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

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**RSA-2531-2022 (O&M)
Date of Decision: 31.01.2024.**

Mohan Singh and others

...Appellants.

Versus

Ranjit Singh through his LRs

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Kranjeet Singh Brar, Advocate
for the appellants.

Sukhvinder Kaur, J.

The instant Regular Second Appeal has been filed by appellants/ defendants against the concurrent findings recorded by both the Courts below, vide which the suit of the respondent/ plaintiff was decreed.

2. The plaintiff filed a suit for declaration to the effect that the plaintiff is owner in possession of 1/8th share out of land measuring 73 kanal 2 marlas as detailed in head note of the plaint, as per jamabandi for the year 2010-2011 situated at village Bhairpura, Patti Kangar, Tehsil Phul, by virtue of Will dated 20.08.2014 executed by Bachan Kaur @ Amarjit Kaur daughter of Jaggar Singh @ Jagat Singh @ Jagga Singh and defendants have no concern with the share of said Bachan Kaur @ Amarjit Kaur and they do not have any right or share in the suit land and in connivance with

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the revenue officials and witnesses defendants have got sanctioned mutation No.11641, which is against law and facts and liable to be set aside and plaintiff wants to get mutation entered on the basis of Will dated 20.08.2014 in the revenue record in the name of the plaintiff to the extent of 1/8th share. The plaintiff also sought relief of permanent injunction restraining the defendants from alienating the 1/8th share of Bachan Kaur @ Amarjit Kaur out of the suit land on the basis of mutation No.11641 by way of sale, mortgage, exchange or any other mode of transfer to anybody in any manner.

3. Brief facts of the case as per plaint are that Bachan Kaur @ Amarjit Kaur was owner in possession of land measuring 73 kanal 2 marlas to the extent of 1/8th share as per jamabandi for the year 2010-2011, situated at village Bhairupa, Tehsil Phul. Bachan Kaur @ Amarjit Kaur during her life time was residing with the plaintiff. She was married to Jarnail Singh son of Gurdial Singh, however no child was born out of their wedlock. The plaintiff was looking after Bachan Kaur @ Amarjit Kaur and Jarnail Singh. Due to services rendered by the plaintiff to her, Bachan Kaur @ Amarjit Kaur with her own wish, executed a Will in favour of the plaintiff on 20.08.2014 in the presence of Mukhtiar Singh Namberdar and Gurjant Singh. The said Will was scribed by Harin Narain Goyal, Deed Writer at the asking of Bachan Kaur @ Amarjit Kaur and she appended her thumb impressions on it in the presence of witnesses, who after entering the said Will in his register and after affixing the joint photo, handed over the same to Bachan Kaur @ Amarjit Kaur. Vide said Will, Bachan Kaur @ Amarjit

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Kaur declared the plaintiff owner in possession of her entire property in India. Bachan Kaur @ Amarjit Kaur had died on 25.08.2014. As per Will dated 20.08.2014 executed by Bachan Kaur @ Amarjit Kaur, plaintiff is owner in possession of the entire estate left by her. Jarnail Singh, husband of Bachan Kaur @ Amarjit Kaur had also declared him as his legal heir regarding his entire estate. The defendants have no concern with the property left by Bachan Kaur @ Amarjit Kaur. Mutation No.11641 which had been got entered by the defendants in connivance with Ranjit Singh Namberdar and revenue officials regarding 1/8th share of Bachan Kaur @ Amarjit Kaur in their favour, is liable to be set aside and the plaintiff is not bound by the said mutation. The defendants are bent upon to alienate the suit property to somebody else on the basis of the said mutation without any right.

4. The suit of respondent/plaintiff was decreed by the trial Court, vide judgment and decree dated 14.02.2018. The appeal preferred by the appellants/ defendants before the First Appellate Court was dismissed, vide judgment and decree dated 31.08.2022. Hence, the present Regular Second Appeal.

5. I have heard learned counsel for the appellants and gone through the records thoroughly.

6. Will like any other document is to be proved and it should satisfy conscious of the Court that the Will was duly executed by the testator with his own free will and in sound state of mind and all the suspicious circumstances surrounding the Will are to be dispelled. Section 63 of the

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Indian Succession Act, requires a Will to be attested and as per requirement of Section 68 of the Indian Evidence Act, at least one attesting witness is to be called for proving its execution. Hon'ble Supreme Court in **R. Venkataehla Iyengar Vs. B.N. Thimmajamma, AIR 1959 SC 443** has held as under:-

“(1) xx xx xx

(2) xx xx xx

(3) *Unlike other documents, the Will speaks from the death of the testator and therefore the maker of the Will is never available for deposing as to the circumstances in which the Will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last Will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the Will.*

(4) xx xx xx

(5) xx xx xx

(6) xx xx xx”

7. In the instant case also, it was incumbent upon the plaintiff to prove the due execution of the Will as per law. To prove the genuineness and validity of the Will, plaintiff has examined its attesting witness Mukhtiar Singh, Namberdar as PW3, who has proved the execution of the Will Ex.P1 and also identified his signatures. Scribe of the Will, namely, Harin Narain Goyal, has been examined as PW2, who has also identified their signatures. So execution of Will Ex.P1 has been established on record, as per Section 68 of the Indian Evidence Act. Now coming to the suspicious circumstances, if the said Will was executed by Bachan Kaur @ Amarjit

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Kaur, five days prior to her death, it cannot be taken to be suspicious circumstance. There is no such evidence on record that Bachan Kaur @ Amarjit Kaur was not in her sound disposing state of mind for the execution of the alleged Will in question, being severely ill. No medical evidence has been brought on record in this respect. If the attesting witness has stated that the plaintiff was present at Tehsil Complex, while plaintiff has stated that he was not present there, then it also does not cast any shadow on the authenticity of the Will. Though it has been pleaded that Will Ex.P1 is a forged and fabricated document, but no evidence has been led by the defendants to prove the said plea of forgery and fabrication. Fraud is to be proved by leading the cogent evidence which is lacking in the present case. The defendants have also failed to prove that Will Ex.P1 does not bear thumb impressions of Bachan Kaur @ Amarjit Kaur. No expert witness to substantiate this plea has been examined by them. Rather affidavit executed by Jarnail Singh, husband of Bachan Kaur @ Amarjit Kaur duly attested by Executive Magistrate also supports the case of the plaintiff as it has been mentioned therein that a Will dated 20.08.2014 had been executed by his wife in favour of Ranjit Singh and he had no objection if the mutation of her inheritance was sanctioned in favour of Ranjit Singh. So there are no suspicious circumstances enveloping the Will in question.

8. For the reasons recorded above, the present Regular Second Appeal fails as it does not raise any question of law much less substantial question of law.

9. Appeal stands dismissed.

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10. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

31.01.2024.
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Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No