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

RSA-3810-2019 (O&M)

Reserved on : 22.11.2024

Date of Decision : 10.12.2024

Surekha

....Appellant

VERSUS

General Public and others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. P.K. Ganga, Advocate for the appellant.

Mr. Lokesh Sinhal, Advocate
for respondent No.4 (through hybrid mode).

ALKA SARIN, J.

1. The present appeal has been preferred by the plaintiff-appellant (Surekha) against concurrent findings returned by both the Courts while dismissing her suit for declaration with consequential relief of injunction.

2. Brief facts relevant to be noticed in the present case are that the plaintiff-appellant (Surekha) herein filed a suit for declaration being Civil Suit No.144-A. Smt. Kamlesh, who is the defendant-respondent No.4 herein, also filed a suit for declaration and mandatory injunction with consequential relief of permanent injunction. Both the said suits relate to the same property and were consolidated vide order dated 02.09.2014. Civil Suit No.144-A titled Smt. Surekha Vs. General Public and others was treated as the main case and the evidence was led in the same. The said suit was filed by the plaintiff-appellant (Surekha) averring that she had become owner in possession of residential house consisting of two bed rooms, kitchen,

DRG/Dinner, bathroom, verandah etc. on the ground floor, DRG/dinner, kitchen, bathroom, two bed rooms, verandah and toilet etc. on the first floor, and two rooms, toilet, terrace etc. on the second floor as mentioned in the site plan, measuring 1440 sq. ft. i.e. 24'X60' constructed on plot No.128, HUDA Sector-7, Gurgaon on the basis of a Will dated 23.09.2012 executed by Smt. Vidyawanti, mother-in-law of the plaintiff-appellant (Surekha). It was further averred that the plaintiff-appellant (Surekha) was entitled to get herself recorded and entered as owner in possession of the suit property in the municipal record and in other Government departments. As a consequential relief, it was prayed that injunction be granted restraining the defendant-respondent Nos.2 to 4 from dispossessing her from the suit property forcibly and illegally. It was the case set up by the plaintiff-appellant (Surekha) that defendant-respondent Nos.2 and 3 (Rohit Tikka and Kamna Tikka) were the son and daughter of the plaintiff-appellant and that the defendant-respondent No.4 (Kamlesh) was the daughter of deceased Vidyawanti. It was averred that the property was earlier owned and possessed by Shri Manohar Lal who purchased the same vide sale deed dated 07.01.1980. Manohar Lal died leaving behind his two sons Ajay Kumar and Janak Raj and one daughter Kamlesh. Ajay Kumar, the husband of the plaintiff-appellant (Surekha) died on 13.06.2006 and Janak Raj died on 18.02.2002. During their lifetime Janak Raj and his sister (Kamlesh) had relinquished their shares in the suit property in favour of their mother Smt. Vidyawanti and had got the house transferred in the name of Smt. Vidyawanti who became the exclusive owner of the suit property. It was further the case that the plaintiff-appellant (Surekha) and her family

members were living with Smt. Vidyawanti and had been looking after and serving her till her death. Smt. Vidyawanti is stated to have died on 05.01.2013 and pleased with the services of the plaintiff-appellant (Surekha), she had executed a legally valid Will in her favour on 23.09.2012. It was further averred that the defendant-respondent Nos.2 to 4 i.e. her son, daughter and sister-in-law, at the instance of some relatives had started giving threats and, hence, the civil suit. The defendant-respondent Nos.2 and 3 i.e. children of the plaintiff-appellant (Surekha) filed their admitted written statement. Thereafter, none appeared on their behalf and they were proceeded against *ex parte* vide order dated 02.01.2013. A separate written statement was filed by the defendant-respondent No.4 (Kamlesh) in which she raised several preliminary objections regarding maintainability of the suit, plaintiff-appellant being neither owner nor in exclusive possession of the suit property, the suit being hopelessly barred by law, etc. On merits it was averred that the plaintiff-appellant (Surekha) had not approached the Court with clean hands and the suit property was earlier owned by Manohar Lal who died intestate leaving behind Smt. Vidyawanti (widow), Janak Raj and Ajay Kumar (sons) and the defendant-respondent No.4 (daughter). Janak Raj was married to Smt. Usha who after the death of Janak Raj married some other person and left a note regarding having nothing to do with the suit property. During the lifetime of Smt. Vidyawanti a mutation was got entered in the record of rights with the consent of both her sons. However, the said mutation created no right in favour of Smt. Vidyawanti regarding the suit property and after her death the defendant-respondent Nos.2 and 3 and the answering defendant-respondent No.4 became joint

owners of the suit property. It was further averred that during the lifetime of Smt. Vidyawanti the defendant-respondent No.4 (Kamlesh) lived on ground floor of the suit property while the first floor and second floor were occupied by the plaintiff-appellant (Surekha) and the defendant-respondent Nos.2 and 3. It was further averred that earlier the plaintiff-appellant had filed a suit for declaration titled "Surekha Vs. Smt. Vidyawanti" on 30.11.2012 in which the plaintiff-appellant (Surekha) had alleged that on 10.09.2012 an oral family settlement had been entered into and the property was given to her exclusively. However, in the present suit a forged and fabricated Will dated 23.09.2012 had been set up. It was further averred that the Will was never executed by Smt. Vidyawanti. In her replication the plaintiff-appellant (Surekha) denied the contents of the written statement and reiterated the contents of the plaint.

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

1. Whether the plaintiff is entitled for a decree for declaration as prayed for ? OPP
2. Whether the plaintiff is entitled to get herself recorded as owner in possession of the house in question in the records ? OPP
3. Whether the plaintiff is entitled to relief of permanent injunction restraining the defendants No.2 and 4 from dispossessing the plaintiff from the house forcibly or illegally in any manner interfering into the ownership and possession of the plaintiff ? OPP

4. Whether the suit is not maintainable ? OPD
5. Whether the plaintiff has no cause of action nor locus standi to file the present suit ? OPD
6. Whether the plaintiff is estopped by their own act, conduct, omission, commissioner, admission latches and acquiescence from filing the present suit ? OPD
7. Whether the suit of the plaintiff is bad for misjoinder of cause of action ? OPD
8. Whether the suit of the plaintiff is bad for non-joinder of necessary parties ? OPD
9. Relief.

4. In the Civil Suit being CS-1537-2013 filed by the defendant-respondent No.4 herein (Kamlesh), a decree of declaration was sought declaring her to being owner in possession to the extent of 1/2 share in the suit property and a relief of mandatory injunction directing Haryana Urban Development Authority (hereinafter referred to as 'HUDA') to sanction the mutation in the names of Kamlesh and the defendant Nos.2 to 4 in her suit. Similar facts were narrated as in the written statement filed in Civil Suit No.144-A. Written statements were filed. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled for the relief of declaration that she is owner in possession of the suit property to the extent of 1/2 share ? OPP
2. Whether the plaintiff is entitled for the relief of mandatory injunction directing the defendant No.1 to

sanction the mutation in the name of plaintiff and defendants No.2 to 4 qua the suit property ? OPP

3. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for ? OPP

4. Whether the suit of the plaintiff is not maintainable and the same is liable to be dismissed with heavy costs ? OPD

5. Whether the plaintiff has no locus standi to file the present suit against the defendants ? OPD

6. Whether the plaintiff has estopped to file present suit by her own act, conduct, omission, commission, admission etc.? OPD

7. Whether the suit is bad on account of non-joinder and mis-joinder of necessary parties ? OPD

8. Relief.

5. As noticed above, Civil Suit No.144-A was treated as the main case and the evidence was led in the said suit. Vide the impugned judgment dated 24.01.2017 passed by the Trial Court, the suit filed by the plaintiff-appellant (Surekha) was dismissed. The suit filed by the defendant-respondent No.4 (Kamlesh) was decreed holding her to being owner in possession of the suit property to the extent of 1/2 share. Aggrieved by the same a single appeal was preferred by the plaintiff-appellant (Surekha) which appeal was also dismissed by the First Appellate Court vide impugned judgment and decree dated 14.05.2019. Hence, the present regular second appeal.

6. Learned counsel for the plaintiff-appellant (Surekha) would contend that earlier a suit for declaration that the plaintiff-appellant (Surekha) had become co-owner on the basis of a family settlement was withdrawn on 28.01.2013 as Smt. Vidyawanti died on 05.01.2013 and thereafter the present suit was filed on 22.03.2013. It is further the contention that the Will stands duly proved as the attesting witnesses had appeared and proved the due execution of the Will and the same could not have been discarded because it was scribed by the beneficiary of the Will.

7. *Per contra*, the learned counsel for the defendant-respondent No.4 (Kamlesh) would contend that admittedly the Will in dispute (Ex.P1) was written by the plaintiff-appellant (Surekha) who is the sole beneficiary of the Will. The said Will is dated 23.09.2012. Being the scribe of the Will and the sole beneficiary, the plaintiff-appellant (Surekha) would have been well aware about the contents of the Will. Hence, being aware of the existence and contents of the Will, there was no occasion for her to have filed the previous suit for declaration on 16.11.2012 that she had become owner on the basis of a family settlement which suit was subsequently withdrawn on 28.01.2013. It is further the contention that the Will is a totally forged and fabricated Will. The active participation of the sole beneficiary of the Will, wherein the natural heir i.e. the only surviving daughter of the Testator has been disinherited, itself is a suspicious circumstance especially when the Will itself was scribed by the plaintiff-appellant (Surekha). It is further the contention that excessive margin has been left on the left side and no margin on the right side which itself appears to be unusual and suspicious. It is further the contention that there is no

evidence that the plaintiff-appellant (Surekha) used to serve Smt. Vidyawanti and that their relations were cordial. It is further the contention that it was proved on the record that the defendant-respondent No.4 (Kamlesh) was residing in the suit property and, hence, a simpliciter suit for declaration without seeking possession itself was not maintainable.

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

9. In the present case strangely, as has candidly been admitted by the learned counsel for the plaintiff-appellant (Surekha), the Will dated 23.09.2012 (Ex.P1) was scribed by the plaintiff-appellant (Surekha) herself which would mean that on 23.09.2012 she was well aware that the entire property had been given to her by the Testator, yet she filed a suit in November 2012 for declaration that she had become co-owner on the basis of a family settlement. The said suit was withdrawn on 28.01.2013 on the ground that Smt. Vidyawanti had died and there was a Will in her favour. Subsequently, the present suit was filed. Though the learned counsel has made a faint effort to try and explain as to the necessity of filing the suit when there was already a Will in favour of the plaintiff-appellant, however, the learned counsel has not been able to point out to any cogent reason as to why a person who is aware of the Will, having scribed the Will herself, would file a suit for declaration on the basis of a family settlement. The filing of the suit itself raises a suspicion in the mind of the Court regarding the validity of the Will dated 23.09.2012. Secondly, the active participation of the sole beneficiary, the plaintiff-appellant (Surekha), itself is a suspicious circumstance. The Will has admittedly been scribed by the plaintiff-appellant

(Surekha). A perusal of the Will also reveals that on the left side of the page a huge margin has been left as also at the bottom of the page. However, there is no margin on the right side of the page. The learned counsel for the plaintiff-appellant (Surekha) has contended that the Will is signed by Smt. Vidyawanti at the end as well as in the margin, however, the manner in which the Will has been written also contributes to the suspicion that the Will is forged and fabricated. The First Appellate Court while dealing with the suspicious circumstances held as under :

“27. The Will Ex.P1 has been scribed by the plaintiff who is the sole beneficiary showing her active involvement in the execution of the Will and also both the witnesses are known to the plaintiff showing their active involvement with the beneficiary. In Nimbo vs. Satyabir Singh 1995 (1) CCC 224 (P&H) it has been observed by Hon’ble Punjab and Haryana High Court that active participation of the propounder in the execution of the will and deriving substantial benefits is itself a suspicious circumstance surrounding the execution of the will and the propounder is required to remove the said suspicion by clear and satisfactory evidence.

28. In the present case the said suspicion has not been removed by the appellant and rather upon the Will Ex.P1 the big left margin on the same along with the shade of ink of the signature of the testator Vidyawanti and the ink used for writing the Will to be different also casts a doubt on the due execution of the Will. It is highly improbable that the Will has been written by the different pen and the testator has appended his signature by a different pen showing that the contents of the Will has been intelligently adjusted on a blank signed paper

thereby also explaining the excessive margin and no margin on the right side of the Will. Plaintiff also has failed to adduce any evidence regarding her amicable relations with the deceased or that there was any reason to deprive defendant No.4 from the natural line of succession and merely performance of marriage of respondent No.4 is no ground to debar her from inheriting the property of the deceased”.

10. A Will is an instrument of testamentary disposition of property. It is a legally acknowledged mode of bequeathing a testator’s property during his lifetime to be acted upon on his/her death and carries with it an element of sanctity. It speaks from the death of the Testator. Since the Testator/Testatrix, at the time of testing the document for its validity, would not be available for deposing as to the circumstances in which the Will came to be executed, stringent requisites for the proof thereof have been statutorily enjoined to rule out the possibility of any manipulation. Recently, in the matter of **Meena Pradhan vs. Kamla Pradhan [(2023) 9 SCC 734]** the Hon’ble Supreme Court inter-alia held as under :

“10. Relying on H. Venkatachala Iyengar v. B.N. Thimmajamma [H. Venkatachala Iyengar v. B.N. Thimmajamma, 1958 SCC OnLine SC 31 : 1959 Supp (1) SCR 426 : AIR 1959 SC 443] (three-Judge Bench), Bhagwan Kaur v. Kartar Kaur [Bhagwan Kaur v. Kartar Kaur, (1994) 5 SCC 135] (three-Judge Bench), Janki Narayan Bhoir v. Narayan Namdeo Kadam [Janki Narayan Bhoir v. Narayan Namdeo Kadam, (2003) 2 SCC 91] (two-Judge Bench), Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh [Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh, (2009) 4 SCC 780 : (2009) 2 SCC (Civ) 348] (three-

Judge Bench) and Shivakumar v. Sharanabasappa [Shivakumar v. Sharanabasappa, (2021) 11 SCC 277] (three-Judge Bench), we can deduce/infer the following principles required for proving the validity and execution of the will:

10.1. The court has to consider two aspects : firstly, that the will is executed by the testator, and secondly, that it was the last will executed by him;

10.2. It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.

10.3. A will is required to fulfil all the formalities required under Section 63 of the Succession Act, that is to say :

(a) The testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and the said signature or affixation shall show that it was intended to give effect to the writing as a will;

(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;

(c) Each of the attesting witnesses must have seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of such signatures;

(d) Each of the attesting witnesses shall sign the will in the presence of the testator, however, the presence of all witnesses at the same time is not required;

10.4. For the purpose of proving the execution of the will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;

10.5. *The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;*

10.6. *If one attesting witness can prove the execution of the will, the examination of other attesting witnesses can be dispensed with;*

10.7. *Where one attesting witness examined to prove the will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;*

10.8. *Whenever there exists any suspicion as to the execution of the will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last will. In such cases, the initial onus on the propounder becomes heavier.*

10.9. *The test of judicial conscience has been evolved for dealing with those cases where the execution of the will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the will while acting on his own free will;*

10.10. *One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.*

10.11. *Suspicious circumstances must be “real, germane and valid” and not merely “the fantasy of the*

doubting mind [Shivakumar v. Sharanabasappa, (2021) 11 SCC 277]”. Whether a particular feature would qualify as “suspicious” would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance, for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit, etc.

11. In short, apart from statutory compliance, broadly it has to be proved that : (a) the testator signed the will out of his own free will, (b) at the time of execution he had a sound state of mind, (c) he was aware of the nature and effect thereof and (d) the will was not executed under any suspicious circumstances.”

11. Coming to the facts of the present case, a perusal of the relevant material on record and applying the provisions and the case law, it is evident that the Will (Ex.P1) is shrouded by suspicious circumstances. The suspicious circumstances enumerated in the judgements of both the Courts are sufficient to discard the Will. The plaintiff-appellant (Surekha) in her evidence has offered no explanation of any of these circumstances and has totally failed to discharge the heavy onus which lay on her of explaining the suspicious circumstances shrouding the execution of the Will and of establishing that the document which she propounded was the last Will and testament of her mother-in-law Smt. Vidyawanti. Counsel for the plaintiff-appellant (Surekha) has been unable to convince this Court to uphold the Will (Ex.P1). In **Jaswant Kaur vs. Amrit Kaur [(1977) 1 SCC 369]** the Apex Court held that :

“9. In cases where the execution of a will is shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What, generally, is an adversary proceeding becomes in such cases a matter of the court’s conscience and then the true question which arises for consideration is whether the evidence led by the propounder of the will is such as to satisfy the conscience of the court that the will was duly executed by the testator. It is impossible to reach such satisfaction unless the party which sets up the will offers a cogent and convincing explanation of the suspicious circumstances surrounding the making of the will.”

This Court finds no reason to differ from the findings returned by both the Courts. No other point was argued.

12. No question of law, much less any substantial question of law, arises in the present case which requires consideration of this Court. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

10.12.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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