

2025:PHHC:007992



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

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RSA-1268-2020 (O&M)

Date of Decision : 20.01.2025

GURCHARAN SINGH AND ANR

.... Appellants

VERSUS

BALDEV KAUR AND ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

**Present : Mr. Vikram Singh, Advocate and
Mr. Abhinav Sood, Advocate for the appellants.**

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the plaintiff-appellants challenging the judgments and decrees dated 12.08.2015 and 11.10.2019 passed by the Trial Court and the First Appellate Court, respectively.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellants herein filed a suit for declaration to the effect that the order dated 29.09.2006 passed by the Assistant Collector Grade-I, Bathinda regarding the inheritance of Raghbir Singh son of Sarban Singh whereby the properties of Raghbir Singh were inherited equally by his legal heirs on the basis of natural succession being illegal, null and void and by ignoring the unregistered Will dated 04.07.2004 executed by Raghbir Singh in favour of the plaintiff-appellants and Gurdeep Singh i.e. defendant-respondent No.2. Order dated 13.03.2007 passed by the Collector, Bathinda was also challenged vide which the appeal filed by the plaintiff-appellants was

dismissed upholding the order dated 29.09.2006. Challenge was also laid to the order dated 08.08.2007 passed by the Commissioner, Faridkot vide which the revision petition was dismissed. An unregistered Will dated 04.07.2004 was set up by the plaintiff-appellants which was alleged to have been executed by Raghbir Singh in favour of his three sons i.e. the plaintiff-appellants herein and defendant-respondent No.2 - Gurdeep Singh - qua his movable and immovable properties. It was the case set up that pleased with the services rendered by his sons, Raghbir Singh had executed an unregistered Will dated 04.07.2004 in their favour. It was further the case that Raghbir Singh during his lifetime had given enough dowry articles to defendant-respondents No.3 and 4 (daughters) equal to their shares in the properties at the time of their marriage and they had accordingly relinquished their shares in the properties.

3. The suit was contested by defendant-respondent No.1 i.e. wife of Raghbir Singh and his third son, namely, Gurdeep Singh (defendant-respondent No.2) raising various preliminary objections. It was the stand taken that the unregistered Will dated 04.07.2004 was a fabricated document. It was further the stand taken that the mutation had rightly been sanctioned as per the Hindu Succession Act, 1956. The daughters i.e. defendant-respondents No.3 and 4 also filed their separate written statement and took similar pleas.

4. Replication was filed denying the contents of the written statements and reiterating those of the plaint.

5. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the Will dated 04.07.2004 executed by Raghbir Singh is legal and valid ? OPP
2. If issue No.1 is proved, whether plaintiffs are entitled to the relief of declaration as prayed for ? OPP
3. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for ? OPP
4. Relief.

6. Vide judgment and decree dated 12.08.2015 the suit was dismissed by the Trial Court. Aggrieved by the same an appeal was preferred by the plaintiff-appellants which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 11.10.2019. Hence, the present regular second appeal by the plaintiff-appellants.

7. Learned counsel for the plaintiff-appellants would contend that the unregistered Will stood duly proved inasmuch as the Scribe of the Will i.e. Harmandeep Singh, Advocate had stepped into the witness box as PW-3 and one of the attesting witnesses i.e. Harjinder Singh had also stepped into the witness box as PW-2. It is further the contention that the daughters (defendant-respondents No.3 and 4) had been given sufficient amount at the time of their marriage and that the wife (defendant-respondent No.1) owned other properties. It is further the contention that except for the handwriting expert no other witness was examined, nor any evidence was led by the defendant-respondents to show that the Will was not a validly executed Will.

8. Heard.

9. In the present case both the Courts concurrently found that the unregistered Will dated 04.07.2004 was shrouded by suspicious circumstances. The defendant-respondents in their evidence have led the evidence of handwriting expert who specifically stated that the thumb impression had been transposed on the document, to which no evidence was led to the contrary. Both the Courts also observed that there was irregular spacing between the lines of the Will. The most important aspect was that the unregistered Will which was set up by the plaintiff-appellants was to be proved by way of cogent evidence to the effect that the same had been read over and explained to the Testator who was an illiterate person as is apparent from the unregistered Will wherein his thumb impression has been appended. Both the Scribe as well as the attesting witnesses admitted in their cross-examination that the contents of the Will had not been read over and explained to the Testator. In such a case it cannot be believed that the unregistered Will was executed by the Testator knowingly and willingly. It is trite that the burden to prove due execution of the Will is always on the propounder. It is incumbent on the propounder of the Will to prove that the Testator had signed a Will and had put his signatures out of his free will and that the testator was possessed of sound disposition of mind and understood the contents of the Will. On a query by the Court to the counsel for the plaintiff-appellants as to whether he could point out to any evidence on the record to suggest that the unregistered Will was read over and the contents

explained and understood by the Testator, learned counsel for the plaintiff-appellants states that there is no such evidence.

10. In view of the glaring facts, no fault can be found with the judgments and decrees passed by both the Courts concerned. No question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

20.01.2025

Aman Jain

(ALKA SARIN)
JUDGE

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