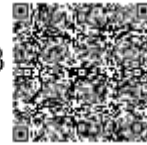


2024:PHHC:093983



113 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-61-2020 (O&M)
Decided on:-24.07.2024

Ram SinghAppellant..

vs.

Jaswant SinghRespondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Mohit Garg, Advocate and
Mr.Mohit Saini, Advocate for the appellant.

HARKESH MANUJA J. (Oral)

1. By way of present appeal, challenge has been laid to the judgments and decrees dated 23.01.2018 and 19.08.2019 passed by the Courts below, whereby the suit for declaration claiming ownership as well assailing the Will dated 01.07.1998 in favour of respondent-defendant, filed at the instance of appellant-plaintiff, stands dismissed.

2. Briefly stating, claiming himself to be the legal heir of deceased-Teja Singh, being his son, appellant-plaintiff filed a suit for declaration qua half share of the estate left by his father as detailed in the plaint while alleging him to be its owner and in possession thereof. It was further submitted that the property inherited by deceased-Teja Singh was ancestral/coparcenary property, the same been inherited by him from his father. It was further stated that the Will dated 01.07.1998, purportedly executed by deceased-Teja Singh in favour of respondent-defendant was a forged & fabricated document. Even the mutation No.12321 dated 06.10.2015 got entered long after the death of Teja Singh on 27.12.2006,

based on the aforesaid Will was also assailed. Further, the appellant-plaintiff also prayed for grant of permanent injunction restraining the respondent-defendant from interfering in the peaceful possession over the property in question and also restraining him from alienating the same during the pendency of the suit.

3. Upon notice, respondent-defendant filed his written statement while claiming himself to be owner in possession of the suit property left by his father- Teja Singh on the basis of registered Will dated 03.07.1998 (executed on 01.07.1998) in his favour.

4. Based on pleadings of the parties, the Trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to relief of declaration as prayed for? OPP
2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP
3. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD
4. Whether suit of the plaintiff is not maintainable in the present form? OPD
5. Whether the suit of the plaintiff is liable to be dismissed being non-joinder of necessary parties? OPD
6. Whether the plaintiff has not come to the court with clean hands and suppressed the material facts from the court? OPD
7. Relief.”

5. The Trial Court vide judgment and decree dated 23.01.2018, dismissed the suit filed at the instance of appellant-plaintiff while upholding the valid execution of Will dated 01.07.1998, registered on 03.07.1998

(Ex.D-1) in favour of respondent-defendant by deceased-father (Teja Singh).

It was also recorded that the suit filed at the instance of appellant-plaintiff was not maintainable being bad for non-joinder of necessary parties as all the legal heirs of deceased-Teja Singh were not impleaded as defendants in the suit.

6. Aggrieved thereof, the appellant-plaintiff filed first appeal, however, the same came to be dismissed by the Court of Id. District Judge, Sangrur, vide its judgment and decree dated 19.08.2019.

7. Impugning the aforementioned judgments and decrees, learned counsel for the appellant-plaintiff submits that the Courts below went wrong while non-suiting the appellant-plaintiff as in the facts and circumstances of the present case, the suit property being ancestral in the hands of deceased-Teja Singh, he could not have alienated the same by way of executing a Will in favour of one of his sons i.e. the respondent-defendant.

He further submits that even a family settlement-cum-compromise qua the property in question was entered into between the members of the family including the deceased-father and two brothers i.e. appellant-plaintiff and respondent-defendant, as per which, the estate left by Teja Singh-deceased was to devolve upon the two brothers in equal share. No other argument has been addressed, especially questioning the valid execution of registered Will dated 03.07.1998 in favour of respondent-defendant.

8. I have heard learned counsel for the appellant and gone through the paper book. I am unable to find substance in the submissions made on behalf of the appellant-plaintiff.

9. In the present case, the appellant-plaintiff has not been able to

establish on record that the suit property in the hands of Teja Singh being ancestral/coparcenary. Except oral statements, no revenue record in the shape of excerpts has been produced/proved so as to establish the nature of the property being joint Hindu Family coparcenary. In such circumstances, it was rightly held by the Courts below that the suit land in the hands of Teja Singh was his self-acquired property and he was fully competent to alienate the same. Moreover, even the family settlement relied upon by the appellant-plaintiff has not been proved on record, as merely a photostat copy thereof has been produced as Mark "A", which was never proved in accordance with the mandate of relevant provisions of Indian Evidence Act, 1872. Besides it, the Will dated 01.07.1998 registered on 03.07.1998 (Ex.D-1) as set up by respondent-defendant executed in his favour by deceased-Teja Singh was duly proved through its scribe Harinder Kumar (DW-1) and one of the attesting witnesses, namely, Diwan Singh (DW-2), in terms of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872. Furthermore, the appellant-plaintiff failed to lead any evidence that the Will in question was a forged and fabricated document.

10. In view of the discussion made herein-above, finding no illegality or perversity with the concurrent findings of fact recorded by the Courts below, there being no overlooking of the material available on record; re-appreciation of pleadings and the evidence being impermissible, at this stage, the present appeal being devoid of merits is thus dismissed.

10. Pending application, if any, also stands disposed of.

24.07.2024

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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/ No