

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****112****RSA-1535-2022 (O&M)****Reserved on : 24.03.2025****Pronounced on : 08.04.2025**

Surjit Singh

....Appellant

VERSUS

Jasdev Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Surender Dhull, Advocate for the appellant.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellant against the judgements and decrees dated 19.02.2016 and 11.08.2021 passed by the Trial Court and the First Appellate Court dismissing his suit for declaration and permanent injunction.

2. One Prem Singh son of Shivdan Singh had five sons and two daughters. The plaintiff-appellant is one of the sons of Prem Singh. The defendant-respondent Nos.1 and 2 are two other sons of Prem Singh, while defendant-respondent Nos.3 and 4 are the daughters of Prem Singh. The defendant-respondent Nos.5 to 10 are the LRs of two other sons of Prem Singh both of whom have expired. The suit was filed by the plaintiff-appellant seeking a declaration that he was entitled for 1/7 share from the estate of deceased Prem Singh in the suit land and that he is joint owner in joint possession to the extent of 1/42 share i.e. 1/7 share from 1/6 share of Prem Singh in the suit land being the son of Prem Singh and declaration to the effect that the suit land is ancestral, coparcenary and joint family

property of the parties and the plaintiff-appellant has a share in it by birth and hence the defendant-respondents have no right to alienate the whole suit land by way of transfer, sale, exchange and mortgage or in any other manner and also sought a declaration that the transfer deed dated 19.08.2004 allegedly executed by Prem Singh in favour of defendant-respondent Nos.1 and 2 regarding 80 Kanals of land is also illegal, null and void and has no effect on the rights of the plaintiff-appellant and the same does not confer any title upon defendant-respondent Nos.1 and 2. According to the plaintiff-appellant the suit land was purchased with funds from the joint family and from the income of ancestral and coparcenary properties. It was averred that Prem Singh died intestate without executing sale/transfer deed regarding the suit land and he was not competent to execute the Will and transfer deed. It was further averred that Prem Singh suffered a shock after the accident in which Surinder Singh (son) and Baldev Kaur (wife) died in 1997 and he was not in his senses after the two deaths and therefore Prem Singh was not competent to execute any document due to his mental condition. The transfer deed dated 19.08.2004 allegedly executed by Prem Singh regarding 80 Kanals of land in favour of defendant-respondent Nos.1 and 2, subsequent mutation and revenue entries were alleged to be illegal, null and void, having no effect on the rights of the plaintiff-appellant and did not confer any title upon defendant-respondent Nos.1 and 2. Hence, the suit.

3. The suit was contested by defendant-respondent Nos.1 and 2 who filed written statement raising preliminary objections about maintainability, concealment of facts, not coming to court with clean hands, estoppel, locus standi, cause of action, non-joinder of necessary parties, etc. On merits it was the stand taken that though the plaintiff-appellant had

challenged the transfer deed dated 19.08.2004 but he had not paid court fee on the value of the same. A registered Will dated 08.09.1998 executed by Prem Singh in their favour was also set-up and it was stated that the parties to the suit are not members of a joint hindu family and that the suit land was neither ancestral nor coparcenary nor joint hindu family property rather the same was a self-acquired and separate property of Prem Singh. The remaining defendant-respondents were proceeded against ex-parte. Replication was filed wherein the contents of the written statement were denied and those of the plaint were reiterated.

4. From the pleadings of the parties following issues were framed :

1. Whether plaintiff is entitled to declaration as prayed for ? OPP
2. Whether plaintiff is entitled to permanent injunction as prayed for ? OPP
3. Whether the present suit is not maintainable ? OPD
4. Whether the plaintiff has concealed true and material facts from the court ? OPD
5. Whether the plaintiff has not come to the court with clean hands ? OPD
6. Whether plaintiff has no locus-standi or cause of action to file the present suit ? OPD
7. Whether the plaintiff is estopped by his own act and conduct to file the present suit ? OPD
8. Whether the suit is bad for non-joinder or mis-joinder of necessary parties ? OPD
9. Relief.

5. Vide judgement and decree dated 19.02.2016 the Trial Court dismissed the suit of the plaintiff-appellant. The appeal of the plaintiff-appellant was also dismissed by the First Appellate Court vide judgement and decree dated 11.08.2021. Hence, the present regular second appeal.

6. Learned counsel for the plaintiff-appellant has contended that both the Courts have erred in dismissing his suit. It is urged that the suit land was joint hindu family coparcenary property and Prem Singh could not have executed a Will regarding land measuring 80 Kanals of land in favour of defendant-respondent Nos.1 and 2. It is contended that the Will dated 08.09.1998 is surrounded by suspicious circumstances and no reason has been assigned for disinheriting the other class-1 legal heirs.

7. Heard counsel for the plaintiff-appellant.

8. In the present case the plaintiff-appellant has been unable to prove that the suit land was joint hindu family coparcenary property. Apart from the oral testimonies, the plaintiff-appellant could not establish from any documentary evidence that the suit land was co-parcenary property. It was incumbent upon the plaintiff-appellant to prove that the suit land was inherited by Prem Singh being the fourth generation in consequence of unbroken line of succession but the said link is missing in the present case. Scanty revenue record was produced by the plaintiff-appellant which by itself does not establish the version of the plaintiff-appellant. Learned counsel for the plaintiff-appellant is unable to point to any cogent and reliable evidence on the record to show that the suit land was ancestral, co-parcenary joint hindu family property.

9. Further, the Will dated 08.09.1998 has been found by both the Courts to have been validly executed by Prem Singh. A Will is an

instrument of testamentary disposition of property. It is a legally acknowledged mode of bequeathing a testator's property during his lifetime to be acted upon on his/her death and carries with it an element of sanctity. Since the Testator/Testatrix, at the time of testing the document for its validity, would not be available for deposing as to the circumstances in which the Will came to be executed, stringent requisites for the proof thereof have been statutorily enjoined to rule out the possibility of any manipulation. Recently, in the matter of **Meena Pradhan vs. Kamla Pradhan [(2023) 9 SCC 734]** the Hon'ble Supreme Court inter-alia held as under :

“10. Relying on H. Venkatachala Iyengar v. B.N. Thimmajamma [H. Venkatachala Iyengar v. B.N. Thimmajamma, 1958 SCC OnLine SC 31 : 1959 Supp (1) SCR 426 : AIR 1959 SC 443] (three-Judge Bench), Bhagwan Kaur v. Kartar Kaur [Bhagwan Kaur v. Kartar Kaur, (1994) 5 SCC 135] (three-Judge Bench), Janki Narayan Bhoir v. Narayan Namdeo Kadam [Janki Narayan Bhoir v. Narayan Namdeo Kadam, (2003) 2 SCC 91] (two-Judge Bench), Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh [Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh, (2009) 4 SCC 780 : (2009) 2 SCC (Civ) 348] (three-Judge Bench) and Shivakumar v. Sharanabasappa [Shivakumar v. Sharanabasappa, (2021) 11 SCC 277] (three-Judge Bench), we can deduce/infer the following principles required for proving the validity and execution of the will:

10.1. *The court has to consider two aspects : firstly, that the will is executed by the testator, and secondly, that it was the last will executed by him;*

10.2. *It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.*

10.3. *A will is required to fulfil all the formalities required under Section 63 of the Succession Act, that is to say :*

(a) The testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and the said signature or affixation shall show that it was intended to give effect to the writing as a will;

(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;

(c) Each of the attesting witnesses must have 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 such signatures;

(d) Each of the attesting witnesses shall sign the will in the presence of the testator, however, the presence of all witnesses at the same time is not required;

10.4. *For the purpose of proving the execution of the will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;*

10.5. *The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;*

10.6. *If one attesting witness can prove the execution of the will, the examination of other attesting witnesses can be dispensed with;*

10.7. *Where one attesting witness examined to prove the will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;*

10.8. *Whenever there exists any suspicion as to the execution of the will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last will. In such cases, the initial onus on the propounder becomes heavier.*

10.9. *The test of judicial conscience has been evolved for dealing with those cases where the execution of the will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the will; sound,*

certain and disposing state of mind and memory of the testator at the time of execution; testator executed the will while acting on his own free will;

10.10. One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.

10.11. Suspicious circumstances must be “real, germane and valid” and not merely “the fantasy of the doubting mind [Shivakumar v. Sharanabasappa, (2021) 11 SCC 277]”. Whether a particular feature would qualify as “suspicious” would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance, for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit, etc.

11. In short, apart from statutory compliance, broadly it has to be proved that : (a) the testator signed the will out of his own free will, (b) at the time of execution he had a sound state of mind, (c) he was aware of the

nature and effect thereof and (d) the will was not executed under any suspicious circumstances.”

10. Coming to the facts of the present case, a perusal of the relevant material on record and applying the provisions and the case law, it is evident that the Will dated 08.09.1998 is validly executed and stands proved in accordance with law. In the absence of any cogent and reliable evidence to doubt the due and proper execution of the Will, the findings recorded by both the Courts cannot be faulted.

11. Learned counsel for the plaintiff-appellant has failed to point out as to how the concurrent findings recorded by both the Courts are erroneous or perverse. No cogent and reliable evidence has been shown to the Court by the learned counsel which would establish that the suit land was ancestral, coparcenary joint hindu family property. This Court finds no reason to differ from the findings returned by both the Courts.

12. No other point was argued.

13. In view of the above, no mistake or error of law or facts can be found with the judgments and decrees passed by both the Courts. No question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

08.04.2025
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES