

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.3561 of 2015

Date of Decision: 14.02.2024

Ved Kumari

....Appellant

VERSUS

Bhisham Sharma and Others

....Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Dinesh Nagar, Advocate for the appellant.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the plaintiff-appellant against the judgment and decree dated 31.01.2014 passed by the Trial Court dismissing the suit and the judgment and decree dated 26.02.2015 passed by the First Appellate Court dismissing the appeal.

2. The brief facts relevant to the present *lis* are that Pawan Kumar was the original owner of the suit land. He was unmarried and died issueless on 07.03.2009. The plaintiff-appellant herein introduced herself to be his only sister and entitled to inherit the estate of Pawan Kumar exclusively being a Clas-II heir as per the Hindu Succession Act, 1956. It was averred that parents of Pawan Kumar and both his brothers, namely, Ram Lubhaya and Harmesh Kumar and sister, namely, Somawati had pre-deceased Pawan Kumar. It was further the case setup that the plaintiff-appellant had been serving Pawan Kumar during his life time but about a week before this suit was brought, defendant-respondent Nos.1 to 3, who happen to be the widow

and minor children of brother of Pawan Kumar, namely, Harmesh Kumar started claiming themselves to be owners of the estate of Pawan Kumar on the basis of an un-registered Will. The plaintiff-appellant claimed that the said Will was forged and fabricated and was never executed by Pawan Kumar. It was further the case set up that Pawan Kumar had lost his senses about six months prior to his death and was not in a sound disposing mind and was not in a position to differentiate between good and bad. It was further averred that Pawan Kumar used to always sign in Punjabi, however, the Will had been thumb marked and hence, the Will was shrouded by suspicious circumstances. On notice, the defendant-respondents appeared. On merits, it was admitted that Pawan Kumar died issueless, however, it was averred that Pawan Kumar had left a Will dated 06.12.2008 in favour of the defendant-respondents. It was further averred in the written statement that Pawan Kumar had been residing with them at village Garhi Kanugo and that his last rites were also performed by them. At the time of his death Pawan Kumar was to pay a loan of Rs.1,23,100/- to Garhi Kanugo Multipurpose Cooperative Society Ltd. and that the said loan was cleared after his death by defendant-respondent No.3-Sudesh Kumari. It was further averred that the plaintiff-appellant was not even on visiting terms with her parents from the last about 30 years since she eloped with Kailash Nath, husband of her deceased sister Soma against the wishes of the family. On the basis of pleadings of the parties the following issues were framed:-

1. Whether the plaintiff is entitled to declaration, as prayed for? OPP
2. Whether the plaintiff is entitled to joint possession, as prayed for? OPP

3. Whether Pawan Kumar executed a valid and legal Will dated 06.12.2008 in his sound disposing mind in favour of defendants no.1 to 3, as prayed for? OPP
4. Whether the plaintiff is estopped from filing the present suit by his act, conduct, admission and acquiescence? OPD
5. Whether suit of the plaintiff is bad for misjoinder and non-joinder of necessary parties? OPD
6. Whether the suit of the plaintiff is not properly valued for the purposes of court-fee & jurisdiction? OPD
7. Relief.

3. The Trial Court on the basis of the pleadings and the evidence on the record dismissed the suit vide judgment and decree dated 31.01.2014 holding that the Will dated 06.12.2008 was duly proved by the defendant-respondents. Aggrieved by the same an appeal was preferred, which also came to be dismissed vide judgment and decree dated 26.02.2015. Hence the present appeal.

4. Learned counsel for the appellant would contend that the Will is shrouded by suspicious circumstances and that there were variations in the writing in the Will inasmuch as on the top there was a lesser space between lines and towards the end there was more space between the lines. The second contention of learned counsel for the appellant is that since it is an unregistered Will the same could not have been relied upon. Learned counsel for the appellant has laid much stress on a document, which is an

order alleged to have been passed by the Sub Divisional Magistrate rejecting the mutation on the ground that the Will was suspicious.

5. Heard.

6. In the present case, firstly dealing with the argument of learned counsel for the appellant that Sub Divisional Magistrate had passed a detailed order rejecting the Will on the ground of suspicious circumstances has not been considered by both the Courts deserves to be rejected inasmuch as the said order was never produced on the record nor the said argument was ever raised before both the Courts. The second argument of learned counsel for the appellant that there is a difference in the spacing between the lines in the beginning of the Will and towards the end of the Will also deserves to be rejected on the ground that the defendant-respondents upon whom the onus lay of proving the Will discharged the same by examining both the attesting witnesses and the scribe who proved the due execution. It was hence incumbent upon the plaintiff-appellant herein to produce a handwriting expert to show any discrepancy in the writing in the Will which the plaintiff-appellant failed to do.

7. Both the Courts have concurrently found that not only were the attesting witnesses examined, who proved the due execution of the Will but even DW6 Sukhdev Singh, Secretary of Garhi Kanugo Multipurpose Cooperative Society Ltd. had deposed that the loan which stood in the name of Pawan Kumar, who thumb marked the documents and that the said loan was later on cleared by defendant-respondent No.3 after his death on 12.06.2009. Even the scribe of the will Makhan Ram, who appeared as DW5, corroborated the version of the attesting witnesses. Learned counsel for the appellant has not been able to convince this Court that there is any

error or illegality in the judgments and decrees passed by the Trial Court as well as the First Appellate Court.

8. In view of the above, no question of law muchless substantial question of law arises for determination in the present case. The appeal, which is wholly devoid of any merit, is accordingly dismissed. All pending applications if any also stand disposed off.

14.02.2024

jk

(ALKA SARIN)
JUDGE

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