



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

**RSA-3645-2023 (O&M)
DECIDED ON: 02.04.2025**

Shila Devi Alias Sheela Devi

....Appellant

Versus

Ram Datt

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Gaurav Datta, Advocate,
 Mr. Vaibhav Bhargav, Advocate and
 Ms. Manisha Dhir, Advocate for the appellant.

VIKRAM AGGARWAL, J (ORAL)

This is plaintiff's appeal against the judgment and decree dated 20.07.2023 passed by the Court of learned Additional District Judge, Fatehgarh Sahib dismissing the appeal filed by the appellant-plaintiff against the judgment and decree dated 14.11.2018 passed by the Court of learned Civil Judge (Junior Division), Amloh vide which the suit filed by the appellant-plaintiff for declaration was dismissed.

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

3. The plaintiff (Shila Devi Alias Sheela Devi) instituted a suit for declaration to the effect that she was owner in possession of residential house to the extent of half share (fully described in the plaint) situated in Guru Ki Nagri, Mandi Gobindgarh, District Fatehgarh Sahib (hereinafter referred to as the 'suit property') on the basis of a registered Will dated 01.06.2006 duly executed by Ram Kaur in favour of the plaintiff and son of defendant namely Shivam. A further declaration was sought declaring the mutation dated 21.04.2007 regarding the estate of Ram Kaur sanctioned in favour of the defendant on the basis of Will dated 20.03.1996 as being

illegal, null and void. Consequential relief of permanent injunction restraining the defendant from ejecting or dispossessing the plaintiff from her peaceful possession over the suit property was sought.

4. The case set up was that Ram Kaur had executed a registered Will dated 01.06.2006 in favour of the plaintiff and son of defendant namely Shivam. After the same, the plaintiff and defendant started living in half portion each of the suit property. The defendant threatened the plaintiff many times that he would eject the plaintiff from the suit property and alleged that Ram Kaur had executed a Will dated 20.03.1996 in his favour. It was averred that the said Will, if any, was a forged and fabricated document. It was averred that relations of defendant were never cordial with Ram Kaur and the defendant used to beat her up as he was addicted to various vices. The plaintiff, being 'Jethani' (husband's brother's wife) had been serving Ram Kaur and in view of the services rendered by her, Ram Kaur executed her last registered Will dated 01.06.2006. Since the defendants tried to dispossess the plaintiff from the suit property, the suit was filed.

5. The suit was opposed by the defendant. In the written statement, certain preliminary objections as regards maintainability, cause of action, estoppel, *locus standi*, the plaintiff not having approached the Court with clean hands etc. were raised. It was averred that no Will dated 01.06.2006 had been executed by Ram Kaur and that the said Will was a forged and fabricated document which had been created four days before the death of Ram Kaur. It was averred that in her last days, Ram Kaur usually remained sick and was not in her sound disposing state of mind and was suffering from various diseases. It was averred that the plaintiff was a stranger and not 'Jethani' of Ram Kaur, since the father of the defendant had no brother and, therefore, there was no question of her executing a Will in favour of a

stranger. It was the defendant who had been serving his mother in old age and as a result of the same, Will dated 20.03.1996 was executed.

6. It was averred that the said Will dated 20.03.1996 had been scribed by a regular deed writer after which the marginal witnesses had signed. The Will was, thereafter, got registered. It was averred that the said Will is the last Will of Ram Kaur and on the basis of the same, mutation had duly been entered. It was averred that, in fact, the plaintiff was a tenant under the defendant and had not paid rent.

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

8. From the pleadings of the parties, following issues were framed:-

“1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP

2. Whether the plaintiff is entitled to declaration as claimed? OPP

3. Whether present suit is not maintainable? OPD

4. Whether the plaintiff has not come to court with clean hands and has suppressed true and material facts? OPD

5. Whether suit is based upon false, frivolous, vexatious facts? OPD

6. Whether plaintiff stopped by her own act and conduct from filing the present suit? OPD

7. Whether plaintiff has no cause of action or locus standi to file the present suit? OPD

8. Whether suit of plaintiff is malafide? OPD

9. Relief.”

9. Parties led their respective evidence.

10. The trial Court dismissed the suit filed by the plaintiff and the appeal against the judgment and decree dated 14.11.2018 was also dismissed, leading to the filing of the present appeal.

11. I have heard learned counsel for the appellant.

12. Learned counsel for the appellant has strenuously urged that impugned judgments are not sustainable. He has referred to the Will (Ex. P-1) which, according to him, was executed by Ram Kaur in favour of the plaintiff and son of the defendant. He has also referred to the Will (Ex. D-2) which has been set up by the defendants. Learned counsel has submitted that the Will set up by the defendant had not been proved in accordance with law as none of the marginal witnesses was examined.

12.1 Learned counsel has referred to the entire oral and documentary evidence and has made strenuous efforts to convince the Court that the judgments passed by the trial Court and the First Appellate Court are not sustainable. Learned counsel has also referred to the impugned judgments and has submitted that the same deserve to be set aside.

13. I have considered the submissions made by learned counsel for the appellant and have perused the same but find the same to be devoid of merit.

14. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab & Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of '***Pankajakshi (Dead) through LRs and others Versus Chandrika and Others***' (2016) (6) SCC 157 followed by judgments of the Supreme Court in the cases of (Kirori & Sarvinder substantial question of law's judgments). Relying upon the law laid down in the aforesaid judgments, no substantial question of law is required to be framed and this Court shall proceed to answer the question which arises for consideration.

15. The reliance of the plaintiff was upon Will dated 01.06.2006 (Ex. P-1). No doubt, the plaintiff was able to prove the due execution of the said Will as she examined the attesting witnesses Harbans Singh Lamberdar and Rulda Ram as PW-4 and PW-6 respectively besides examining the deed writer Neeraj Kumar Bansal as PW-5. The plaintiff herself stepped into the witness box as PW-1 and deposed about the Will having been executed in her favour. However, the Will was rightly found to be shrouded by suspicious circumstances for the following reasons:

15.1 The Will was allegedly executed by Ram Kaur on 01.06.2006 whereas Ram Kaur expired four days after the execution of the said Will. This in itself is a suspicious circumstance coupled with the fact that it has come in the evidence that the plaintiff Shila Devi Alias Sheela Devi was accompanying Ram Kaur when the Will was executed and registered. The mere presence of the beneficiary of the Will at the time of execution and registration of the Will makes the Will shrouded by suspicious circumstances.

15.2 The plaintiff claimed to be the brother's wife of the husband of Ram Kaur i.e. *Jethani*. However, she could not prove the relationship. On the contrary, it came on record that the father of the defendant was not having any brother. The defendant produced ration cards (Ex. D-2 and Ex.D-3) to prove the said fact. Further, the plaintiff is said to be wife of Teja Singh, son of Ram Singh whereas Ram Dutt was the son of Gurdev Singh and not Ram Singh. The name of grandfather of Ram Dutt was Mela Singh. The relationship, therefore, did not stood proved. There was no mention of the Will dated 20.03.1996 (Ex.D-2) in the Will dated 01.06.2006 (Ex.P-1). This Will mentioned about some other Will dated 01.05.2006 stated to have been executed by Ram Kaur in favour of her grandsons Shivam, Sahil and Jatin.

This Will has not seen the light of the day. It is also strange that while in the Will (Ex. P-1), Ram Kaur initially states that she had executed a Will in favour of her grandsons namely Shivam, Sahil and Jatin but she subsequently allegedly executed the Will dated 01.06.2006 in favour of the plaintiff and Shivam, her grandson. No reason was given as to why the other grandsons were being left out and why Shivam was being included again.

15.3 The plaintiff was not able to prove that she was residing Ram Kaur or that she was serving her.

16. Under the circumstances, both Courts rightly held that the Will dated 01.06.2006 was shrouded by suspicious circumstances. As regards the Will dated 20.03.1996, no doubt the attesting witnesses were not examined, though, the deed writer Neeraj Kumar Bansal was examined. However, it was the plaintiff who had alleged that the Will dated 20.03.1996 was a forged and fabricated document and, therefore, the onus was upon her to prove the same. In any case, no issue was framed to this effect, though an issue was framed with regard to the declaration, the onus to prove which was on the plaintiff. The plaintiff, however, miserably failed to prove the same.

17. Both Courts returned concurrent findings which, in the considered opinion of this Court, are not liable to be interfered with.

Consequently, finding no merit in the appeal, the same is dismissed.

02.04.2025
Prince Chawla

(VIKRAM AGGARWAL)
JUDGE

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