

RSA No.476 of 2018 (O&M)

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2024:PHHC:022212

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

RSA No.476 of 2018 (O&M)

Date of Decision:09.01.2024

Mohinder Singh

....Appellant

Versus

Jagir Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

**Present: Mr. L. S. Sidhu, Advocate,
for the appellant.**

SUDEEPTI SHARMA, J. (Oral)

1. The appellant filed a suit for declaration to the effect that he is the owner in possession of the land measuring 40 Kanal 10 Marla being 1/2th share out of the land measuring 81 Kanal comprised of Khewat No. 351/337 Khatauni No. 918 Rect. No. 28 Killa No. 5 (8-0) 12/2 (7-0) 17(8-0) 18/1(5-4), Khatauni No.919, Rect. No. 28 Killa No. 3/2 (4-12) 4(8-0) Khatauni No. 920 Rect No. 20 Killa No. 7(8-0) 8(8-0) 9(76-19), 10/1(0-5) 14(8-0) Khatauni No.921 Rect. No.28 Killa No.13 (8-0) situated at village Toot, Tehsil and District Ferozepur on the basis of Will dated 12.10.1984 exeucted by Bhagwan Kaur widow of Ganga Singh.

2. In the suit, the appellant alleged that the suit land measuring 81 Kanal as detailed in the head note of the plaint was owned by one Bhagwan Kaur widow of Ganga Singh. Bhagwan Kaur had been residing

with the appellant and the appellant is the real nephew of Bhagwan Kaur. The said Bhagwan Kaur has since expired and the appellant during her life time had been serving Bhagwan Kaur and she has got great love and affection towards the appellant due to the services rendered by the appellant to Bhagwan Kaur during her life time. She executed legal, valid and genuine Will in her sound disposing mind and on her own free will in favour of the appellant on 12.10.1984. Earlier Bhagwan Kaur was the owner in possession of the land in dispute and after her death, the appellant became owner in possession of the land measuring 40 Kanal 10 Marla being 1/2th share out of total land measuring 81 Kanal on the basis of Will dated 12.10.1984.

3. Upon notice, the respondents appeared and submitted that the appellant is neither related with Bhagwan Kaur the previous owner of the suit land nor he ever resided with said Bhagwan Kaur. Bhagwan Kaur never executed any will dated 12.10.1984 in favour of the appellant and alleged Will is a forged and fabricated document. The appellant never remained in actual cultivating possession of the land in dispute at the spot. It was further submitted that respondent No.1 Jagir Singh is the adopted son of Bhagwan Kaur. The respondent was given in adoption by the parents of the respondent to Ganga Singh and Bhagwan Kaur who took the respondent in adoption from Sohan Singh and his wife in ceremony. Respondent No.1 Jagir Singh had been looking after Bhagwan Kaur during her life time and had been treating her as his mother and Bhagwan Kaur out of love and affection and services rendered by the

respondent, executed the valid Will on 01.11.1984 in favour of the respondent in her sound disposing mind. After the death of Bhagwan Kaur, the mutation of inheritance of Bhagwan Kaur bearing No.4746 of village Toot, Tehsil and District Ferozepur was ordered to be sanctioned on 27.12.2000 by the Court of the learned Assistant Collector Ist Grade, Ferozepur. During life time Bhagwan Kaur had been cultivating the land in dispute and after her death, the respondent remained in actual cultivating possession thereof. The mutation of inheritance was rightly sanctioned by the Assistant Collector Ist Grade, Ferozepur in favour of respondent and the respondent became absolute owner in possession of the land in dispute at the spot. Respondent No.1 through his attorney Jagir Singh son of Sadiq son of Hakam vide sale deed dated 18.01.2001 transferred the land measuring 20 Kanal 5 Marla out of the land in dispute in favour of Bachittar Singh son of Joginder Singh, resident of village Rukna Begu and also executed sale deed through his attorney in favour of Sucha Singh son of Joginder Singh for valuable consideration. The possession of the land was delivered by the respondent in favour of Bachittar Singh (respondent No.2) and Sucha Singh (respondent No.3) the date when the sale deeds were executed and said Bachittar Singh and Sucha Singh are in actual cultivating possession of the land purchased by them. The present suit was barred by limitation. On merits, it was submitted that Bhagwan Kaur was co-sharer of the land in dispute to the extent of her share as recorded in the revenue record. It was denied that Bhagwan Kaur during her life time executed any Will on 12.10.1984 in

favour of the appellant, rather Bhagwan Kaur out of her own free will and sound disposing mind executed valid Will on 01.11.1984 in favour of respondent No.1 Jagir Singh. It was admitted that Bhagwan Kaur was owner of the land measuring 40 Kanal 10 Marla. Denying rest of the averments prayer was made for the dismissal of the suit.

4. From the pleadings of the parties, the following issues were framed vide order dated 29.05.2003 passed by the then learned Civil Judge (Junior Division), Ferozepur:-

1. Whether Bhagwan Kaur executed a valid Will dated 12.10.1984 in favour of the plaintiff if so its effect? OPP
2. Whether Bhagwan Kaur executed a Will in favour of defendant No.1, if so its effect? OPP
3. If issue No.1 and 2 are not proved, whether the registered sale deed dated 18.10.2001 executed by defendant No.1 through his attorney is liable to be set aside? OPP
4. Whether defendants No.2 and 3 are bonafide purchasers of the land vide registered sale deed dated 18.01.2001 and they have become absolute owner of the land purchased by them? OPP
5. Whether the suit is not maintainable in the present form? OPD
6. Whether the plaintiff has no locus standi to file the present suit? OPD
7. Whether the suit is liable to be dismissed with special costs? OPD
8. Relief.

5. The witnesses were examined by both the parties to prove their case.

6. After hearing both the parties, the learned trial Court dismissed the suit filed by the appellant/plaintiff vide judgment and decree dated 31.10.2014.

7. The appellant filed an appeal against the judgment and decree dated 31.10.2014 and the learned Additional District Judge, Ferozepur vide judgment dated 09.08.2017 dismissed the appeal filed by the appellant. Hence, the present regular second appeal.

8. Learned counsel for the appellant contends that both the Courts below have not taken into consideration the evidence led by the appellant and the judgment and decree dated 31.10.2014 passed by the learned trial Court and the judgment and decree dated 09.08.2017 passed by the learned Additional District Judge, Ferozepur, are perverse and illegal and liable to be reversed.

9. I have heard learned counsel for the appellant and perused the whole record of this case.

10. To prove his case, no ration-card or voter list of the relevant period was produced by the appellant that he is the nephew of Bhagwan Kaur. Hakam Singh son of Labh Singh, resident of village Wandhar appeared as PW1 who was marginal witness of the Will dated 12.10.1984 and as per his statement, the alleged Will was scribed at Kot Kapura by the Document Writer in his own handwriting and he also made a corresponding entry in his register but it was proved by the respondents that the alleged Will was not hand written by the Document Writer, rather the same was typed one and without any seal or signatures of any

Document Writer. Even the entry in the register of Document Writer regarding the execution of alleged Will was not proved on record. Moreover, the Will was unregistered. As per the statement of Hakam Singh PW1 they appeared before the Tehsildar, Kot Kapura but perusal of the alleged Will shows that the same was unregistered document and creates a suspicion that if the executant of the Will alongwith marginal witnesses appeared before the Tehsildar, Kot Kapura then why the Will was not got registered. Further, only one of the attesting witnesses of the alleged Will dated 12.10.1984 was examined. The other witness namely Parsa Singh, Lambardar, resident of village Wandhar was not examined as per the requirement of law regarding proving of the Will. Bhagwan Singh son of Nikka Singh, resident of village Beelewal was examined as PW2 who stated that Bhagwan Kaur was related to the appellant but in cross-examination the name of husband of Bhagwan Kaur was stated to be Ranga Singh instead of Ganga Singh.

11. Mukhtiar Singh was examined as PW3 who only stated to the effect that respondent No.1 Jagir Singh was not related to Bhagwan Kaur in any manner and during his cross-examination, he admitted that he did not know Bhagwan Kaur and in cross-examination, he further admitted that due to political rivalry, he deposed against the respondents. The appellant himself appeared as PW4 and contrary to the statements made by other witnesses, he stated that prior to 10 years of her death, Bhagwan Kaur, was residing with him and he got his ration-card wherein Bhagwan Kaur was enrolled as a member of the family, whereas no ration

card was produced on record by the appellant. As per the contention of the appellant, he submitted that he used to cultivate the land in dispute during life time of Bhagwan Kaur and even at the time of litigation, he was in cultivating possession of the land in dispute whereas as per the record placed on the file, the name of the appellant was nowhere mentioned in the *Jamabandi* and *Khasra Girdawari* proved as Ex.PW3 and Ex.PW4 respectively, in the column of cultivation.

13. A perusal of record further shows that on the basis of Will dated 01.11.1984, Mutation No.4746 Ex. D15 was entered in favour of respondent No.1 Jagir Singh on 12.12.2000 and the same was forwarded to concerned SDM, Ferozepur to decide the mutation who vide order dated 27.12.2000 ordered to sanction the mutation in favour of Jagir Singh (respondent No.1) being the adopted son of Bhagwan Kaur on the basis of Will dated 01.11.1984.

14. A perusal of the record further shows that Jagir Singh being the owner of the suit property sold the land in question to Bachittar Singh (respondent No.2) and Sucha Singh (respondent No.3) vide sale deeds Ex.D6 and D7 on 18.01.2001 and Bachittar Singh and Sucha Singh are recorded in revenue record being owners in possession since the date of purchase of property in question.

15. Ex.D8 and Ex.D9 are the *Jamabandis* whereas Ex.D10 to Ex.D12 are *Khasra Girdawaris* showing the possession of respondent No.2 Bachittar Singh and respondent No. 3 Sucha Singh. Ex.D13 is the order dated 30.03.2001 passed by the SDM-cum-Collector, Ferozepur in

which the respondents Bachittar Singh and Sucha Singh filed an application under Section 4 of Redemption of Property Act releasing the property from mortgages i.e. Sheetal Parshad and others. Vide order dated 30.03.2001 the then revenue authority ordered to redeem the land in question in favour of Bachittar Singh (respondent No.2) and Sucha Singh (respondent No.3).

16. The appellant could not prove that he remained in cultivation possession of the suit property. In his cross-examination, the appellant admitted that Bhagwan Kaur told him about the execution of the alleged Will in his favour prior to her death and if it was so he could have produced the same before the concerned authority for sanctioning of mutation of inheritance of Bhagwan Kaur in his favour on the basis of Will. Moreover, the application moved by the appellant before the Tehsildar, Ferozepur for sanctioning the mutation of inheritance after 3-4 years of death of Bhagwan Kaur, which is just an oral submission and no such application was produced and proved on the file by the appellant. The appellant was granted every opportunity by the trial Court to prove his case.

17. The appellant further examined Pardeep Kumar, Election Clerk, Faridkot who brought the voter list of village Beelewal for the year 1975, 1980 and 1984 Ex.PW5/1 to Ex.PW5/3 respectively and in these documents the person whose name was mentioned as Bhagwan Kaur in the voter list is the wife of Ranga Singh and not of Ganga Singh. Further, even as per voter list Bhagwan Kaur was shown as resident of village

Beelewal in the year 1984 then these documents are contrary to the contents of the Will dated 12.10.1984 wherein Bhagwan Kaur was mentioned as wife of Ganga Singh and resident of village Wandhar for the last 8 years, meaning thereby as per the contents of the Will Bhagwan Kaur had been residing at village Wandhar since 1976 but the entire record produced by Pardeep Kumar, Election Clerk, Faridkot for the year 1975 to 1984 shows Bhagwan Kaur as resident of village Beelewal and no voter list was produced on record to prove that after 1976 any voter list was in existence which contained the name of Bhagwan Kaur being resident of village Wandhar.

18. A perusal of the above examination of the witnesses as well as record shows that the appellant could not prove his case regarding the execution of any Will in his favour.

19. Respondent No.1 successfully proved his case to the effect that he is adopted son of Bhagwan Kaur and had been looking after her during her lifetime and out of love and affection and services rendered by him, she executed valid Will on 01.11.1984 in favour of respondent No.1 Jagir Singh in her sound mind. Further, sanctioning of mutation regarding the inheritance of Bhagwan Kaur in favour of respondents No.2 and 3 was also proved. To prove his case respondent No.1 examined Makhan Singh son of Labh Singh, retired AF&SO from District Food & Supplies Controller, Faridkot as DW1 who after seeing the original ration card of respondent No.1 Jagir Singh stated that it was prepared in the office of Food & Supplies, Talwandi Bhai and as per his statement, the same bears

the stamp of Inspector, Food & Supplies and his signatures. The ration card was proved on record as Ex.D1.

20. Further, Sadhu Singh son of Sohan Singh appeared as DW2 who deposed regarding the adoption ceremony of respondent No.1 Jagir Singh. Sadhu Singh is the real brother of respondent No.1 Jagir Singh. Even respondent No.1 Jagir Singh himself stepped into the witness box as DW3 and his version could not be falsified during his cross-examination. The respondents examined Bohar Singh son of Gurbax Singh as DW5 who was the scribe of the Will dated 01.11.1984. Further, Gajjan Singh son of Bahal Singh was examined as DW6 who was the marginal witness of the Will dated 01.11.1984. Both the witnesses were cross-examined at length but no major discrepancy to disbelieve them was found out.

21. To prove sale deeds dated 18.01.2001 by respondent No.1 in favour of respondents No.2 and 3, respondents examined Swaran Singh, the marginal witness of sale deeds Ex.D6 and Ex.D7. Sucha Singh respondent No.3 himself appeared as DW8 who proved the possession of respondents No.2 and 3 over the suit property being bonafide purchasers for valuable consideration.

22. As per the above record, the appellant tried to prove himself to be owner in possession of the suit property on the basis of Will dated 12.10.1984 executed by Bhagwan Kaur in his favour whereas respondent No.1 Jagir Singh tried to prove himself to be owner in possession of suit property on the basis of Will dated 01.11.1984 executed by Bhagwan Kaur in his favour and adoption of respondent No.1 by Bhagwan Kaur

and respondents No.2 and 3 claimed themselves as bonafide purchasers of the suit property on the basis of two sale deeds dated 18.01.2001 executed by respondent No.1 Jagir Singh through his attorney.

23. A perusal of above discussion supported by documentary evidence shows that the appellant failed to prove the execution of Will dated 12.10.1984 in his favour.

24. In view of the above, I do not find any infirmity in the judgment and decree dated 31.10.2014 passed by the learned trial Court and the judgment and decree dated 09.08.2017 passed by the learned Additional District Judge, Ferozepur, therefore, the present regular second appeal is dismissed.

25. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

January 09, 2024
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No