

2024:PHHC:150278



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

RSA-5819-2019 (O&M)
Reserved on : 06.11.2024
Pronounced on : 19.11.2024

MANDEEP SINGHAppellant

VERSUS

SUKHDEEP SINGH AND OTHERSRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ishmeet Singh, Advocate for
Mr. Sherry K. Singla, Advocate for the appellant.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellant against the judgements and decrees dated 23.07.2018 and 05.10.2019 passed by the Trial Court and the First Appellate Court dismissing his suit for declaration and permanent injunction.

2. The parties are related to each other. One Pavittar Kaur was the grand mother of the plaintiff-appellant and defendant-respondent Nos.1 to 4 and mother in law of defendant-respondent No.5. Pavittar Kaur died on 04.12.2014 leaving behind the parties as her legal heirs. As per the plaintiff-appellant, he and his brother defendant-respondent No.1 were serving Pavittar Kaur during her life time. However, after the death of Pavittar Kaur the defendant-respondent No.1 started alleging himself to being the owner of the suit property on the basis of a Will dated 28.06.2014. The plaintiff-appellant however set-up a family settlement dated 23.12.2014 whereunder

the plaintiff-appellant and defendant-respondent No.1 became joint owners to the extent of 1/3rd share each and defendant-respondent Nos.2 to 5 to the extent of 1/3rd share. As per the plaintiff-appellant all the parties put their signatures in the presence of witnesses. However, despite the family settlement the defendant-respondent No.1 got the mutation entered in his favour alone on the basis of the alleged Will. Hence, the present suit. Defendant-respondent No.1 in his written statement took the plea that Pavittar Kaur had executed a Will dated 28.06.2012, registered on 02.07.2012, in favour of her husband Surjit Singh as well as defendant-respondent No.1. Since Surjit Singh died during the life time of Pavittar Kaur, the defendant-respondent No.1 became sole owner of the suit property on the basis of the Will. It was stated that the document dated 23.12.2014 was termed as a family settlement whereas it was a a partition deed which was neither stamped nor registered and was a forged and fabricated document. The remaining defendant-respondents were proceeded against ex-parte.

3. From the pleadings of the parties following issues were framed :
1. Whether the plaintiff is entitled to the 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 got no cause of action and *locus standi* to file the present suit ? OPD

4. Whether suit of the plaintiff is not maintainable in the present form ? OPD
5. Whether suit has not been properly valued for the purpose of court fee and jurisdiction ? OPD
6. Whether suit of the plaintiff is false, frivolous and vexatious ? OPD
7. Relief.

4. Vide judgement and decree dated 23.07.2018 the Trial Court dismissed the suit of the plaintiff-appellant. The appeal of the plaintiff-appellant was also dismissed by the First Appellate Court vide judgement and decree dated 05.10.2019. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellant has contended that both the Courts have erred in dismissing his suit. It is urged that the parties had entered into a valid and binding family settlement which ought to have been upheld by the Courts. According to counsel the Will relied upon by the defendant-respondent No.1 is surrounded by suspicious circumstances.

6. Heard counsel for the plaintiff-appellant.

7. In the present case the plaintiff-appellant has founded his case on a family settlement dated 23.12.2014. However, both the Courts have declined to accept the said document it being unregistered. The Will left by Pavittar Kaur has been accepted by both the Courts. Pavittar Kaur died on 04.12.2014 and immediately on her death the Will left by her came into play whereunder the defendant-respondent No.1 succeeded to her estate. The plaintiff-appellant and the defendant-respondent Nos.2 to 5 did not receive

anything under the Will left by Pavittar Kaur. Thus, for them to get any share in the suit property on the date of the family settlement the defendant-respondent No.1 would have to give up some portion or relinquish some portion. This relinquishment could only be done by a registered document. The family settlement dated 23.12.2014 is not a registered document. It cannot be accepted to being a proper relinquishment by defendant-respondent No.1. Further, the family settlement gave rights to the plaintiff-appellant and the defendant-respondent Nos.2 to 5 in the suit property for the first time. They had no pre-existing rights in it. The said document thus again required registration. In the absence of its registration the family settlement dated 23.12.2014 has rightly not been accepted by both the Courts. The counsel for the plaintiff-appellant has not been able to dislodge the concurrent findings recorded by both the Courts. No other point was argued.

8. In view of the above, no mistake or error of law or facts can be found with the judgments and decrees passed by both the Courts. No question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

19.11.2024

Aman Jain

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No