



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

RSA-3618-2018 (O&M)

Reserved on : 17.12.2024

Pronounced on : 07.01.2025

Gurmukh Singh (deceased) through LRs

....Appellant

VERSUS

Sukhpal Singh & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vijay Lath, Advocate for the appellants.

ALKA SARIN, J.

1. The present appeal is by the legal representatives of the plaintiff-appellant against the judgements and decrees dated 26.03.2015 and 25.09.2017 passed by the Trial Court and the First Appellate Court dismissing his suit.

2. Briefly, the facts are that the plaintiff-appellant filed a suit for declaration with consequential relief of permanent injunction As per the plaintiff-appellant, Battan Singh (father of the plaintiff-appellant and of defendant-respondent Nos.3 to 5) was the owner in possession of the suit land. Battan Singh had five sons - the plaintiff-appellant, defendant-respondent Nos.3 to 5 and Maha Singh. After the death of Battan Singh, his estate devolved upon his five sons equally to the extent of 1/5 share each. One son, Maha Singh, died unmarried and issueless and thus his estate devolved upon his four brothers to the extent of 1/4 share each. Thus, the plaintiff-appellant has 1/4 share in the suit land. However, the defendant-

respondent Nos.1 and 2 claimed a Will in their favour allegedly executed by Maha Singh. As per the plaintiff-appellant the said Will was a result of fraud and forgery and conferred no title of defendant-respondent Nos.1 and 2. Defendant-respondent No.8 herein claimed that she has purchased the suit land from defendant-respondent No.1 but since defendant-respondent No.1 had no right in the suit land, so the property purchased by defendant-respondent No.8 herein did not confer a better title on her. Hence, the present suit. The suit was contested by defendant-respondent Nos.1 and 2 and the defendant-respondent No.8 herein. In their written statement defendant-respondent Nos.1 and 2 raised preliminary objections of maintainability, non-joinder of necessary parties, estoppel, hit by principle of subjudice and cause of action. On merits it was stated that after the death of Battan Singh his estate devolved upon his sons including Maha Singh who raised construction over his property and after the death of his wife and child he was looked after by the mother of defendant-respondent Nos.1 and 2 and in lieu of the services rendered, Maha Singh executed a registered Will dated 02.12.2009 in his sound disposing mind in favour of the defendant-respondent Nos.1 and 2 and after his death the mutation was also sanctioned in their favour. It was pleaded that even the last rites of Maha Singh were performed by the family of defendant-respondent Nos.1 and 2 and the other brothers of Maha Singh attended the said last rites. Defendant-respondent No.8 in her written statement took the stand that she was a Bonafide purchaser for consideration and that she had purchased the property from defendant-respondent No.1 vide registered sale deed dated 17.01.2012.

Replication was filed reiterating the contents of the plaint and denying the averments made in the written statement.

3. The Trial Court framed the following issues :

1. Whether the plaintiff is entitled to the declaration as prayed for ? OPP
2. Whether the plaintiff is entitled to the permanent injunction as consequential relief as prayed for ? OPP
3. Whether the plaintiff is entitled to joint possession of the suit property as alternative relief, as prayed for ? OPP
4. Whether the present suit is not maintainable ? OPD
5. Whether the suit is bad for non-joinder of necessary parties ? OPD
6. Whether the plaintiff is barred by his act and conduct to file the present suit ? OPD
7. Whether the plaintiff is barred by his act and conduct to file the present suit ? OPD
8. Whether defendant no.10 is bonafide purchaser of the suit property for valuable consideration having purchased the same from Sukhpal Singh vide sale deed dated 17.01.2012 ? OPD
9. Whether Maha Singh had executed a will dated 02.12.2009 in favour of Sukhpal Singh and Baljit Kaur ? OPD

10. Relief.

4. Vide judgement and decree dated 26.03.2015 the Trial Court dismissed the suit of the plaintiff-appellant. His appeal was also dismissed by the First Appellate Court vide judgement and decree dated 25.09.2017. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellant has argued that both the Courts have erred in dismissing his suit. It is urged that the Will set-up by defendant-respondent Nos.1 and 2 was a forged and fabricated document and was surrounded by suspicious circumstances. It is argued that Maha Singh was not in a sound and disposing state of mind to have executed a Will. It was submitted that the Will was surrounded by suspicious circumstances as natural heirs were deprived of the property of the Testator. It was submitted that infact the suit should have been decreed.

6. Heard learned counsel for the plaintiff-appellant and perused the record.

7. In the present case both the Courts have upheld the Will propounded by defendant-respondent Nos.1 and 2. The original Will (Ex.D3) also bears the thumb marked photograph of the testator Maha Singh and it is a registered Will. The thumb impressions of the Testator on the Will and on the endorsement have not been denied by the plaintiff-appellant. The scribe of the Will and it's attesting witnesses stepped in the witness box to depose about it's execution. Nothing could be elicited by the plaintiff-appellant in the cross-examination of these witnesses. The defendant-respondent Nos.1 and 2 are not strangers but nephew and niece of the

Testator, Maha Singh. Counsel for the plaintiff-appellant argued that the Testator was not in a sound health when the Will was executed but this argument is not supported by any credible evidence available on the record. The medical record produced by the plaintiff-appellant was incomplete. Further, the plaintiff-appellant himself did not step into the witness box to face cross-examination. Mere exclusion of the natural heirs from any benefit is not of such suspicious circumstances as to create legitimate doubts on the genuineness of the Will. It has been time and again been held that a Will is executed only to alter the mode of succession and by the very nature of things it is bound to result in either reducing the share or depriving the share of the natural heir. If the Testator intended to benefit all the heirs as per the law of succession, there is no necessity at all to execute a Will. Thus, merely because the defendant-respondent Nos.1 and 2 were given the suit property in exclusion of the plaintiff-appellant cannot be held to be suspicious circumstance. No other point was argued.

8. 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.

07.01.2025

Ankur

**(ALKA SARIN)
JUDGE**

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