

106

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

RSA-4014-2018 (O&M)

Reserved on : 13.02.2024

Date of Decision: 20.02.2024

Ramesh Kumar

.....Appellant

VERSUS

Mahender Kumar Ladhar and Ors.

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Nitish Garg, Advocate for the appellant.

ALKA SARIN, J.

1. The present appeal has been preferred by the defendant-appellant challenging the judgment and decree dated 21.09.2016 passed by the Trial Court decreeing the suit of the plaintiff-respondent Nos.1 and 2 and the judgment and decree dated 12.12.2017 passed by the First Appellate Court dismissing the appeal filed by the defendant-appellant.

2. The parties to the litigation are brothers and sister. Brief facts relevant to the present *lis* are that the plaintiff-respondent Nos.1 and 2 through their attorney - Prem Kumari Ladhar - filed a suit for joint possession of the suit property averring therein that Lajwanti wife of late Shankar Dass, mother of the parties, owned 13/137 share in the property measuring 6 kanals 11 marlas and that she died intestate on 12.06.2002

leaving behind three sons and a daughter. It was further the case set-up that taking undue advantage of the absence of the plaintiffs and defendant No.2, the defendant-appellant succeeded in getting the mutation of inheritance of Lajwanti sanctioned in his name to the exclusion of the other siblings on the basis of a forged and fabricated Will dated 20.12.2001. The suit was contested by the defendant-appellant who propounded the Will dated 20.12.2001 in his favour by his mother. It was further the stand taken that the Will was legal, genuine and lawful and that the mutation on the basis of the Will had already been sanctioned in his favour. Replication was filed.

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

1. Whether the plaintiff is entitled to joint possession of the suit property ? OPP
2. Whether the suit is not maintainable in the present form ? OPD
3. Whether the plaintiffs are barred by their act and conduct to file the present suit ? OPD
4. Whether the plaintiffs have no cause of action to file the present suit ? OPD
5. Whether the plaintiff has got no locus standi to file the present suit ? OPD
6. Relief.

4. The Trial Court decreed the suit of the plaintiff-respondent Nos.1 and 2 vide the judgment and decree dated 21.09.2016. Aggrieved by the same, the defendant-appellant preferred an appeal which was dismissed

by the First Appellate Court vide the judgment and decree dated 12.12.2017.

Hence, the present regular second appeal.

5. Learned counsel for the defendant-appellant has vehemently contended that the defendant-appellant was the owner of the suit property on the basis of the Will dated 20.12.2001 executed by his mother - Lajwanti - to the exclusion of others. It is further the contention of the learned counsel that both the Courts have not considered the Will but have still decreed the suit.

6. I have heard the learned counsel for the defendant-appellant.

7. In the present case admittedly the suit property was owned by Lajwanti. The defendant-appellant set up a Will dated 20.12.2001 alleged to have been executed by his mother leaving her entire property to him. The said Will was challenged by the plaintiff-respondent Nos.1 and 2 averring in the plaint that the Will was forged and fabricated. It has concurrently been found by both the Courts that the Will dated 20.12.2001 was never produced and proved before the Courts in accordance with law. One Harpal Singh, Reader in the Court of Sub Divisional Magistrate, Nawanshahr, was directed to produce the Will dated 20.12.2001 as the defendant-appellant had submitted that the original was lying in the office of Sub Divisional Magistrate, Nawanshahr. However, the said witness stated that the Will dated 20.12.2001 was not available in the record. It has further been found that not only the Will dated 20.12.2001 was not produced, even the photocopy of the Will was not produced. The defendant-appellant through his attorney moved an application for permission to lead secondary evidence to prove the Will dated 20.12.2001 and the said application was allowed by the Trial Court. Even thereafter the Will dated 20.12.2001 was not proved by

RSA-4014-2018

way of secondary evidence.

8. In view of the above and in view of the fact that no evidence was led to prove the Will dated 20.12.2001, no error can be found in the judgments and decrees passed by both the Courts. No question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

20.02.2024
Yogesh Sharma

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