

**RSA-835-2018****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****RSA-835-2018 (O&M)
Reserved on : 16.07.2024
Pronounced on : 26.07.2024**

PARMINDER SINGH

....Appellant

VERSUS

BAKSHISH KAUR (DECEASED) THR LRS & ORS.Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Munish Gupta, Advocate for the appellant.

ALKA SARIN, J.**CM-2073-C-2018**

This is an application for condonation of delay of 55 days in
refiling the main appeal.

For the reasons stated in the application, the same is allowed.

Delay of 55 days in refiling the main appeal is condoned.

RSA-835-2018

1. The present regular second appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 06.08.2013 passed by the Trial Court whereby the suit of the plaintiff-appellant was dismissed, and the judgment and decree dated 22.02.2017 passed by the First Appellate Court whereby the appeal filed by the plaintiff-appellant was also dismissed.

2. The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for declaration that he was exclusive owner of the



properties as detailed in the head note of the plaint. It was the case set up by the plaintiff-appellant that one Iqbal Singh resident of Kothi No.786, Phase-VII, SAS Nagar (Mohali) had property in Village Badala Mahi, Tehsil and District Hoshiarpur and he was working as a Superintendent in the Office of Financial Commissioner, Punjab, Chandigarh. He was issueless and the plaintiff-appellant used to serve Iqbal Singh during his lifetime. Iqbal Singh had great love and affection for the plaintiff-appellant. In lieu of the services rendered by the plaintiff-appellant, Iqbal Singh executed a registered Will on 02.04.1997 bequeathing his entire estate in favour of the plaintiff-appellant. Defendant No.1, namely, Bakhshish Kaur (since deceased), who was the wife of Iqbal Singh, used to quarrel with Iqbal Singh and wanted that the entire property of Iqbal Singh should go to her family. It was further the averment in the plaint that defendant-respondent No.1 in connivance with the Deed Writer, namely, Ravinder Singh and Tehsildar of Fatehgarh Sahib, namely, Gurnam Singh Raipuri, prepared one cancellation deed, Will and General Power of Attorney on 19.02.1998. It was further the case that Iqbal Singh did not execute the said documents and he again executed an unregistered Will on 28.01.1999 in favour of the plaintiff-appellant. It was further averred that Iqbal Singh had died and his last rites were performed by the plaintiff-appellant and defendant-respondent No.5 at Mohali.

3. Defendant-respondent No.1, who was subsequently succeeded by her legal representatives, put in appearance and contested the suit and filed written statement raising preliminary objections *qua locus standi* and

***RSA-835-2018*****-3-**

suppression of true and correct facts and that the documents put forward by the plaintiff-appellant were forged. It was the stand taken by defendant-respondent No.1 that the plaintiff-appellant never served Iqbal Singh during his lifetime as Iqbal Singh used to reside at Chandigarh whereas the plaintiff-appellant resided at a different place. The plaintiff-appellant and his father (defendant-respondent No.5) used to visit Iqbal Singh occasionally. It was further the case that the deceased, namely, Iqbal Singh had great love and affection for his wife (defendant-respondent No.1). It was further the stand of defendant-respondent No.1 that Iqbal Singh was aware of the *malafide* intentions of the plaintiff-appellant and his father and hence not only did he cancel the earlier Will but also executed a Will and a Power of Attorney in favour of defendant-respondent No.1. Iqbal Singh died in PGI, Chandigarh and his dead body was brought to his residence i.e. Kothi No.786, Phase-VII, Mohali where his last rites were performed. Defendant-respondents No.2 and 3 though filed a separate written statement, however, took the same stand as that of defendant-respondent No.1. Defendant-respondent No.5, who was the father of the plaintiff-appellant, filed a separate written statement averring therein that he is already in possession of the suit land situated in Village Badala Mahi, Tehsi and District Hoshiarpur in view of the agreement to sell dated 12.12.1998 executed in his favour by Iqbal Singh. It was further the case that a civil suit was already pending for specific performance of the said agreement.

*RSA-835-2018**-4-*

4. Replications were filed to the written statements wherein the contents of the written statements were denied and those of the plaint were reiterated.

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

1. Whether Iqbal Singh son of Ganesha Singh executed Will on 28.01.1999 bequeathing his entire estate in favour of the plaintiff ? OPP
2. Whether defendant No.1 in illegal connivance with scribe, attesting witness and Tehsildar got executed cancellation deed, Will and power of attorney from Iqbal Singh on 19.02.1998 by extorting undue influence ? OPP
3. Whether sale deed dated 18.12.1998 executed by Iqbal Singh in favour of defendant No.2 is illegal, null and void ? OPP
4. Whether defendants No.1 to 3 threatened for alienation of disputed property illegally and forcibly ? OPP
5. Whether present suit is maintainable ? OPP
6. Whether plaintiff has concealed true and material facts from the Court ? OPD
7. Whether plaintiff is estopped by his own act and



conduct from filing the present suit ? OPP

8. Whether Civil Court at Hoshiarpur has jurisdiction to entertain the present suit ? OPP
9. Whether suit is not properly valued for the purposes of Court fee and jurisdiction ? OPD
10. Whether suit is bad for mis-joinder of necessary parties ? OPD
11. Whether defendant No.1 is entitled to inherit estate of Iqbal Singh ? OPD
12. Relief.

6. The Trial Court dismissed the suit of the plaintiff-appellant vide judgment and decree dated 06.08.2013 holding that the Will dated 28.01.1999 (Ex.P11) was not a duly executed Will. Aggrieved by the same an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 22.02.2017. Hence, the present regular second appeal by the plaintiff-appellant.

7. The learned counsel for the plaintiff-appellant would contend that both the Courts have erred in non-suiting him and dismissing his suit. It is urged that the execution of the Will dated 28.01.1999 (Ex.P11) was duly proved by the plaintiff-appellant and that merely by relying upon the findings returned in another suit, the said Will has been rejected by the First Appellate Court. It is further the contention of the learned counsel for the

*RSA-835-2018***-6-**

plaintiff-appellant that Iqbal Singh had suffered a shoulder injury and hence he had thumb mark the Will as he was unable to sign. As per counsel, in view of the Will (Ex.P11) in his favour, the plaintiff-appellant is entitled to succeed to the estate of Iqbal Singh and that the documents of the defendant-respondent No.1 are a result of fraud.

8. Heard.

9. In the present case Iqbal Singh is stated to have executed a registered Will on 02.04.1997 (Ex.P12) bequeathing his entire property in favour of the plaintiff-appellant. Thereafter, the said Will was cancelled by a cancellation deed (Ex.DW3/B) and a Will dated 19.02.1998 (Ex.DW3/C) and a General Power of Attorney (Ex.DW5/A) executed in favour of defendant-respondent No.1 on 19.02.1998. It was the case of the plaintiff-appellant that subsequently an unregistered Will dated 28.01.1999 (Ex.P11) was executed by Iqbal Singh bequeathing his entire property in favour of the plaintiff-appellant. It is an admitted fact that Iqbal Singh was an educated person and was working in the Revenue Department, Government of Punjab as Deputy Secretary, Finance. The argument of the learned counsel for the plaintiff-appellant that since the testator, namely, Iqbal Singh, had suffered a shoulder injury and hence he was unable to sign the Will and had thumb marked the same deserves to be rejected on the ground that there is no material on the record to even remotely suggest that Iqbal Singh had suffered a shoulder injury at the time of execution of the Will dated 28.01.1999 (Ex.P11). No medical record had been produced by the plaintiff-

**RSA-835-2018****-7-**

appellant to prove that the testator, namely, Iqbal Singh, had suffered a shoulder injury as a result of which he could not append his signatures on the Will (Ex.P11). The said Will has not been proved to having been duly and validly executed. The learned counsel for the plaintiff-appellant has not been able to convince this Court that there was any fraud which was committed by the defendant-respondent No.1. It is trite that when allegations of fraud are made, the same need to be proved by leading cogent evidence which is lacking in the present case. The documents in favour of the defendant-respondent No.1 are registered documents. In the absence of the essential requirements of proving fraud, the argument of the learned counsel for the plaintiff-appellant cannot be accepted. No other point was argued.

10. In view of the above, I do not find any merit in the present appeal. No question of law, much less any substantial question of law, arises for determination in the present case. The appeal being devoid of any merits is accordingly dismissed. Pending applications, if any, also stand disposed off.

26.07.2024
Aman Jain

(ALKA SARIN)
JUDGE

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