



In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1036 of 1991

Date of Decision: 17.01.2025

Zile Singh

... Appellant(s)

Versus

Fateh Singh (Since Deceased) through his Legal Representatives and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Amit Jain, Senior Advocate
with Mr. Naveen Kundu and Mr. Varun Parkash, Advocates
for the appellant(s).

Mr. Rajinder Goel, Advocate
for respondents No.1 and 2.

Anil Kshetarpal, J.

1. The correctness of the concurrent findings of fact arrived at by both the Courts below is assailed by the plaintiff, namely Zile Singh. In fact, two suits for the grant of decree of declaration were filed, one by Ram Dhan and another by Zile Singh and both were consolidated. The Trial Court dismissed both the suits holding that there was a valid Will executed by Baru in favour of Zile Singh on 29.10.1979. The First Appellate Court has reversed the findings with regard to the Will and held that the same is surrounded by the suspicious circumstances.

2. In order to comprehend the issues, the relevant facts, in brief, are required to be noticed. The inheritance of Baru's property is in dispute, who died on 15.11.1980. He was the owner of the suit property. He executed

two Wills in favour of Zile Singh. The first Will was executed on 19.01.1978 which was subsequently reiterated by a registered Will dated 29.10.1979. However, there are certain subsequent developments which have taken place. Ram Dhan, brother of Baru, had executed two registered sale deeds in favor of Fateh Singh on 03.04.1981 with respect to the suit property. Zile Singh is the son of Ujala. Fateh Singh, Ram Nath and Ujala are three brothers. In other words, Zile Singh is the nephew of Fateh Singh and Ram Nath and Ujala's son. Baru was their distant collateral. Fateh Singh, Ujala and Ram Nath filed a civil suit for the grant of decree of declaration to the effect that the plaintiffs are the owners in possession of three equal shares of half share of the land owned by Baru which was decreed, as Ram Dhan and Zile Singh admitted it in their written statement and Zile Singh also deposed in the Court conceding to the plaintiffs' case.

3. In this round of litigation, against the judgment of the First Appellate Court, Ram Dhan did file a regular second appeal, however, he withdrew the same on 12.12.1996. Now, the appeal filed by Zile Singh has come up for disposal.

4. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper book.

5. The learned senior counsel representing the appellant submits that the First Appellate Court has erred in recording a finding that the Will dated 29.10.1979 is surrounded by the suspicious circumstances and it has not been proved. He further submits that the finding of the First Appellate Court with respect to the genuineness of the Will dated 29.10.1979 is erroneous and there was no occasion for Zile Singh to suffer a consent

decree. He further submits that Ram Nath was the practising Advocate at Panipat and his remaining two brothers were uneducated. He further submits that the suit was filed and decreed on 22.05.1981 itself which proves that a fraud was played with the Court.

6. Per contra, the learned counsel representing the respondents No. 1 and 2 has contended that not only the finding of the First Appellate Court with regard to the validity of the Will dated 29.10.1979 is correct, but also the judgments of both the Courts below with respect to the correctness of the consent decree are correct.

7. This Court has considered the submissions and also evaluated and analyzed the arguments of the leaned counsel representing the parties.

8. Though the leaned senior counsel representing the appellant is correct in contending that in the plaint of Civil Suit No. 318 of 1981, which is Ex.D4/1, filed by Ujala, Fateh Singh and Ram Nath, there is no assertion with regard to the family settlement. However, a perusal of the written statement filed by Zile Singh (appellant) who was defendant No.2 in the aforesaid suit proves that he admitted that due to family settlement, he has acknowledged that the plaintiffs are the owners in possession in equal share of the suit land. It would be noted here that one of the plaintiffs was his own father, namely Ujala. Zile Singh is the son of Ujala. Similarly, Ex.DW.1/2 is Zile Singh's deposition in the Court recorded on 22.05.1981. Both the written statement as well as the deposition are signed by Zile Singh. He has failed to prove any misrepresentation or fraud. Even if Ram Nath was a practising Advocate, still the suit was filed by all the three brothers, namely Ujala, Fateh Singh and Ram Nath claiming equal share.

9. A decree passed by the competent Court of jurisdiction can only be set aside if it is proved that it suffers from any fraud or misrepresentation or from any defect which permits setting aside of a concluding contract. The consent decree passed by the Court is permission under Order XII Rule 6 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”). Hence, the argument of the learned senior counsel representing the appellant lacks substance.

10. With respect to the challenge to the finding of the First Appellate Court regarding Will dated 29.10.1979, it would be noticed that it would lose its significance particularly when there is a subsequent court decree passed with regard to the property on 22.05.1981. Zile Singh, the beneficiary of the Will, is party to the suit. Even if it is assumed that there is a registered Will executed by Baru in favour of Zile Singh, subsequently, the court decree suffered by Zile Singh would be enforceable. Hence, it is not considered appropriate to examine the correctness of finding of the First Appellate Court with regard to the registered Will.

11. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of facts arrived at by both the Courts below. Hence, the present appeal is dismissed.

(Anil Kshetarpal)
Judge

January 17, 2025
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No