2024

RACHHPAL SINGH (SINCE DECEASED) TH. HIS LRSAppellants

Versus

SRISHTA DEVI AND ORS

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Madan Sandhu, Advocate and
Mr. Sarvjeet Singh Thakur, Advocate for the appellants.

HARKESH MANUJA, J. (ORAL)

By way of present appeal, challenge has been laid to judgments and decrees dated 29.10.2018 and 26.02.2024 passed by the Courts below whereby, a suit for declaration filed at the instance of respondent No.1–plaintiff stands decreed.

2. Briefly stating, claiming her mother to be the exclusive owner of the suit land measuring 135 kanals and 13 Marlas, situated within the revenue estates of villages Rampur, Hadbast No.353 and Village Bilron, Hadbast No.351, Tehsil Garhshankar, District Hoshiarpur, respondent No.1–plaintiff filed a suit for declaration, claiming herself to be owner-in-possession of land, measuring 45 kanals and 4 marlas being its 1/3rd share. It was further pleaded that Will dated 09.09.1985 as set up by her two brothers, i.e. the original defendants, holding respondent No.1–plaintiff to remain as owner of 1/3 share during her lifetime only was a forged and fabricated one as no such Will was ever executed by their mother Prakash Devi. It was thus

pleaded that the revenue entries based on the said Will dated 09.09.1985 were also liable to be deleted and corrected accordingly thereby, showing her to be its absolute owner. Respondent No.1—plaintiff further pleaded that as the defendants failed to accede to the request made by her, hence she was compelled to file the suit.

2. Upon notice, a joint written statement was filed on behalf of appellant(s) as well as defendant No.1 while submitting that their mother Prakash Devi was exclusive owner-in-possession of the suit property measuring 135 kanals and 13 marlas and a valid Will was executed by her on 09.09.1985, whereby 2/3rd share of the property was bequeathed in favour of two sons i.e. defendant Nos.1 and 2, besides giving limited right of ownership to respondent No.1-plaintiff during her lifetime only. It was also pleaded that the mutation based on the said, will dated 09.09.1985 was entered by the revenue authorities in the presence of respondent No.1—plaintiff and thus, she was estopped from assailing its validity at this stage and thus her suit was liable to be dismissed.

3. Based on the pleadings following issues were framed:-

- “1. Whether plaintiff is entitled to the relief of declaration as prayed for? OPP
2. Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP
3. Whether Parkash Devi executed will dated 09-09-1985 in sound disposing mind out of free will ?OPD
- 4 Whether suit is not maintainable in the present form? OPD
- 5 Relief.”

4. The trial Court vide judgment and decree dated 29.10.2018 decreed the suit filed at the instance of respondent No.1—plaintiff as the

defendants were unable to prove the valid execution of Will dated 09.09.1985 by their mother Prakash Devi. Aggrieved thereof, appellant–defendant No.1 as well as defendant No.2 filed first appeal, however, the same came to be dismissed vide judgment and decree dated 26.02.2024 again while discarding the will dated 09.09.1985 with the findings that its valid execution was not proved on record, besides the same being surrounded by suspicious circumstances.

5. By way of present appeal, the aforementioned, two judgments and decrees passed by the Courts below have been assailed at the instance of appellant–defendant No.2.

6. Learned counsel for the appellants submits that the Courts below went wrong while discarding the Will dated 09.09.1985 on the ground that the same was not proved in accordance with law. Learned counsel further submits that since neither of the two attesting witnesses were alive at the relevant point in time when the evidence of the appellant-defendant No.2 was being recorded, the Will in question was proved through deposition of DW-2 Paramjit Singh (Scribe).

7. I have heard learned counsel for the appellant and gone through the paper book.

8. In the present case, there was no dispute between the parties that the property in question was owned by their mother Prakash Devi being its exclusive owner-in-possession. The Will dated 09.09.1985 was propounded by the defendants allegedly executed by deceased Prakash Devi whereby, they were to become entitled as absolute owners qua $2/3^{\text{rd}}$ share of the property in question besides

having bequeathed 1/3rd share in favour of respondent No.1-plaintiff by holding her to be a limited owner-in-possession during her lifetime.

9. A perusal of the evidence available on record reflects that neither any of the attesting witnesses to the Will in question dated 09.09.1985 was ever produced by the defendants; nor even any document was proved on record to show that they were not alive. Besides it, none of the family members being conversant with the handwriting of the two attesting witnesses, were ever produced by the defendants so as to identify the same. No merits can be found in the plea set up by the appellants that the execution as well as attestation of Will in question was proved through the deposition of Scribe, namely, Paramjit Singh, who appeared as DW-2, especially when he himself deposed that the attesting witnesses were not personally known to him.

10. In such circumstances, the Will in question being not proved on record in terms of Section 63 of Indian Succession Act, 1956 read with Sections 68 and 69 of the Indian evidence Act 1872, no illegality or perversity can be found in the judgments and decrees passed by the Courts below while discarding the same, thus, the present appeal stands, dismissed, being devoid of merits thereby, upholding the judgments and decrees under challenge.

11. Pending application(s), if any, shall also stand disposed of.

16.09.2024

(HARKESH MANUJA)

Tejwinder

JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No