



RSA-3525-2019 (O&M)

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

**RSA-3525-2019 (O&M)
Decided on : 04.03.2025**

Lakha Singh

..... Appellant

Versus

Joginder Kaur

..... Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. C.M.Munjhal, Advocate
for the appellant.

VIKRAM AGGARWAL, J (ORAL)

This is plaintiff's second appeal against the judgment and decree dated 02.04.2019, passed by the Court of learned Additional District Judge, Ferozepur, dismissing the appeal filed by the appellant-plaintiff against the judgment and decree dated 12.02.2018, passed by the Court of learned Additional Civil Judge (Senior Division), Zira vide which the suit for declaration and permanent injunction filed by the appellant-plaintiff was dismissed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. Plaintiff Lakha Singh is the brother of one Raghbir Singh who expired on 20.11.2013 and the defendant Joginder Kaur is his widow. The case set up by the plaintiff was that Raghbir Singh was the owner of land measuring 32 kanals 06 marlas (fully described in the plaint), situated in



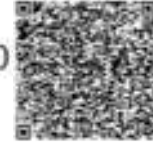
Village Amin Wala, Tehsil Zira, District Ferozepur (hereinafter referred to as 'the suit property'). It was averred that during his lifetime Raghbir Singh had executed a Will dated 20.09.2013 in favour of the plaintiff. The said Will was witnessed by attesting witnesses namely Angrej Singh, Shabeg Singh and Malkeet Singh. However, after the death of Raghbir Singh, the defendant, in collusion with the revenue authorities, got the mutation of the suit property effected in her favour, leading to the filing of the suit for declaration, possession and permanent injunction.

4. The suit was opposed by the defendant. Certain preliminary objections with regard to non-joinder of necessary parties, cause of action, locus standi etc. were raised. On merits, it was averred that the Will was forged and fabricated and that an FIR No.182 dated 27.10.2014 had been registered at Police Station Makhu against the plaintiff and the witnesses of the alleged Will. It was averred that the mutation had rightly been executed in favour of the defendant, she being the sole legal representative of Raghbir Singh, for, they did not have any issue.

5. In the replication, the averments made in the written statement were denied and those made in the plaint were reiterated.

6. From the pleadings of the parties, the trial Court framed the following issues:-

- 1. Whether the plaintiff is entitled to relief of declaration as prayed for in the plaint ? OPP***
- 2. Whether the plaintiff is entitled to consequential relief of permanent injunction as prayed for in the plaint ? OPP***
- 3. Whether the suit of the plaintiff is not maintainable ? OPD***



4. *Whether the plaintiff has no cause of action to file the present suit ? OPD*

5. *Whether the alleged Will dated 20.09.2013 is a forged, fabricated, ante date document ? OPD*

6. *Relief.*

7. Parties led their respective evidence.

8. The trial Court dismissed the suit filed by the plaintiff and the appeal filed against the said decision was also dismissed, leading to the filing of the present regular second appeal.

9. I have heard learned counsel for the appellant.

10. Learned counsel for the appellant submits that the Courts erred in dismissing the suit filed by the plaintiff. He submits that the impugned judgments and decree are not sustainable.

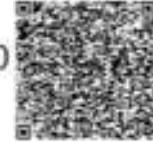
11. I have considered the submissions made by learned counsel for the appellant but find the same to be devoid of merit. The execution of the Will had to be proved in terms of the provisions of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872;

“63. Execution of unprivileged Wills.—Every testator, not being a soldier employed in an expedition or engaged in actual warfare, [or an airman so employed or engaged,] or a mariner at sea, shall execute his will according to the following rules:

—

(a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing



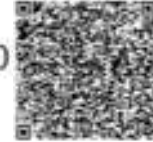
as a will.

(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

68. Proof of execution of document required by law to be attested.—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]

12. However, out of the three witnesses who were stated to have witnessed the execution of the Will, two witnesses namely PW3 Malkeet Singh and PW4 Subegh Singh were examined. They did not support the case of the plaintiff and, on the contrary, stated that Raghbir Singh had not executed any Will on 20.09.2013. They went to the extent of stating that the plaintiff had obtained their signatures on the Will Ex.P1 after the death of



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Raghubir Singh. No doubt, one hand-writing expert namely Karandeep Singh Arora was also examined by the plaintiff as PW6 who stated that the signatures on the Will were that of Raghubir Singh. However, the expert examined by the defendant namely DW3 Anil Kumar Gupta gave a contrary report. This report was found to be more trustworthy by the Courts. In any case, once the witnesses themselves did not support the case of the plaintiff and stated in so many words that their signatures had been obtained after the death of Raghubir Singh and further the third witness namely Angrej Singh, *Nambardar* was not examined, the reports of the hand-writing expert and the scribe would pale into insignificance. Both the Courts, therefore, rightly found that the execution of the Will Ex.P1 had not been proved. I do not find any illegality in the said findings of facts warranting interference in second appeal.

In view of the aforementioned facts and circumstances, I do not find any merit in the present appeal and the same is accordingly dismissed.

Pending application(s), if any, stand(s) disposed of accordingly.

(VIKRAM AGGARWAL)

JUDGE

04.03.2025

mamta

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No