

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-9724-2018 (O&M)
Reserved on : 19.01.2024
Date of decision : 23.01.2024

BHURI KAUR & ANOTHER ... Appellants

Versus

SUKHDEV SINGH & OTHERS ... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Kanav Bansal, Advocate for the appellants.
(Joined through video conferencing)

ALKA SARIN, J.

CM-18840-2018

1. For the reasons stated therein, the application for condonation of delay in refiling the appeal is allowed. Delay of 70 days in refiling the appeal is condoned.

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2. The present regular second appeal has been preferred by the defendant-appellants against the concurrent findings of both the Courts below whereby the suit of the plaintiff-respondent has been decreed.

3. Brief facts relevant to the present *lis* are that the plaintiff-respondent filed a suit for declaration and permanent injunction averring that earlier Sarban Singh, father of the plaintiff-respondent, was owner in possession of the suit property to the extent of 1/4 share. Sarban Singh died on 29.05.2012 and during his life time he had executed a registered Will dated 29.08.2007 in favour of the plaintiff-respondent. The defendants had

no concern with the suit property but illegally got mutation No.12809 sanctioned which was illegal, null, void and had no effect on the rights of the plaintiff-respondent and that the plaintiff-respondent was entitled to inherit the property of deceased Sarban Singh on the basis of Will dated 29.08.2007. It was averred that the plaintiff-respondent had many times requested the defendants to accede to his genuine request but to no avail. Hence, the present suit. The defendant Nos.1 to 7 filed written statement admitting the case of the plaintiff-respondent. The defendant-appellants (defendant Nos.8 and 9) filed written statement taking preliminary objections of non-maintainability, no cause of action, etc. and on merits it was denied that Sarban Singh executed any Will dated 29.08.2007 though his ownership over the suit property was admitted. It was stated that the Will was illegal, null, void, forged and fabricated and that Sarban Singh did not put his signatures on the Will in question. It was further the stand taken that Sarban Singh during his life time used to live with the defendant-appellants who used to serve Sarban Singh and that the plaintiff-respondent was habitual of committing fraud and that the suit property is co-parcenary property. As per the defendant-appellants the mutation No.12809 was legal and valid and that earlier also the plaintiff-respondent had committed fraud with Sarban Singh and illegally got transferred land in the name of his son and nephew through power of attorney of Sarban Singh. However, when Sarban Singh came to know about this then the plaintiff-respondent got a sale deed executed in return in favour of Sarban Singh from his nephew. Rest of the averments were denied and it was prayed that the suit be

dismissed. On the basis of the pleadings, the following issues were framed:

1. Whether plaintiff is entitled for the relief of declaration as prayed for ? OPP
2. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for ? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
4. Whether the plaintiff has no locus standi and cause of action to file the present suit ? OPP
5. Whether the plaintiff has concealed material facts from the court ? OPD
6. Whether this court has no jurisdiction to entertain, try and decide this suit ? OPD
7. Relief.

4. The parties led their evidence and on the basis of the pleadings and evidence, the Trial Court decreed the suit of the plaintiff-respondent. The registered Will set-up by the plaintiff-respondent was upheld and the suit property was not found to be co-parcenary property. Aggrieved by the judgment and decree dated 12.01.2016, an appeal was preferred by the defendant-appellants which also met with the same fate vide judgement and decree dated 27.11.2017 passed by the First Appellate Court. Hence, the present regular second appeal.

5. The learned counsel for the defendant-appellants has contended that the impugned judgements and decrees are illegal and against the

evidence available on the record. It is argued that the Will dated 29.08.2007 is shrouded with mystery and suspicious circumstances and the same has not been proved in accordance with law. It is also submitted that the suit property is co-parcenary property and there was no reason for Sarban Singh to execute the Will in favour of the plaintiff-respondent alone. It was contended that the suit deserved to be dismissed.

6. Heard the learned counsel for the defendant-appellants and perused the paperbook.

7. In the present case the plaintiff-respondent has successfully established that the suit property was owned by Sarban Singh and has been bequeathed in favour of the plaintiff-respondent. Both the Courts below have concurrently upheld the validity of the Will dated 29.08.2007. The said Will has been held to be duly proved by its attesting witness PW4 and is also supported by the scribe PW3 and is also a registered Will. The Court also cannot ignore the fact that the children of Sarban Singh have supported the case of the plaintiff-respondent whereas the daughter-in-law and granddaughter of Sarban Singh (the defendant-appellants) are contesting the Will dated 29.08.2007. The stand taken by the defendant-appellants that the suit property is co-parcenary is liable to be rejected as there is no evidence available to establish this claim. The defendant-appellants failed to establish and prove the pleas taken by them in the written statement. Even before this Court the learned counsel for the defendant-appellants has been unable to point out to any evidence on the record to establish the arguments raised in this regular second appeal. That being so, the present appeal must

necessarily fail. No other point was argued.

8. In view of the above, I do not find any illegality or infirmity in the judgments and decrees passed by both the Courts. No question of law, much less any substantial question of law, arises for determination in the present case. The present regular second appeal which is wholly devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

23.01.2024
Aman Jain

(ALKA SARIN)
JUDGE

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