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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-5967-2024(O&M)
Date of decision : 07.01.2025

Nirmla Devi @ Nirmala and another

... Petitioners

Versus

Rajesh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Lajpat Rai Sharma, Advocate
for the petitioners.

Mr.Keshav Pratap Singh, Advocate
for respondent no.1.

VIKAS BAHL, J.(ORAL)

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 18.09.2024 (Annexure P-8) passed by the Additional District Judge, Jind, in Civil Misc. Appeal no.18 of 2024 instituted on 05.06.2024 vide which the appeal filed by respondent no.1-plaintiff against the order dated 31.05.2024 (Annexure P-7) passed by the Civil Judge (Jr.Div.), Safidon, under Order 39 Rules 1 and 2 read with Section 151 CPC in Civil Suit no.894 of 2018, has been accepted and the defendants have been restrained from alienating the suit land.

2. Learned counsel for the petitioners has submitted that in the present case, the petitioners are the daughters of Satnarain and a suit was

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filed by respondent no.1, who is the grand son of Satnarain, on 13.11.2018 for declaration to the effect that the said Rajesh and the proforma defendant-Ankit were the owners in possession of ½ share each in agriculture land total measuring 91 kanals 1 marla situated in revenue estate of Village Ratta Khera, Tehsil Safidon, District Jind. It is submitted that the said suit was filed on the basis of Will dated 20.07.2007, which has been stated to be executed by Satnarain in favour of respondent no.1-plaintiff and that in the said plaint, no challenge was made to the registered cancellation deed no.241 dated 31.12.2012 vide which the said Will had been cancelled. It is further submitted that in the written statement which was filed by the present petitioners, specific reference to the said cancellation deed, which was of the year 2012, had been made but no amendment till date has been sought by the plaintiff in the said suit to challenge the said cancellation deed. It is further submitted that the father of the petitioners-Satnarain had died in the year 2018 and for a period of more than 5 years, the said Satnarain had never questioned the said cancellation deed dated 31.12.2012 nor had executed any subsequent Will in favour of any party, much less, respondent no.1-plaintiff.

3. It is submitted that mutation no.1459 dated 12.09.2018 with respect to the estate of Satnarain was sanctioned in the presence of all the parties, in favour of the petitioners to the extent of half share. It is further submitted that in pursuance of the said mutation, respondent no.1-plaintiff along with his mother Rajbala had executed a registered sale deed dated 22.10.2018 selling a part of the suit land in favour of one Sushil Kumar and

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as per the said sale deed, it is respondent no.1-plaintiff Rajesh, who had received huge amount of sale consideration through cheques. It is submitted that after sanctioning of the mutation and after having executed the said sale deed, respondent no.1-plaintiff had filed the present suit for declaration in which no challenge was made to the cancellation deed of the year 2012 and that the trial Court had vide order dated 31.05.2024 dismissed the application filed by respondent no.1-plaintiff under Order 39 Rules 1 and 2 CPC after observing that the conduct of the plaintiff does not entitle him for grant of any injunction.

4. It is submitted that the Additional District Judge vide impugned order dated 18.09.2024 has set aside the well reasoned order passed by the trial Court and has allowed the application filed by respondent no.1-plaintiff on surmises and conjectures; primarily by stating that the signatures on the cancellation deed are different from the signatures on Will dated 20.07.2007, without there being any handwriting expert report on record and without there being any pleading on the said aspect and also without there being any challenge to the registered cancellation deed dated 31.12.2012. It is further submitted that the observation of the Appellate Court on the said aspect of signatures is perverse as even the signatures of the deceased-Satnarain on the Will and the cancellation deed are similar and they cannot be remotely stated to be different and for the said purpose, learned counsel for the petitioners has referred to the signatures which are at running pages 66 and 69 of the paper book. It is submitted that the petitioners are in dire need of money and thus, be permitted to sell their

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share and since respondent no.1-plaintiff has no prima-facie case in his favour, thus, the impugned order be set aside and liberty be granted to the petitioners to sell their share.

5. Learned counsel for contesting respondent no.1 has opposed the present revision petition and has submitted that in the present case, the Ist Appellate Court has compared the signatures of the deceased-Satnarain on the Will dated 20.07.2007 with the cancellation deed dated 31.12.2012 and has formed an opinion that the signatures are different. It is further submitted that the reason for the execution of the sale deed dated 22.10.2018 by respondent no.1-plaintiff, in which reference had been made to the mutation no.1459, had been duly explained before the Ist Appellate Court and the respondent no.1-plaintiff has annexed documents along with CM-22818-CII-2024 to further explain the reason for the execution of the said sale deed.

6. It is submitted that an agreement dated 16.11.2017 (Annexure R-2) was entered into by Satnarain, the admitted owner, for the sale of 8 kanals of land out of the suit property and it was to honour the said agreement that the sale deed dated 22.10.2018 was executed by respondent no.1 as well as his mother Rajbala in favour of Sushil Kumar and has further submitted that in the said sale deed dated 22.10.2018, a specific reference has been made to the said agreement to sell. It is further argued that prior to the execution of the said sale deed, a mutual agreement dated 29.06.2018 (Annexure R-3) was also entered into and even an affidavit dated 17.09.2018 (Annexure R-1) was executed between the parties so as to



honour the agreement to sell dated 16.11.2017. It is argued that the petitioners along with Satish, son of Satnarain, have also executed sale deed dated 24.09.2018 (Annexure R-6) in favour of Kapil Saini and the said sale deed was prior to the sale deed dated 22.10.2018 executed by respondent no.1-plaintiff and his mother and the same shows that there was a common understanding that the agreement dated 16.11.2017 executed by the father Satnarain was to be honoured by all the parties concerned. It is submitted that the impugned order is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed.

7. This Court has heard the learned counsel for the parties and has perused the paper book.

8. On 18.10.2024, this Court was pleased to pass the following order:-

“Present:- Mr. Lajpat Rai Sharma, Advocate for the petitioners.

Inter alia contends that the registered Will dated 20.07.2007 in favour of the plaintiff had been cancelled vide cancellation deed dated 31.12.2012 and subsequently, the mutation had been sanctioned on the basis of natural succession and subsequent to the mutation, even the sale deed had been executed by the plaintiff in favour of a third party. It is submitted that the defendants are in dire need to sell a part of the suit property. It is further submitted that in the said circumstances, at least the petitioners be permitted to sell a part of their share for which they would inform the Court about the subsequent purchaser and would mention the same in the sale deed and would also comply with the other conditions.

**CR-5967-2024(O&M)****6***Notice of motion for 28.11.2024.**To be shown in the urgent list.**Liberty is granted to the petitioners to serve the respondents through dasti process also.**18.10.2024”*

9. On 28.11.2024, learned counsel for respondent no.1 had prayed for an adjournment to get instructions in the matter. On 12.12.2024 as well as on 19.12.2024, prayer was again made by counsel for respondent no.1 to get instructions in the matter. It is submitted by learned counsel for respondent no.1 that he has instructions to oppose the prayer made by the petitioners and also the present revision petition and accordingly, the matter has been heard on merits.

10. As per the report of the Registry, the other respondents have been served. However, no one has appeared on behalf of the other respondents.

11. After hearing learned counsel for the parties and perusing the paper book, this Court is of the opinion that the order passed by the Ist Appellate Court dated 18.09.2024 is illegal and deserves to be set aside for the reasons stated hereinafter.

12. It is not in dispute that respondent no.1-plaintiff had filed a suit for declaration with respect to the ownership of the land measuring 91 kanals 1 marla on the basis of registered Will dated 20.07.2007 stated to have been executed by Satnarain, the admitted owner, in his favour. It is also not in dispute that respondent no.1-Rajesh is the grand son of the said Satnarain and son of Sushil whereas the present petitioners are the



daughters of Satnarain and Satish Kumar (defendant no.1) is the son of Satnarain and thus the said Satnarain had four children i.e., two sons and two daughters. In the written statement filed by defendants no.2 and 3 / present petitioners, a specific plea was taken that the Will dated 20.07.2007 was cancelled vide registered cancellation deed no.241 dated 31.12.2012. Admittedly, the said cancellation deed has not been challenged in the suit nor has been challenged till date. It was further stated in the written statement that on the basis of the inheritance the present petitioners were the owners to the extent of half share of the entire suit land measuring 91 kanals 1 marla and the remaining half share belonged to the plaintiff, defendants no.1 and 4 and the mutation no.1459 dated 12.09.2018 had been sanctioned in favour of the petitioners as well as the plaintiff, defendants no.1 and 4 recognising the abovesaid shares.

13. Along with the suit, respondent no.1-plaintiff had filed an application under Order 39 Rules 1 and 2 CPC for restraining the defendants from alienating the suit property. The trial Court vide order dated 31.05.2024 had dismissed the said application with the observation that respondent no.1-plaintiff had not challenged the cancellation deed dated 31.12.2012 and that even if it was presumed that respondent no.1-plaintiff was not in the knowledge of the said cancellation deed at the time of filing of the suit, then also the pleadings regarding the same had been made in the written statement, which was filed in the year 2019 and in spite of lapse of more than 4 years, no amendment had been sought to challenge the said registered cancellation deed. It was further observed that the



mutation of inheritance of deceased Satnarain was entered vide mutation no. 1459 dated 12.09.2018 and the said mutation had been acted upon and the plaintiff along with his mother had sold the land vide registered sale deed dated 22.10.2018 to Sushil Kumar son of Surat Singh, and had claimed himself to be owner of the same vide the same mutation no.1459 and thus, the plaintiff had the knowledge of the entire facts but had chosen not to disclose the said facts and thus, was not entitled to the equitable relief of injunction.

14. The appeal filed by respondent no.1-plaintiff has been allowed by the Ist Appellate Court vide order dated 18.09.2024 after primarily observing that the signatures on the Will dated 20.07.2007 are different from the signatures on the cancellation deed dated 31.12.2012. The said order dated 18.09.2024 is illegal and deserves to be set aside for the following reasons:-

- i) The cancellation deed dated 31.12.2012 vide which the Will dated 20.07.2007 in favour of respondent no.1-plaintiff had been cancelled by Satnarain, the admitted owner of the property, is a registered document. The said cancellation deed had been attested by Sushil Kumar, Lambardar of village Ratta Khera (the said fact is apparent from a perusal of Annexure P-2 at running page 69 of the paper book which is the vernacular of Annexure P-2). In the said cancellation deed, it had been stated by the said Satnarain that his grand sons i.e., the plaintiff and defendant no.5-Ankit were not taking care of him and had thrown him out of the house and that he had no



faith in his grand sons and therefore, he had cancelled the Will dated 20.7.2007. Satnarain had admittedly died on 25.05.2018 and thus, was alive for a period of more than 5 years after the execution of the said registered cancellation deed but had never sought to question the said registered cancellation deed nor had executed any subsequent registered document in favour of the plaintiff.

ii) The plaintiff had filed the suit on 13.11.2018 in which no prayer had been made for declaring the said registered cancellation deed dated 31.12.2012 to be illegal, null and void. It is a matter of settled law that there is deemed notice of a registered document. Moreover at any rate, the averments regarding the cancellation deed were detailed in the written statement filed by the petitioners on 08.02.2019 and even till date, moreso when the impugned order dated 18.09.2024 was passed, no challenge has been made to the said registered cancellation deed dated 31.12.2012.

iii) The chronological list of events as well as the documents relied upon on behalf of respondent no.1 itself shows that respondent no.1-plaintiff has no prima facie case in his favour.

31.12.2012- Registered cancellation deed cancelling the Will dated 20.07.2007 was executed.

25.05.2018- Satnarain, the admitted owner, died.

29.06.2018- Annexure R-3, which has been relied upon by respondent no.1-plaintiff, had also been signed by respondent no.1 and it clearly shows that mutation of inheritance had not



yet been recorded and after getting the mutation of inheritance entered, the legal heirs of the first party i.e., the petitioners, Satish Kumar, and the plaintiff were bound to get the sale deed registered in favour of the second party in pursuance of the agreement to sell dated 16.11.2017. The said document clearly shows that subsequent mutation no.1459 dated 12.09.2018 was entered into with the consent and knowledge of respondent no.1-plaintiff and other parties. The relevant portion of Annexure R-3 is reproduced hereinbelow:-

“The mutation of inheritance has not yet been recorded. After getting mutation of inheritance entered, the legal heirs of the first party, as per this agreement, will be bound to get the sale deed registered in favour of the second party. Therefore, after hearing this mutual agreement in our senses and understanding the same, it has been executed with our independent consent so that it may be a proof and can be used at any time. Dated 29.6.2018.

1. Sd/- Satish Kumar 2. Sd/- Nirmala Devi
Sd/- Sushil Kumar and Kapil Saini, second parties.
3. Sd/- Bimla Devi 4. Sd/- Rajesh first party”

12.09.2018- Mutation no.1459 was executed vide which the land in question was mutated in favour of the petitioners to the extent of half share, being the daughters of Satnarain.

17.09.2018- Annexure R-1, which is a joint affidavit, has been relied upon by respondent no.1 which shows that the plaintiff



along with the present petitioners have made a specific averment in paragraph 2 of the said affidavit that they are the owners in possession of the land measuring 8 kanals, which is a part of the suit land and belonged to the father-Satnarain. The said affidavit (Annexure R-1) which has been duly signed by respondent no.1-plaintiff is reproduced hereinbelow:-

*“I/We 1. Satish Kumar. 2. **Rajesh Kumar** sons and 3.**Nirmala Devi**, 4. **Bimla Devi** daughters of Satnarain son of Shri Hazari, residents of Rattakhera, Tehsil Safidon, District Jind, do hereby solemnly affirm and declare as under:-*

1. That we are permanent residents of the aforesaid address.

2. That we, the first party are owner in possession of the land of our father Satnarain son of Shri Hazari, resident of Rattakhera, Tehsil Safidon, comprised in Khewat No.94, Khata No.103, Rect. No. 16, Killa No. 19/2/ (2-0) and 20/1/2 (4-1) and 21/2 (1-10) and 22/1 (0-9), total area measuring 8 Kanals 0 Marla, boundaries of which are: In East: Sangota Petrol Pump, in West: Panchal Dharamshala, in North: Jind Road, in South: Land of first party, as per Jamabandi for the year 2012-13. The first party after entering into an agreement to sell vide Wasika No. 2468 dated 16.11.2017 with 1. Sushil Kumar son of Shri Surat Singh, resident of Rattakhera and 2. Kapil Saini son of Shri Dharampal in equal shares, residents of Malaar, Tehsil Safidon for a sale consideration of Rs.82,00,000/- (Rupees eighty two lacs) in favour of the second party and after taking Rs.20,00,000/- (Rupees twenty lacs) as earnest money, had fixed date of sale deed as 30.06.2018. After this on dated 29.08.2018 again the target date was fixed as 15.09.2018. The first party Satnarain has been expired, who has expired on 25.05.2018 and we are his legal heirs. On dated 15.09.2018 there was Government Holiday. After that today on



dated 17.09.2018, it is last date for getting the sale deed registered. We the first parties, are ready to get the sale deed of the aforesaid land registered in favour of the second party (vendee). Since 9.00 A.M. in the morning till 5.00 P.M. we are present in the office of Sub Registrar Sahab, Safidon, but the vendee has not come present.

3. That we want to get our presence verified as per rules.

4. That our presence may be marked as per rules.

Deponents

*Sd/- **Nirmala***

*Sd/- **Satish***

*Sd/- **Rajesh***

*Sd/- **Bimla***

A perusal of the said affidavit would show that even as per the said document relied upon by the learned counsel for respondent no.1, it is apparent that respondent no.1 had admitted that the present petitioners are also owners of the property in question.

22.10.2018- Annexure R-5 is the sale deed executed by respondent no.1-plaintiff and his mother with respect to two kanals of land out of the suit land in favour of one Sushil Kumar son of Surat Singh and in the said sale deed, reliance has been placed upon the mutation no.1459 to claim ownership of the property, which mutation the plaintiff is now seeking to challenge in a suit that has been filed within a period of one month from the date of execution of the said sale deed. A perusal of the said sale deed would further show that two



cheques, which are part of the sale consideration, were given to respondent no.1-plaintiff and Rajbala, his mother, and there is nothing in the said registered sale deed to show that any amount was paid to the present petitioners.

15. From the above said facts, it is prima facie apparent that Satnarain was the owner of the suit property and initially had executed a Will dated 20.07.2007 in favour of respondent no.1-plaintiff and Ankit, who are his grand sons and thereafter vide registered cancellation deed dated 31.12.2012 had cancelled the said Will and had lived for a period of more than 5 years after the said cancellation deed and had not questioned the said registered cancellation deed and the mutation of inheritance was sanctioned on 12.09.2018 in which the petitioners were also given their due share being the daughters of the said Satnarain and the parties had also acted in a manner which clearly showed that they were all satisfied with the said mutation, which facts are even apparent from the affidavit dated 17.09.2018 (Annexure R-1) and also the sale deeds (Annexures R-5 and R-6). It is only thereafter that the plaintiff had filed the present suit dated 13.11.2018 challenging the said mutation no.1459 which had been duly acted upon.

16. Importantly, although the suit has been filed after a period of more than 5 years from the registered cancellation deed but till date no challenge has been made to the same. A registered document carries presumption with itself and thus, at the stage of deciding an application under Order 39 Rules 1 and 2 CPC the said registered document is of great significance and the trial Court had rightly relied upon the said document



and the aspect of non-challenge to the same, to reject the application filed by respondent no.1-plaintiff under Order 39 Rules 1 and 2 CPC. The Ist Appellate Court has failed to consider that although during the course of trial the plaintiff-respondent no.1 would have to prove the registered Will propounded by him and the petitioners would have to prove the registered cancellation deed but at the stage of deciding the application under Order 39 Rules 1 and 2 CPC, both the registered documents were to be taken on their face value, moreso, when there was no challenge to the registered cancellation deed, which was subsequent to the registered Will.

17. The observation of the Ist Appellate Court to the effect that signatures on the Will are not similar to the signatures on the cancellation deed are without pleadings and are based on surmises and conjectures. In the plaint, there is no averment that the signatures on the cancellation deed are forged or fabricated. It is admitted before this Court that the plaintiff has not filed any replication, moreso, on the date of the passing of the impugned order. There is no averment, thus, from the side of respondent no.1-plaintiff to allege that the signatures on the cancellation deed are not of Satnarain. The observations of the Ist Appellate Court are thus beyond pleadings. Moreover, there is nothing prima facie muchless a Handwriting Expert report to show that the said signatures are different. Further, the cancellation deed which apart from being registered, has also been duly attested by attesting witnesses which includes Sushil Kumar, Lambardar of village Ratta Khera, which is the village where the property is situated and the parties reside. Moreover, even a naked eye comparison of the Will (at



running page 66 of the paper book) as well as that of the registered cancellation deed (at running page 69 of the paper book) does not show that the signatures are so different so as to make it the primary basis for allowing the appeal of respondent no.1-plaintiff as has been done by the Ist Appellate Court. In the said circumstances, it is apparent that the plaintiff did not have a prima facie case in his favour and thus, the impugned order dated 18.09.2024 is illegal and deserves to be set aside.

18. In the present case, although the sale by the petitioners would be governed by the principle of 'lis pendens' but in order to ensure complete justice between the parties, this Court is of the opinion that the petitioners be permitted to sell their share after the petitioners inform the trial Court about the details of the subsequent purchasers and on the condition that they mention the factum with respect to the pending litigation in the sale deed to be executed by the petitioners in favour of a third party, so that the third party which purchases the property in question is aware of the fact that there is a pending litigation regarding the same. It would be relevant to note that the counsel for the petitioners, at the time of issuance of notice of motion on 18.10.2024 had consented to the said condition being imposed.

19. Learned counsel for the petitioners as well as respondent no.1 have fairly submitted that the share of the petitioners which is reflected in the revenue record is half of the total land measuring 91 kanal 1 marla and out of the said land, the petitioners have already sold 2 kanals of the land.

20. Keeping in view the abovesaid facts and circumstances, the impugned order dated 18.09.2024 is set aside and the present revision



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petition is partly allowed and the petitioners are permitted to sell their share of the suit land minus 2 kanals (already sold) but prior to selling the same, the petitioners would be required to move an application before the trial Court, giving the details of the subsequent purchasers and would also give an undertaking that the fact with respect to the pending litigation would be mentioned in the sale deed so that the subsequent purchaser is made aware of the pending litigation and the said sale deed, after execution would be placed on record of the trial Court.

21. It is clarified that the observations made in this order are only for the purpose of disposing of the present revision petition arising out of the proceedings under Order 39 Rules 1 and 2 CPC and would not be construed as an expression of final opinion on the merits of the main suit, which would be decided by the trial Court independently, in accordance with law.

(VIKAS BAHL)
JUDGE

January 07, 2025.
Davinder Kumar

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