

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

106

RSA No.9695 of 2018 (O&M)
Reserved on : 18.04.2024
Date of Decision : 24.04.2024

Om Parkash

....Appellant

VERSUS

Ganga Jiwan & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashish Yadav, Advocate for the appellant.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellant against the judgment and decree dated 04.03.2016 passed by the Trial Court and the judgment and decree dated 02.07.2018 passed by the First Appellate Court whereby his suit for declaration and permanent injunction has been dismissed.
2. The brief facts relevant to the present case are that the plaintiff-appellant and the defendant-respondents are brothers. The plaintiff-appellant approached the Trial Court averring that the father of the parties, Pyare Lal, had during his lifetime distributed the agricultural land measuring 86 Kanals 04 Marlas owned by him in Village Kheri Taluka Patauda equally amongst his legal heirs and since then the parties to the suit are cultivating their respective shares as owners. As per the plaintiff-appellant the father of the

parties, Pyare Lal, got paralyzed in 2008 and after that he lost his memory and the defendant-respondents, taking undue benefit of his condition, procured a false Will in their favour by producing Pyare Lal in the Office of the Sub-Registrar on 19.11.2008. The plaintiff-appellant challenged the said Will dated 19.11.2008 as being declared illegal, null and void and not binding on his rights. The defendant-respondents contested the suit taking the stand that the plaintiff-appellant had left the house of Pyare Lal and was living separately since the past 27-28 years. It was also averred that the marriages of the children of the plaintiff-appellant were solemnized by the deceased Pyare Lal by incurring expenditure of approximately Rs.20-25 lacs and Pyare Lal had also spent on the construction of the house of the plaintiff-appellant. It was further pleaded that during his life time Pyare Lal had purchased several properties at Village Kheri Taluka Patauda and had executed sale-deeds in favour of his sons i.e. the plaintiff-appellant and the defendant-respondents and that the plaintiff-appellant had thereafter transferred his share in favour of his son by executing a gift deed dated 19.06.2007. The Will dated 19.11.2008 was defended by averring that Pyare Lal was in a healthy state of physical and mental health when he had executed and got registered the said Will which was duly read over and explained to him in the presence of the witnesses and only after understanding the contents of the said Will to be correct did Pyare Lal put his thumb-impression on the same. Replication was filed by the plaintiff-appellant controverting the averments of the written statement and reiterating the contents of the plaint.

3. On the basis of the pleadings of the parties the Trial Court framed the following issues :

1. Whether the Will dated 19.11.2008 is illegal, null and void and not binding on the rights of the plaintiff ?
OPP
2. Whether the plaintiff is owner-in-possession of suit land of para no.1 of the plaint to the extent of 1/4 share ?
OPP
3. Whether the plaintiff is entitled for a decree for permanent injunction, as prayed for ? OPP
4. Whether the suit of the plaintiff in present form is not maintainable ? OPD
5. Whether the plaintiff has no cause of action and locus-standi to file this suit ? OPD
6. Whether the plaintiff is estopped from filing the suit by his own act and conduct ? OPD
7. Whether the plaintiff has concealed the material facts from the Court ? If so, as to what effect ? OPD
8. Whether the suit of plaintiff is time barred ? OPD
9. Relief.

4. The Trial Court vide judgment and decree dated 04.03.2016 dismissed the suit of the plaintiff-appellant. Aggrieved by the said judgment and decree dated 04.03.2016 an appeal was preferred by the plaintiff-appellant which appeal was also dismissed vide judgment and decree dated 02.07.2018. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellant has contended that the impugned judgements and decrees are illegal and erroneous and that the Courts have wrongly dismissed the suit of the plaintiff-appellant. It was submitted that the Will allegedly executed by Pyare Lal was surrounded by suspicious circumstances and that Pyare Lal was not in a sound and disposing state of mind when the Will was allegedly executed. Pyare Lal could not differentiate between right and wrong, good and bad and the Will had been obtained by taking undue benefit of his illness just three days prior to his death.

6. Heard counsel for the plaintiff-appellant and perused the paperbook.

7. Both the Courts have reached concurrent findings of fact and have dismissed the suit of the plaintiff-appellant. It has been found that the Will dated 19.11.2008 was legal and valid. The plaintiff-appellant has not produced on the record any medical record of Pyare Lal to show that he had got paralyzed in 2008 or was ill when the Will was executed. Mere bald oral assertions were made by the plaintiff-appellant. The Will dated 19.11.2008 was duly proved by the defendant-respondents and the attesting witness. The First Appellate Court found that *“There is not any iota of evidence on the case file which could show that Pyare Lal had become paralyzed or he had lost his memory prior to his death. Plaintiff has claimed that Pyare Lal was getting treatment from Desi Vaid but he has failed to produce any such Vaid. He had not even dared to produce any neighbourer or his family members to depose about the said facts”*. It was further found that *“When presence of Pyare Lal in Tehsil premises on the day of execution of the Will is admitted*

by the plaintiff and there is no evidence that Pyare Lal was not in sound disposing mind at that time or had not consented to execute the Will, there is no reason to disbelieve a registered document i.e. Will in question". Even before this Court the learned counsel for the plaintiff-appellant has not been able to show any evidence on the record to prove that Pyare Lal was not well and was not in a sound state of mind when the Will dated 19.11.2008 was executed by him. Counsel for the plaintiff-appellant has not been able to show any material on the record to displace the concurrent findings recorded by both the Courts. The due and valid execution of the Will dated 19.11.2008 has been established and proved and accepted by both the Courts. No other point was argued.

8. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The regular second appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

24.04.2024

Yogesh Sharma

(ALKA SARIN)
JUDGE

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