

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****108****RSA-1401-2021 (O&M)****Date of decision: 24.01.2025****Gurpalinder Singh****...Appellant(s)****Vs.****Amritsar Improvement Trust and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Neeraj Yadav, Advocate for the appellant.

NIDHI GUPTA, J.**CM-5364-C-2021**

Prayer in this application filed under Section 5 of the Limitation Act read with Section 151 CPC is for condonation of delay of 166 days in filing the accompanying appeal.

Heard.

For the reasons mentioned in the application which is supported by an affidavit of the applicant/appellant, the same is allowed and the delay of 166 days in filing the accompanying appeal is condoned.

RSA-1401-2021 (O&M)

The present second appeal has been filed by the plaintiff no.1 against the concurrent findings of the learned Courts below, whereby the suit of the appellant and his wife/ plaintiff no.2 for declaration to the effect that the plaintiffs are owners of the suit property/ plot No.E-234, measuring 300 Sq. Yards, situated in Ranjit Avenue (Ajnala Road Expansion



Scheme) Amritsar on the basis of the Will dated 19.2.2003 executed by S. Gurdatar Singh son of Gurbux Singh in their favour, after having been allotted to him (S.Gurdatar Singh), being local displaced person by defendant No.1; **AND** for permanent injunction restraining the defendant No.1 from allotting and transferring in any manner whatsoever the aforesaid plot in favour of any other person/s and for mandatory injunction, directing the defendant No.1 to execute the sale deed, handover the vacant possession and to complete all other requisite formalities for proper and beneficial use of aforesaid plot No.E-234 by the plaintiffs; **OR** in the alternative to allot a new plot measuring 300 sq. yards in the aforesaid scheme in lieu of the plot referred to above, was dismissed by learned Civil Judge (Senior Division), Amritsar vide judgment and decree dated 30.05.2017; and the appeal filed by the plaintiff was dismissed by the learned Additional District Judge, Amritsar vide judgment and decree dated 03.07.2019.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'plaintiff'; and the respondents are the 'defendants'.

3. The brief facts of the case as set out in the plaint are that the father of the plaintiff, namely S. Gurdatar Singh, was joint owner along with defendants no. 2 to 7 of land property by Khasra No.94/11/2, 20, 21, 95/14/2, 15, 16, 114/2/1 min situated in the revenue estate of Gumtala Sub Urban Amritsar. The aforesaid land was acquired by defendant No.1-Trust for setting up Ajnala Road Area Expansion Scheme. In the above said land,



Father of the plaintiff i.e. S.Gurdatar Singh owned land measuring 2 Kanal 11 Marlas; and on his application, he was allotted plot No. E-234 measuring 300 sq. yds., being a local displaced persons of the said Scheme. He was also issued allotment letter No. AIT 6078 dated 10.03.1992 and he deposited requisite amount of Rs.13,075/- being the 1/4th of sale consideration vide receipt No. 11166 dated 31.3.1992.

4. It was further pleaded by the plaintiff that defendants No. 2 to 7 were also allotted different plots of which possession was delivered to them; however, the father of the plaintiff was not delivered the possession of plot No. E-234 measuring 300 sq. yds. on false and flimsy grounds. Thereafter, the father of the plaintiff no.1 expired on 3.7.2003. Upon his death, the plaintiff found an allotment letter dated 10.03.1992 of the above said plot and also a Will dated 19.2.2003 executed by the father of the plaintiff, as per which the suit property was bequeathed to the plaintiffs. Accordingly, plaintiff No.1 approached defendant No.1 to execute the sale deed and to deliver the possession of the plot No. E-234 to the plaintiffs. However, defendant No. 1 kept on delaying the matter and ultimately refused to execute the sale deed. The defendants No. 2 to 7 also refused to admit the claim of the plaintiffs. Thus the plaintiffs were compelled to file the present suit.

5. Upon notice, the defendant No.1 appeared and resisted the suit and filed written statement *inter alia* taking the objection therein that plaintiffs had suppressed the material facts. It was however, admitted that allotment letter No. AIT-6078 dated 10.3.1992 was issued to father of the



plaintiff no.1 i.e. Gurdatar Singh and he also deposited Rs.13,075/- as 1/4th of the total sale consideration vide receipt No. 11166 dated 31.3.1992. Other vague averments of the plaint were denied and prayer for dismissal of the suit was made. The remaining defendants No. 2 to 7 also appeared; and separate written statement was filed by defendant No.3; and joint written statement were filed by defendants No. 2, 4, 5 and 7 resisting the suit and *inter alia* stating that the Will dated 19.2.2003 is a forged and fabricated document. The plaintiffs filed replication reiterating the averments made in the plaint and controverting the averments made in the written statements. On the basis of the pleadings made by the parties, following issues were framed:-

- “1. Whether the plaintiff is entitled to declaration as prayed for? OPP
2. Whether the land in question was allotted to father of the plaintiff? OPP
3. Whether the present suit is not maintainable? OPD
4. Whether the plaintiff has not come to the court with clean hands?OPD
5. Relief.”

6. On the basis of the pleadings, oral and documentary evidence adduced by the parties, the learned trial Court dismissed the suit of the plaintiffs vide judgment and decree dated 30.05.2017. The appeal filed by plaintiff no.1 against the said judgment and decree dated 30.05.2017, was dismissed by the learned Additional District Judge, Amritsar vide judgment and decree dated 03.07.2019. Hence, the present second appeal.



7. Learned counsel for the plaintiff assails the concurrent judgments of the learned Courts below by submitting that it had been categorically admitted by defendant No.1 that letter of allotment dated 10.3.1992 had been duly issued to Gurdatar Singh/father of plaintiff No.1; and that the payment of Rs.13,075/- being 1/4th of total sale consideration was also made by the said Gurdatar Singh vide receipt No. 11166 dated 31.3.1992. It is submitted that despite these admitted facts, possession of the aforesaid plot was not delivered to Gurdatar Singh. Gurdattar Singh expired on 03.07.2003 and it is only then that the plaintiff discovered the documents in respect of the above said plot, as also the Will dated 19.02.2003. Immediately thereafter, the present suit was filed.

8. It is argued that from the above facts, it is clear that the impugned judgments have been passed without appreciating the facts and controversy at hand. Learned Courts below have failed to consider that alongwith relief of declaration, the plaintiff had also prayed for permanent injunction and mandatory injunction. However, the learned trial Court did not accede to declare the said reliefs despite the fact that defendant No.1 had admitted that plot No. E-234 was allotted to the father of plaintiff no.1. The Courts below have non-suited the plaintiffs only on the ground that Will dated 19.02.2003 was not proven. Learned counsel contends that even the said findings of the learned Courts below is contrary to the record as plaintiff had led sufficient cogent evidence to prove the authenticity of the Will. However, the same has been discarded due to small discrepancy which is bound to occur with the passage of time. Moreover, it has come on



record that as per the testimony of PW3 Clerk of the defendant No.1-Trust, it is admitted fact on record that issuance of allotment letter dated 10.03.1992 against receipt No. 11166 dated 31.03.1992 is not denied. It is also admitted fact on record that Gurdatar Singh did not get the possession of plot No. E-234. It is also admitted that allotment letter dated 10.03.1992 was also concerned with Gurdatar Singh. The plaintiff is claiming his title on the said plot on the basis of Will dated 19.02.2003. Learned counsel accordingly prays that the present appeal be allowed; and the impugned judgements and decrees of the learned Courts below be set aside.

9. No other argument is raised on behalf of the appellant.

10. Heard learned counsel for the appellant and perused the case file in great detail.

11. The plaintiff is claiming title to the suit property on the basis of Will dated 19.02.2003 executed by Gurdatar Singh. However, the said Will dated 19.02.2003 executed by Gurdatar Singh has been discarded by the Courts below, being an unregistered document, and shrouded in suspicious circumstances. This is borne out from the fact that it was the case of the plaintiff that the said Will (Ex.P1) had been scribed by Gurdatar Singh/father of the plaintiff No.1 himself in the Punjabi script. However, defendant No.7 as DW1 had categorically stated that the testator was not conversant with the Punjabi script. Even the plaintiff No.1 as PW4 had deposed that medium of study of his father i.e. Gurdatar Singh was English; plaintiff No.1 himself further admitted that his father did not know how to



write Punjabi. In contradiction of the said statement, plaintiff No.1/PW4 had stated that his father used to write him letters in Punjabi when the plaintiff was studying in school/college and later on when the plaintiff was residing in Ludhiana. However, admittedly the plaintiff failed to produce any such letters on record to show that Gurdatar Singh could write in Punjabi. Although PW1 Sardool Singh, marginal witness of the Will (Ex.P1) had deposed that the same was scribed by Gurdatar Singh in his own hand, he had simultaneously admitted in his cross-examination that he had never seen Gurdatar Singh writing or signing the said Will. As such, Id. Courts below have correctly drawn adverse inference against the plaintiff.

12. Even the statements of the two attesting witnesses i.e. Sardool Singh PW1 and Gurbarinder Singh PW2 to the Will were doubted by the learned trial Court as there were material discrepancies in their statements. Sardool Singh PW1 marginal witness to the Will had stated that no reason had been mentioned in the said Will for ignoring the other children of Gurdatar Singh. The said statement is incorrect, as in the Will it is clearly mentioned that plot No. E-234 is being bequeathed to the plaintiffs as all the other family members had been allotted plots under the LDP scheme but no plot had been allotted to plaintiff No.1. Another discrepancy is that PW1 Sardool Singh had mentioned that there was no over-writing or cutting in the Will at the time of its execution; however perusal of Will (Ex.P1) shows that there is overwriting in Ex.P1 at point Mark A. This fact had been admitted by the other marginal witness to the Will, namely Gurbarinder Singh Sandhu PW2/defendant No.3. There were similar other numerous



discrepancies in the prosecution evidence. For instance, Gurbarinder Singh, marginal witness to the Will/defendant No.3/PW2 had denied the Will in his written statement to the plaint. The learned trial Court further disbelieved the testimony of PW2 Gurbarinder Singh Sandhu/defendant No.3 on the ground that he and the plaintiff No.1 were real brothers and therefore, had common interest. The following observations of the learned trial Court in the paras No. 25, 26 and 27 of the impugned judgment dated 30.5.2017 are relevant:-

“25. Sardool Singh PW1 when stepped into the witness box admitted that in Ex.P1, it was not mentioned that Gurdatar Singh had executed any earlier Will. However, contents of Ex.P1 are otherwise and as per Ex.P1 the executant mentioned that he cancels the earlier Will. Perusal of Ex.P1 shows that there is no mention about the date, month and year of the said earlier Will. From the appreciation of testimony of PW1, it comes out that he admits that present plaintiff also produced a Will in some other litigation which remaining pending between the parties. Sardool Singh admitted that he has been attending the court regarding the pendency of said suit. However, he showed ignorance if that Will was also in the hand of Gurdatar Singh or not. He also showed ignorance whether the said suit was decided against Gurpalinder Singh or not. He showed ignorance if said Will was held to be forged or not. From Ex.D2 it comes out that in previous litigation between the parties to suit, Sardool Singh had been attending the court and appeared as PW4 in that suit in support of present plaintiff No.1 for the reasons best known to him.



26. Similarly, the statement of Gurbarinder Singh is also contradictory to Ex.P1. He showed ignorance if Gurdatar Singh executed any Will earlier than Ex.P1 or not. He categorically stated that neither any earlier Will was discussed nor mentioned in Ex.P1 or not. It is important to mention here that Gurbarinder Singh is that person who himself rely upon the Will dated 18.4.1972 in a civil litigation pending between the parties at Patti, Tarn Taran which Will has already been ignored vide order dated 21.1.2015 Ex.D2. There is also discrepancy in the statement of Gurbarinder Singh as he stated that no plot number was mentioned in the Will Ex.P1. However, perusal of Ex.P1 shows that the plot Number E- 234 is mentioned there. In view of above discussion, it comes out that neither Sardool Singh nor Gurbarinder Singh are conversant with the recital of Ex.P1 and they signed the document being interested witnesses. Gurbirinder Singh is real brother of plaintiff No.1. It is evident from record that Gurdatar Singh solemnized two marriages. The first wife was Parsin Kaur and the name of second wife was Pritam Kaur. Parsin Kaur had three children namely Gurmit Kaur, Gurbirinder Singh and Gurpal Inder Singh. Pritam Kaur had three daughters namely Baljit Kaur, Ranjit Kaur and Jagjit Kaur. From this evidence, it comes out that plaintiff Gurpalinder Singh and defendant Gurbirinder Singh who is none else but the real brother of plaintiff Gurpalinder Singh and also marginal witness of the Will in question. It comes out that both plaintiff No.1 and defendant No.3 were born from the wedlock of Gurdatar Singh and Parsin Kaur. However, defendant No.4,5 and 7 are the daughters of defendant No.2 Pritam



Kaur and Gurdatar Singh. Meaning thereby plaintiffs and defendant No.3 are the common interest.

27. *From the cross-examination of PW2 Gurbarinder Singh, it comes out that he is vigilant about one civil suit pending between the parties. He admits that a Will was produced in that litigation by the plaintiff of Gurdatar Singh. He admits that the suit has been dismissed and the appeal is pending but he showed ignorance whether the Will produced in the earlier suit was held to be forged. He admits that the Will produced in that suit was also handwritten. It is important to mention here that while filing the written statement to para No.5 of the plaint wherein the plaintiff alleged that he found a Will dated 19.2.2003 executed by his father, Gurbarinder Singh defendant No.3 who is marginal witness of the alleged Will categorically denied this fact for want of knowledge and stated that plaintiff No.1 is put to strict proof of each and every allegation made in the para. Meaning thereby, the marginal witness of the alleged Will itself questioned the document Ex.P1 which also creates a doubt regarding the genuineness of the Will. The written statement of Gurbirinder Singh, his testimony, contents of the Will are self contradictory to each other. Moreover, the contents of the pleadings are also contradictory in itself as the plaintiffs allege that the Will is dated 19.2.2003 executed by Gurdatar Singh in their favour however Ex.P1 is dated 18.2.2003 and the date i.e. 19.2.2003 underneath the alleged signatures of Gurdatar Singh is smudged one.” (Emphasis added)*

13. It is also relevant that the plaintiff claims to have found the Will in the year 2006-07, whereas the present Civil Suit No. 17 was filed on

04.02.2010. Moreover, even there is no explanation given by plaintiff as to why, when he found out the Will in the year 2006-07, then why he did not approach the defendant No.1-Amritsar Improvement Trust; and filed the present Civil Suit for declaration only in the year 2010. It is also incongruous that the real brother of the plaintiff No.1 i.e. Gurbarinder Singh/PW2 who was also marginal witness to the Will dated 19.02.2003, did not disclose regarding the execution of the Will to his real brother i.e. plaintiff No.1 during all these years.

14. It was in view of the above facts that both the learned Courts below vide concurrent findings, had non-suited the plaintiff. Ld. Counsel for the plaintiff/appellant is unable to dispute or controvert the above said findings of the learned Courts below. I am, therefore, in agreement with the learned Courts below that the Will relied upon by the plaintiff is shrouded in suspicious circumstances.

15. In view of the above facts and findings, no ground is made out that calls for interference in the concurrent findings of the learned Courts below.

16. The present regular second appeal is hereby **dismissed**.

17. Pending applications, if any, stand disposed of.

24.01.2025

(NIDHI GUPTA)

Divyanshi

JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No