

“1. Whether Plaintiff Is Entitled to Declaration as Prayed Vs. Swaran Kaur and Others

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Court : Punjab and Haryana

Decided On : Aug-04-2014

Appellant : “1. Whether Plaintiff Is Entitled to Declaration as Prayed

Respondent : Swaran Kaur and Others

Judgement :

Rs.No.4066 of 2010 (O&M) -1- IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH Rs.No.4066 of 2010 (O&M) Date of Decision:04.08.2014 Kanwaljit Kaur and another ..Appellants versus Swaran Kaur and others ..Respondents CORAM : HON'BLE Mr.JUSTICE RAMESHWAR SINGH MALIK Present : Mr.B.D.Sharma, Advocate for the appellants.

Mr.K.S.Reikhi, Advocate for respondent No.1.

**** 1.

To be referred to the Reporters or not?.

2.

Whether the judgment should be reported in the Digest?.

**** RAMESHWAR SINGH MALIK J.

Feeling aggrieved against the concurrent findings recorded by both the learned courts below, thereby decreeing the suit of the plaintiff- respondents for declaration and permanent injunction, defendants have approached this Court by way of present regular second appeal.

Brief facts of the case are that the plaintiffs-respondents filed the suit for declaration and permanent injunction, challenging the validity of Will allegedly suffered by Sukhwinder Singh son of S.

Shamsher Singh, in favour of his wife and daughter as well as defendants No.1 and 2, appellants herein.

Sale deed suffered by appellant No.1 in favour of respondents No.2 and 3 was also challenged.

It was pleaded by the plaintiff that her son Sukhwinder Singh never executed any Will.

His death was sudden due to electric shock on 12.5.1998.

He was only 28 years old at the time of his death.

The Will was unregistered and was prepared after the death of Thakral Rajeev 2014.08.19 13:16 I attest to the accuracy and integrity of this document High Court Chandigarh Rs.No.4066 of 2010 (O&M) -2- Sukhwinder Singh.

Since the plaintiff was entitled for 1/3rd share in the estate of deceased Sukhwinder Singh, being his class-I heir, defendant- appellant No.1 had no right to sell the land to the extent of 1/3rd share of the plaintiff.

Having been served in suit, defendants appeared and filed their written statement denying all the averments taken in the plaint.

On completion of pleadings of the parties, learned trial court framed the following issues:- 1.

Whether plaintiff is entitled to declaration as prayed for?.

OPP.

2.

Whether plaintiff is entitled to permanent injunction as prayed for?.

OPP3 Whether plaintiff has no cause of action and locus standi to file the present suit?.

OPD4 Whether suit of the plaintiff is not properly valued for the purpose of court fee and jurisdiction?.

OPD5 Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties?.

OPD2A Whether Sukhwinder Singh has executed a Will dated 6.1.1997 in favour of defendant No.1 and 2?.

OPD6 Relief.

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In order to prove their respective stands taken, both parties led their documentary as well as oral evidence.

After hearing both the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiff has duly proved her case.

Accordingly, while declaring the Will Ex.D-1 as well as Sale deed Ex.P-1 as null and void, suit of the plaintiff was decreed vide impugned judgment and decree dated 23.10.2006.

Dis-satisfied, defendants-appellants filed their fiRs.appeal which also came to be dismissed by learned Additional District Judge, Amritsar, vide impugned judgment and decree dated 14.09.2009.

Hence, Thakral Rajeev 2014.08.19 13:16 I attest to the accuracy and integrity of this document High Court Chandigarh Rs.No.4066 of 2010 (O&M) -3- this appeal.

Learned counsel for the appellants submits that learned courts below misdirected themselves, while not appreciating the oral as well as documentary evidence, in the correct perspective.

Plaintiff has failed to prove her case.

There was sufficient and cogent evidence brought on record by the appellants to non-suit the plaintiffs.

However, since the learned courts below proceeded on misconceived approach, impugned judgments and decrees were not sustainable in law.

He prays for setting aside the impugned judgments and decrees, by allowing the present appeal.

Per contra, learned counsel for the respondents-plaintiff submits that suit of the plaintiff was rightly decreed.

Will Ex.D-1 was surrounded by suspicious circumstances.

Appellants-defendants failed to prove the Will to be a genuine document.

The Will was rightly discarded by the learned courts below.

Since learned courts below have recorded concurrent findings based on cogent evidence produced by the plaintiff, there was hardly any scope for this Court to interfere.

He prays for dismissal of the appeal.

Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, instant appeal is misconceived and does not warrant interference at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure ('CPC' for short). To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record that Sukhwinder Singh deceased was Thakral Rajeev 2014.08.19 13:16 I attest to the accuracy and integrity of this document High Court Chandigarh Rs.No.4066 of 2010 (O&M) -4- only 28 years old at the time of his accidental death.

He died because of electric shock on 12.5.1998.

Just within one month thereafter, defendant- appellant No.1 sold the disputed land in favour of defendants No.3 and 4 by way of sale deed dated 12.6.1998.

Plaintiff appeared as PW-1 and proved all the above-said material facts.

Neither it has been proved on record nor it appears to reason that Sukhwinder Singh (since deceased) would execute his Will at the age of 28 years. The Will was unregistered.

Its registration at a later date i.e. 14.10.1998 under Section 40 of the Registration Act, will not cure the basic defect, nor the registration alone would be sufficient to remove the suspicious circumstances, which were apparent on the face of it.

Further, the conduct of defendant-appellant No.1 to sell the suit land including 1/3rd share of plaintiff, within one month from the date of death of her husband, shows the over all conduct of the appellant.

Having said that, this Court feels no hesitation to conclude that learned courts below have committed no error of law, while passing the impugned judgments and the same deserve to be upheld.

Another suspicious circumstance surrounding the Will dated 6.1.1997 Ex.D-1 was that the testator has not assigned any reason, whatsoever, to disinherit his mother.

Finger print expert has duly proved his report, whereby it was established on record that signatures of Sukhwinder Singh (since deceased) on the disputed Will Ex.D-1, did not tally with his admitted signatures on an earlier sale deed dated 17.5.1993 Ex.P-6.

Hand writing and Finger Print expert was PW-5.

In this view of the matter, it can be safely concluded that although onus was on the defendants-appellants to prove due execution of the Will, they being propounder and beneficiaries of Thakral Rajeev 2014.08.19 13:16 I attest to the accuracy and integrity of this document High Court Chandigarh Rs.No.4066 of 2010 (O&M) -5- the Will, yet they failed to discharge their onus.

Learned courts below rightly held that Will Ex.D-1 was surrounded by suspicious circumstances.

The findings recorded by the learned courts below have not been found to be either perverse or illegal and the impugned judgments deserve to be upheld, for this reason also.

Before arriving at a judicious conclusion, the learned first appellate court recorded cogent findings in para 15 of the impugned judgment and relevant part thereof reads as under:- ..The first and foremost point to be decided is that whether Sukhwinder Singh has executed a WILL dated 6.1.1997 in favour of appellants.

In order to prove the Will dated 6.1.1997, appellant herself stepped into the witness box and examined Swaran Singh and Harjant Singh marginal witnesses of the WILL dated 6.1.1997 Ex.D1 and also examined DW3 Jagteshwar Singh, Assistant Kanungo who proved on record endorsement Ex.D2.

On the other hand, plaintiff now respondent No.1 herself stepped into witness box and in order to disprove the signatures of Sukhwinder Singh on the WILL Ex.D1 and prove her contention, examined Sukhjinder Singh handwriting and finger print expert who compared the signatures of Sukhwinder Singh deceased on WILL Ex.D1 and on Sale deed dated 17.5.1993 Ex.P6 signed by Sukhwinder Singh deceased.

Although, the sale deed dated 17.5.1993 Ex.P6 was duly proved by PW2 Gurmit Singh, PW3 Niranjan Singh and PW4 Baldev Singh.

Sukhjinder Singh handwriting and finger print expert deposed that the signatures of Sukhwinder Singh deceased does not tally with the signatures on sale deed dated 17.5.1993 Ex.P6.

Further if the evidence of the marginal witnesses namely DW2 and DW4 is considered, especially, DW4, he has instead of proving have created to suspicion on the execution of WILL, as he does not know regarding the person who scribed the WILL, he does not know Thakral Rajeev 2014.08.19 13:16 I attest to the accuracy and integrity of this document High Court Chandigarh Rs.No.4066 of 2010 (O&M) -6- whether the WILL was scribed on stamp paper or plain paper, whether the WILL was in hand or typed.

Further he failed to depose that whether who scribed the WILL was a Sikh or Hindu.

Now, if the evidentiary value of the witness to prove the WILL is considered and the fact that the WILL was executed by Sukhwinder Singh in the age of 28 years and after that he died due to electrocution.

Whereas the version of the appellants is that Sukhwinder Singh was having a number of enemies and on account of that he was always apprehending danger to life, so he executed a WILL in favour of appellants but when appellant herself stepped into witness, she deposed during cross examination that her husband had no dispute with any one in the village except with the family membeRs.It is settled proposition of law that if there is any suspicion over the validity of the WILL, then the entire evidence is to be appreciated alongwith other surrounding circumstances.

The version of the plaintiff is that the defendants No.1 and 2 now appellants set up a forged and fabricated WILL of deceased Sukhwinder Singh and on the basis of the same, they had executed one sale deed in favour of defendants No.3 and 4.

On the other hand, the version of defendants No.1 and 2 now appellants is that the WILL in question is a genuine documents and they have become owners on the basis of that WILL and the sale deed in question is also a genuine.

It is settled proposition of law that a propounder of a WILL must dispel or suspicious circumstances gathered around the WILL to the satisfaction of the Court.

So after considering the entire facts, circumstances and evidence herein above discussed, especially considering the report of the handwriting expert, contradiction of statements of marginal witnesses Harjant Singh and Swaran Singh, this Court is of the considered view that the appellants have failed to prove the WILL Ex.D1.

As such, the finding of lower Court on issue No.2-A is upheld.

It is a matter of record and fact, which is not disputed that the plaintiff is the mother of deceased Sukhwinder Singh.

So she is the Class-I heir of Thakral Rajeev 2014.08.19 13:16 I attest to the accuracy and integrity of this document High Court Chandigarh Rs.No.4066 of 2010 (O&M) -7- Sukhwindr Singh as per Hindu Succession Act, 1956.

It is further matter of record and fact that Sukhwinder Singh deceased left behind his widow Kanwaljit Kaur and minor daughter Yashika along with Swaran Kaur mother, all class-I heirs. So as per the provisions of Hindu Succession Act, 1956, they all are entitled to 1/3 share individually of the property of deceased Sukhwinder Singh in equal share as I have upheld the finding of learned lower court on issue No.2-A and as WILL dated 6.1.1997 Ex.D1 has not been duly proved so Swaran Kaur plaintiff has also held entitled to inherit 1/3 share of property of Sukhwinder Singh alongwith Kanwaljit Kaur and Yashika separately.

Defendants No.3 and 4 have pleaded that they are bonafide purchasers for consideration and without notice.

But no evidence has been adduced in order to show their bona fide.

Rather the defendants No.3 and 4 have only placed on record written and have not contested the suit further and was proceeded against exparte.

Still in the appeal, they have not participated.

So finding of the learned lower Court that defendants No.3 and 4 are not bona fide purchaser is upheld so far purchase of 1/3 share of the plaintiff Swaran Kaur is concerned.

Hence, finding of learned lower Court on issue Nos.1 and 2 is also upheld.

During the couRs.of hearing, learned counsel for the appellants failed to substantiate any of his arguments.

No jurisdictional error or patent illegality apparent on the record of the case has been pointed out in either of the impugned judgments.

Further, no question of law much less substantial question of law has been found involved in the present case, which is sine quo non for interference at the hands of this Court, while exercising its jurisdiction under Section 100 CPC.

Thus, it is unhesitatingly held that the impugned judgements and decrees passed by the learned courts below deserve to be upheld, for this reason as well.

Thakral Rajeev 2014.08.19 13:16 No other argument was raised.

I attest to the accuracy and integrity of this document High Court Chandigarh Rs.No.4066 of 2010 (O&M) -8- Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance, thus, it must fail.

No case for interference has been made out.

Resultantly, instant appeal stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK) JUDGE0408.2014 rajeev Thakral Rajeev 2014.08.19 13:16 I attest to the accuracy and integrity of this document High Court Chandigarh

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