

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on 6th of November, 2024
Pronounced on 10th December, 2024

RSA No.4524 of 2017 (O&M)

Samarjeet
Versus
Yudhvir

....Appellant
...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sanjiv Kumar Aggarwal, Advocate,
Mr. Ojas Bansal, Advocate,
Mr. Tejas Bansal, Advocate and
Mr. Nissim Aggarwal, Advocate for the appellant.

Mr. Sandeep K. Sharma, Advocate,
Mr. Harjit Yadav, Advocate and
Mr. Arjun Singh, Advocate for the respondent.

PANKAJ JAIN, J.

Defendant is in second appeal against the judgment and decree passed by lower Appellate Court dated 28th of August, 2017 whereby judgment and decree passed by Civil Judge (Junior Division), Rohtak dated 31st of March, 2014 stands reversed allowing the appeal preferred by the plaintiff.

2. Parties to the suit are brothers fighting for the estate left by their father Dilawar Singh. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the appellant as the defendant and the respondent as the plaintiff.

3. Plaintiff filed suit seeking decree of declaration with the consequential relief of mandatory injunction claiming that Dilawar Singh father of plaintiff as well as defendant was owner in possession of ancestral agricultural land and other moveable and immoveable properties as mentioned in Para No.1 of the plaint. Dilawar Singh was residing with defendant and his wife, who used to exercise undue influence over him. Defendant in collusion with officials of the office of the Registrar, forged and fabricated Will dated 26th of July, 2007 registered vide Vasika No.921 dated 3rd of February, 2009 in his favour. The same being result of fraud, the forged and fabricated Will needs to be declared illegal, null and void and the same has no effect on the right of the plaintiff being legal heir of Dilawar Singh.

4. Suit was contested by defendant propounding Will challenged by the plaintiff. It was further claimed that plaintiff falsely implicated defendant and late father Dilawar Singh in a criminal case. Father Dilawar Singh, had to remain in jail for 17 days. Later on, the case was found to be based upon false allegations and resulted in cancellation report. It was further claimed that deceased Dilawar Singh transferred his ancestral property in equal shares amongst his sons. Property mentioned in para No.1 of the plaint was self acquired property of Dilawar Singh who bequeathed the same in favour of defendant by way of Will in dispute.

5. On the basis of pleadings, suit filed by the plaintiff was put to trial by framing following issues :

1. Whether the plaintiff is entitled to the decree of declaration on the grounds as averred in the plaint? OPP
2. Whether the plaintiff is entitled to the decree of mandatory injunction on the grounds as averred in the plaint? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the suit is bad for non joinder of necessary parties? OPD
5. Whether the suit is barred under section 41(h) of the Specific Relief Act? OPD
6. Whether the suit has not been properly valued for the purpose of court fee? OPD
7. Relief.

6. Trial Court decided issues No.1 and 2 in favour of the defendant and against the plaintiff holding that Will dated 26th of July, 2007 registered on 3rd of February, 2009 stands proved. Both the attesting witnesses namely Raje Ram who appeared as DW4 and Promila who appeared as DW5 proved the Will. Plaintiff failed to prove the alleged forgery or fabrication.

7. Trial Court answered issue No.3 also in favour of defendant and against the plaintiff and dismissed the suit.

8. In appeal, Lower Appellate Court reversed the findings recorded by Trial Court w.r.t. Will holding that there were major discrepancies in the testimony of the attesting witnesses which cannot be relied upon. Appellate Court further held that non-examination of scribe of the Will and Stamp Vendor is fatal to the case of the defendant. Resultantly,

Lower Appellate Court reversed finding on issues No.1, 2 and 3 and allowed the appeal decreeing the suit filed by the plaintiff.

9. Counsel for the appellant while assailing the impugned judgment and decree passed by Lower Appellate Court submits that the Lower Appellate Court erred in disbelieving the Will propounded by the defendant/appellant and believing the Will dated 28th of March, 2003 propounded by the plaintiff by considering evidence which was beyond pleadings. Mr. Aggarwal further submits that the plaintiff claimed the Will to be result of fraud and that the Will was forged and fabricated document. No evidence to the said effect was led by the plaintiff yet the Appellate Court made out a new case in favour of the plaintiff to dislodge the Will propounded by the defendant returning findings which are beyond record and perverse and hence need to be set aside.

10. Per contra, counsel for the respondent submits that Lower Appellate Court properly appreciated the evidence on record and rightly found that the findings recorded by the Trial Court were against the evidence on record and need to be reversed. Lower Appellate Court being final Court of facts has returned pure finding of facts which cannot be re-appreciated in the second appeal. He thus, submits that the findings recorded by the Lower Appellate Court need to be affirmed and the instant appeal deserves to be dismissed.

11. I have heard counsel for the parties and have carefully gone through records of the case.

12. In the considered opinion of this Court, the seminal issue that needs to be adjudicated is the legality of Will dated 26th of July, 2007 and registered as document bearing No.921 dated 3rd of February, 2009. Law w.r.t. proof of Will is well settled. Will needs to be proved to have been executed in terms of Section 63(c) of the Indian Succession Act as per Section 68 of the Indian Evidence Act. Wherever the party opposing the Will raises any suspicious circumstance surrounding the Will, it is for the propounder to dispel the same. In case, challenge is made to the Will pleading fraud, the party pleading fraud needs to plead details thereof and to prove fraud beyond doubt.

13. Applying the aforesaid parameters to the present case, defendant who propounded the Will examined the two attesting witnesses of the Will as DW4 and DW5. Both the witnesses fully proved the Will and supported the case of the prosecution. Trial Court resultantly held that the Will was validly proved by the defendant. However, Appellate Court reversed the findings pointing out certain discrepancies in the testimony of DW4 Raje Ram. Appellate Court found that Raje Ram stated that the impugned Will was executed over the simple paper, but the same was on stamp paper. In the considered opinion of this Court, from the bare perusal of the Will, it is evident that the same was executed on the plain paper using adhesive stamp. Lower Appellate Court, further discarded the testimony of Raje Ram holding that Raje Ram stated that testator only signed over one paper of the executed Will but the Will, Exhibit PW4/B, is signed not only

over the last paper of the Will, but also over per page of it. The aforesaid finding is also perverse as the Appellate Court completely misread the testimony of DW4 Raje Ram who stated as under:

“I signed on the Will at one place. I cannot say whether Dilawar signed at two places or three places.”

14. Lower Appellate Court further found that testimony of DW4 was inconsistent and against the Will as he claimed that the name of testator and witnesses were got typed, whereas the name and address of the testator as well as witnesses were hand written on the Will. The aforesaid finding is also perverse as DW4 specifically stated that *“name of Dilawar and his daughter was written on the Will. The same was written by the person who was typing the Will. Apart from signatures on the Will, names of Dilawar and his daughter were not written by hand. The name which was written in hand was written by his daughter only and name of Dilawar was written by Dilawar himself and I wrote my own name”*.

15. Thus, from the aforesaid testimony of DW4, it cannot be inferred that DW4 stated that names of the testator and attesting witnesses were typed on the Will as claimed by the Lower Appellate Court. The so called suspicious circumstances as pointed out by the Lower appellate Court are against the record and thus, cannot be sustained. Merely for the reason that the Will was got registered after the death of Dilawar Singh (14th of October, 2008) the same cannot be discarded when the same stands proved

in accordance with law. I may hastenly add here that the other attesting witness to the Will is none-else but the daughter of testator Dilawar Singh and younger sister of plaintiff and defendant. She has fully supported the Will executed by their father. In case, Will is dislodged, she herself is going to gain from the estate left by Dilawar Singh, but still she opted to support the Will, itself is a circumstance which cannot be ignored lightly.

16. Testator has detailed out the reasons for ignoring the plaintiff. Plaintiff admitted the reasons pointed out in the Will to be correct in his cross-examination. A father who was falsely embroiled in a criminal case that too under Section 307 IPC for which he had to remain in imprisonment for 17 days, had sufficient reason to disinherit plaintiff.

17. In view of above, this Court finds that the Will having been fully proved and the defendant having failed to lead any evidence to prove that the Will was forged or fabricated, Lower Appellate Court erred in reversing the findings returned by the Trial Court on issues No.1, 2 and 3 by misreading the testimony of DW4 Raje Ram and erred in law in returning the findings which are result of pure misreading of evidence and are unsustainable in the eyes of law.

18. Thus, from the testimony of DW4 and DW5 the inevitable conclusion is that the Will was proved to have been executed by Dilawar Singh in terms of Section 63(c) of the Indian Succession Act. From the joint testimony of DW4 and DW5 and careful perusal of the Will, this Court does not find any reason strong enough to dislodge the Will.

20. Pending application, if any, shall also stand disposed off.

Judge

Whether reportable : Yes/No