

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****117****RSA-1084-2021 (O&M)****Date of Decision : 04.11.2024**

Narinder Singh

....Appellant

VERSUS

Sukhwant Kaur and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Gursharan Singh, Advocate for the appellant.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the defendant no.4-appellant challenging the judgment and decree dated 13.12.2013 passed by the Trial Court and the judgment and decree dated 16.09.2019 passed by the First Appellate Court whereby the suit for declaration filed by the plaintiff-respondent no.1 has been decreed.

2. Brief facts relevant to the present *lis* are that one Hardeep Singh son of S. Thakur Singh was exclusive owner in possession in respect of the land measuring 30 Kanals 7 Marlas, as described in the headnote of the plaint, situated in village Sarhali Kalan, Tehsil and District Tarn Taran. Hardeep Singh is stated to have died on 08.12.2000 leaving behind Sukhwant Kaur (plaintiff) as his widow, Ranjit Singh (defendant no.1) as his son and legal heir and Gurpreet Singh alias Gurmeet Kaur and Kanwaljit Kaur (defendant Nos.2 and 3) as his daughters/legal heirs. The suit was filed by Sukhwant Kaur (plaintiff-respondent No.1) on the ground that Hardeep Singh had great love and affection for her and hence he executed a registered

Will dated 23.10.2000 bequeathing his entire estate in her favour. It was further averred that the defendants had no right or title in the suit land. Further, a challenge was laid to a Will dated 10.07.1997 executed in favour of Ranjit Singh (defendant No.1). Further, the plaintiff-respondent No.1 challenged the sale deed dated 22.02.2008 qua 14 Kanals 7 Marlas of land in favour of Joginder Singh (defendant-respondent No.5) and sale deed dated 04.04.2008 qua 12 Kanals of land executed by Ranjit Singh (defendant No.1) in favour of Narinder Singh (defendant No.4-appellant herein).

3. Ranjit Singh (defendant No.1) filed a written statement contending that his father Hardeep Singh had executed a registered Will dated 10.07.1997 in his favour and mutation No.876 was sanctioned in his favour in the year 2000 on the basis of the said Will. It was further averred that he had sold the suit land in favour of Narinder Singh (defendant no.4-appellant herein) vide registered sale deed dated 04.04.2008. He denied that the Will in his favour was cancelled and alleged that the Will set-up by his mother Sukhwant Kaur (plaintiff-respondent No.1) was a forged and fabricated document. Narinder Singh (defendant No.4-appellant herein) and Joginder Singh (defendant-respondent No.5) filed separate written statements stating therein that the Will dated 23.10.2000 was a forged and fabricated document and that Ranjit Singh (defendant No.1) was the exclusive owner in possession of the land left by his father, Hardeep Singh, and that they had purchased the suit land for valuable consideration and were in actual physical possession of the same. They relied on the Will dated 10.07.1997 left by Hardeep Singh in favour of Ranjit Singh (defendant

No.1). Sukhwant Kaur (plaintiff-respondent No.1) filed replication reiterating the contents of her plaint.

4. Subsequently, the children of Hardeep Singh i.e. defendant Nos.1 to 3 were proceeded against *ex parte*. On the basis of the pleadings, the following issues were framed :

1. Whether the plaintiff is entitled to the declaration to the effect that he is co-sharer and co-owner of suit land as fully detailed in the head note of the plaint ?
OPP
2. Whether the plaintiff is entitled to joint possession of the land, as fully detailed in the head note of the plaint ? OPP
3. Whether the suit is not maintainable ? OPD
4. Whether the plaintiff has not come to the Court with clean hands and has suppressed the material facts from the Court, if so, its effect ? OPD
5. Whether the plaintiff has got no locus standi to file the present suit ? OPD
6. Whether the plaintiff has got no locus standi to file the present suit against defendant no.4, who is bona fide purchaser of the suit property for valuable consideration without notice of alleged rights of the plaintiff ? OPD
7. Whether the suit is not properly valued for the purpose of court fee and jurisdiction ? OPD

8. Whether the plaintiff is estopped by her own act and conduct from filing the present suit ? OPD

Following additional issues were framed on 07.11.2013 :

1. Whether Hardeep Singh executed a Will dated 23.10.2000 in favour of Smt. Sukhwant Kaur plaintiff ?

OPP

2. Whether Hardeep Singh executed a Will dated 10.07.1997 in favour of Ranjit Singh ? OPD-1

3. Relief.

5. The Trial Court, on the basis of the pleadings and the evidence on the record, held the Will dated 23.10.2000 (Ex.P-1/A) to be duly proved. It was further held that the original sale deed dated 22.02.2008 in favour of the defendant-appellant was never produced on record and only a photocopy of the same was produced. It was further held that the said sale deed had been executed during the pendency of the civil suit and was hence hit by the principle of *lis pendens* and there was no evidence on record to show that defendant-appellant did not have knowledge of the defect in the title of Ranjit Singh (defendant No.1). The Trial Court thus decreed the suit declaring Sukhwant Kaur (plaintiff-respondent No.1) to be the sole owner qua the estate left by her deceased husband Hardeep Singh.

6. Aggrieved by the judgment and decree passed by the Trial Court, Narinder Singh (defendant No.4-appellant herein) and Joginder Singh (defendant-respondent No.5) filed two separate appeals. However, vide judgment and decree dated 16.09.2019 both the appeals were dismissed by

the First Appellate Court. Hence, the present regular second appeal has been filed by Narinder Singh (defendant no.4-appellant herein). Joginder Singh (defendant-respondent No.5) had filed appeal being RSA-1213-2021 which was dismissed by this Court vide judgment dated 23.05.2022. Thereafter, against the judgment dated 23.05.2022, Joginder Singh (defendant-respondent Nos.5) had filed Special Leave to Appeal (Civil) No.16003 of 2022 before the Hon'ble Supreme Court, which was also dismissed as withdrawn vide order dated 14.10.2022.

7. Learned counsel for the Narinder Singh (defendant No.4-appellant herein) would contend that it is a clear case of collusion between the mother and the son to defeat the legal rights of Narinder Singh (defendant No.4-appellant herein) who is a *bonafide* purchaser for consideration. It is further the contention that the Will dated 23.10.2000 in favour of the plaintiff-respondent No.1 was shrouded by suspicious circumstances and hence the Courts below have erred in law in upholding the validity of the said Will. According to counsel the earlier Will executed on 10.07.1997 by Hardeep Singh in favour of his son Ranjit Singh (defendant No.1) was valid and stood proved.

8. Heard.

9. While dismissing the appeal being RSA-1213-2021 filed by Joginder Singh (defendant-respondent No.5 herein), arising out of the same impugned judgments and decrees, this Court vide judgment dated 23.05.2022 had observed as under :

“ In the present case, admittedly, the Will dated 10.07.1997 was executed by the deceased Hardeep Singh in favour of Ranjit Singh (defendant no.1). However, by the subsequent Will dated 23.10.2000 the earlier Will dated 10.07.1997 was specifically cancelled and the entire property was bequeathed by Hardeep Singh in favour of his wife Sukhwant Kaur (plaintiff). In order to prove the Will dated 23.10.2000 (Ex.P-1/A), both the attesting witnesses of the Will stepped into the witness-box as PW-1 and PW-2 and testified regarding the due and valid execution of the Will. Further, the scribe of the Will, namely, Avinder Singh Dhillon also stepped into the witness-box as PW-3 and fully supported the case set up by the plaintiff-respondent no.1. The testimonies of the said witnesses could not be shaken in their cross-examination. The next point, which needs to be dealt with is whether the defendant no.5-appellant herein can be considered to be a bona fide purchaser for valuable consideration without notice of the rights of the plaintiff-respondent no.1. It has come in evidence that the mutation on the basis of the Will dated 23.10.2000 (Ex.P-1/A) was sanctioned on 15.01.2004 in a gathering in the village itself and that the defendant no.5-appellant is a resident of the same village and

hence, it can by no stretch of imagination be said that the defendant no.5-appellant was not aware of the execution the said Will. None of the vendees from Ranjit Singh (defendant no.1) i.e. Narinder Singh (DW1, defendant no.4) and Joginder Singh (DW4, defendant no.5-appellant) uttered a word in their testimonies regarding having made any bona fide verification about the title of Ranjit Singh (defendant no.1). It was simply stated by defendant no.5-appellant that he had seen the Will dated 10.07.1997 in favour of Ranjit Singh as also the mutation in his favour. The sale deeds in favour of Narinder Singh (DW1, defendant no.4) and Joginder Singh (DW4, defendant no.5-appellant) are many years after sanctioning of the mutation in favour of the plaintiff-respondent no.1. Both Narinder Singh (DW1, defendant no.4) and Joginder Singh (DW4, defendant no.5-appellant) are brothers and the sale deed in favour of Narinder Singh (defendant no.4) was executed by his father acting as attorney of Ranjit Singh (defendant no.1). It has further been noticed by both the Courts below that there is no evidence on the record regarding any consideration having passed qua the sale deed in favour of the defendant no.5-appellant. The Will dated 10.07.1997 was not proved in accordance with law and

was cancelled by the subsequent Will dated 23.10.2000. Even before this Court counsel for the defendant no.5-appellant could not show how the earlier Will dated 10.07.1997 could be held to be duly proved.

During the course of hearing, learned counsel for the defendant no.5-appellant failed to point out any patent illegality or perversity in either of the judgments rendered by both the Courts below. He also could not refer to any question of law, much less a substantial question of law, which arose in the present regular second appeal.

No other point has been argued. No question of law, much less any substantial question of law, arises in the present case.”

11. In view of the above findings recorded by this Court while dismissing the connected appeal being RSA-1213-2021, there is no merit in the present appeal also and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

04.11.2024
jk

(ALKA SARIN)
JUDGE

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