

2025:PHHC:058053



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-204-2018 (O&M)

I. BALWINDER SINGH

..... APPELLANT

Vs.

SWARANA RANI (DECEASED) THROUGH HER LRS AND ANOTHER

..... RESPONDENT

CR-3582-2017 (O&M)

II. BALWINDER SINGH

..... APPELLANT

Vs.

SWARANA RANI (DECEASED) THROUGH HER LRS AND OTHERS

..... RESPONDENTS

**Reserved on: 29.04.2025
Pronounced on: 03.05.2025**

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by: - Mr. Sanjeev Kumar Arora, Advocate,
for the appellant in RSA No.204 of 2018
for the petitioner in CR No.3582-2017

Mr. Piyush Sharma, Advocate,
for LR's of respondent No.1 in both the cases.

DEEPAK GUPTA, J.

Defendant No.1 of the suit is before this Court against the reversal. Suit for declaration and permanent injunction regarding the property in dispute filed by Plaintiff – Swarana Rani (*respondent No.1 herein*) was though dismissed by the trial Court of learned Civil Judge (Jr. Divn.), Ferozepur vide judgment dated 09.02.2016, but the appeal filed by said plaintiff - Swarana Rani was accepted by the First Appellate Court of

learned Additional District Judge, Ferozepur, who set aside the judgment of the trial Court and decreed the suit vide judgment dated 11.04.2017.

2. In order to avoid confusion, parties shall be referred as per their status before the Trial Court.

3.1 Dispute pertains to the estate of one Kharaiti Lal.

3.2 Said Kharaiti Lal was married to Smt. Shanti Devi, who had predeceased him. They did not have any issue. Parents of Kharaiti Lal had already expired. Thus, Kharaiti Lal expired issue-less and without leaving any Class-I legal heir. It is not in dispute that plaintiff - Swarana Rani is the real sister of Kharaiti Lal and is the only surviving legal heir falling in Class II of Kharaiti Lal, as per Hindu Succession Act, 1956.

3.3 It is also not in dispute that defendants No.1 & 2 are not related to Kharaiti Lal in any manner. Defendant No.1-Balwinder is clerk to an Advocate in District Court, Ferozepur and defendant No.2 is also alleged to be aware about the technicalities of law.

4.1 According to plaintiff, she being the only natural heir of Kharaiti Lal, inherited the suit properties. It was alleged that taking undue advantage of the old age and mental & feeble condition of Kharaiti Lal, defendant No.1 got executed a power of attorney and obtained his signature on some blank papers; and then in connivance with the marginal witnesses, got executed forged and fabricated Will dated 26.06.2010 in favour of defendant No.1 and another Will dated 26.08.2010 in favour of defendant No.2. Not only this, in order to deprive the plaintiff of her legal rights in the suit property, defendants, got published a report in the newspaper at the behest of Kharaiti Lal so as to disown the plaintiff. It is further alleged that by misusing the forged and fabricated power of attorney, defendant No.1 sold one of the suit properties i.e. House No.108 to defendant No.3 by virtue of sale deed dated 01.06.2010.

4.2 It is further claimed by the plaintiff that during his lifetime, Kharaiti Lal had come to know about the fraudulent designs of defendant No.1 and therefore, he had made a complaint to DSP Sub Division,

Ferozpur stating therein that he owned House No.108, Street No.3 in Dashmesh Nagar, Ferozpur City and in connection with the dispute of that house, he had met defendant No.1, clerk to an Advocate, who was an acquaintance with him. Pertaining to that dispute, defendant No.1 had obtained his signatures on some blank papers and misused the same by obtaining ₹70-80,000/- and on the basis of forged power of attorney had sold the house to defendant No.3. Apart from this, Kharaiti Lal had also moved an application to Tehsildar in October 2010 for cancelling the power of attorney and to prevent defendant No.1 from misusing the same.

4.3 Prayer was accordingly made by the plaintiff to pass the decree of declaration that Will dated 26.06.2010 in favour of defendant No.1 and Will dated 26.08.2010 in favour of defendant No.2 allegedly executed by Kharaiti Lal and power of attorney dated 07.05.2010, alleged to have been executed by defendant No.1 and the sale deed dated 01.06.2010, on the basis of that power of attorney in favour of defendant No.3 as executed by defendant No.1 were null and void documents and that defendants did not have any right to sell the property of Kharaiti Lal or to withdraw any amount from the bank accounts on the basis of the forged Wills. A decree of permanent injunction was also sought to restrain the defendants from alienating the suit property on the basis of forged Wills; or withdrawing any amount from the bank account of the Kharaiti Lal, or making any alteration in the property of Kharaiti Lal.

5. Defendant No.2 did not contest the suit and was proceeded *ex parte*; whereas claim against defendant No.3 was withdrawn.

6. Suit was contested by defendant No.1 - Balwinder i.e. appellant herein, who in his written statement claimed that plaintiff had been disowned by Kharaiti Lal during his lifetime and that she never served him. Defendant No.1 further claimed that he used to serve Kharaiti Lal during his lifetime. He further set up a Will dated 26.06.2010 in his favour stated to be executed by Kharaiti Lal in his favour bequeathing his property. He prayed for dismissal of the suit.

7. Necessary issues were framed. Evidence produced by the parties was taken on record.

8.1 Although trial Court held that Wills in question as referred by the plaintiff and propounded by the defendants were not proved on record and so, decided the issues accordingly, but at the same time, it was held that plaintiff had failed to produce cogent evidence that the documents as challenged by her were forged and fabricated and because of this reasoning, the suit was dismissed by way of the judgment dated 09.02.2016.

8.2 In the appeal filed by plaintiff, the First Appellate Court upheld the finding of the trial Court to the effect that Wills in question were not proved. However, the First Appellate Court, reversed the finding of the trial Court, whereby plaintiff was held to be not entitled to the declaration and injunction as prayed by her. It was held that once it was proved that the impugned Wills in question and power of attorney etc. were not proved, plaintiff being the natural legal heir of Kharaiti Lal was entitled to the declaration as well as injunction as prayed by her. The appeal was accordingly accepted and suit was decreed vide judgment dated 11.04.2017.

9. Assailing the aforesaid reversal, it is contended by Id. counsel for the appellant-defendant No.1 that plaintiff failed to prove that she had ever served Kharaiti Lal. Learned counsel contends further that Kharaiti Lal during his lifetime had disowned his sister-plaintiff. Learned counsel further submits that since it is the plaintiff, who had challenged the legality and validity of the Wills in question beside the power of attorney and sale deed in favour of defendant No.3, therefore, onus was upon the said plaintiff to prove those documents, but she failed to discharge the said onus and therefore, learned First Appellate Court has wrongly reversed the findings of the trial Court. Prayer is accordingly made to set aside the judgment passed by the Appellate Court, and to restore the judgment of the trial Court.

10. On the other hand, learned counsel for the plaintiff-respondent contends that defendant No.1 and 2 are the propounders of the two Wills dated 26.06.2010 and 26.08.2010 respectively. Onus was upon them to prove those Wills. However, original Will dated 26.06.2010 was not at all produced. Only its photocopy was produced. Not only this, none of the attesting witnesses to the said Will was examined. Besides, the Will dated 26.8.2010 in favour of defendant No.2 was not even produced on record and defendant No.2 did not even contest the suit and therefore, the Courts below have rightly given the concurrent findings that Wills in question were not proved. Learned counsel contends further that defendants No.1 & 2, being the propounders of the Will, the onus was upon them so as to prove the same by producing the same and by examining at least one of the attesting witnesses, but they had failed to do so. Learned counsel further submits that the plaintiff by adducing evidence proved that during his lifetime, Kharaiti Lal had made a complaint against defendant as to how the power of attorney was procured by him fraudulently. However, defendant No.1 failed to examine any of the witness so as to prove the alleged power of attorney, by virtue of which he had sold one of the suit properties to defendant No.3. With these submissions, learned counsel defends the judgment passed by the First Appellate Court and prays for dismissal of the appeal.

11. This Court has considered submissions of both the sides and have appraised the record carefully.

12. It is not disputed by Id. counsel for the appellant that original Will dated 26.06.2010 in favour of defendant No.1-appellant was not produced on record. It is also conceded by him that none of the attesting witnesses to the said Will were examined. As per the admitted position of law, the Will is required to be attested by two witnesses but in order to prove the same, examination of at least one of the attesting witnesses is necessary. Defendant No.1 being the propounder of the said Will dated 26.06.2010, was required to prove the said Will in accordance with law,

but he failed to do so and therefore, the Courts below rightly held that Will in question was not proved.

13. As far as the Will dated 26.08.2010, alleged to have been executed by Kharaiti Lal in favour of defendant No.2 is concerned, the said Will was not even produced. Defendant No.2 neither contested the Will nor examined any attesting witness and as such, the Courts below rightly held that the said Will was not proved.

14. Plaintiff produced cogent evidence in order to show that the alleged power of attorney dated 07.05.2010 purported to have been executed by Kharaiti Lal in favour of defendant No.1, was fraudulent and during his lifetime, Kharaiti Lal had come to know about the fraudulent designs of defendant No.1 and had made complaint to DSP. Since the said power of attorney is purported to be in favour of defendant No.1, so again it was for defendant No.1-appellant herein to prove the due execution of the said POA by examining any of the witnesses to the said power of attorney. However, defendant No.1 failed to prove the said power of attorney in accordance with law by examining any witness thereto and as such, the First Appellate Court rightly discarded the power of attorney and therefore, rightly held that based upon that power of attorney, no alienation could have been made in favour of defendant No.3 and as such, the sale deed dated 01.06.2010 in favour of defendant No.3 has also been rightly held to be null and void.

15. Even if it be assumed for the sake of arguments that plaintiff-Swarana Rani had not served her brother-Kharaiti Lal during his lifetime, as is contended by the counsel for the appellant, it will not advance the case of the appellant. Concededly, plaintiff-Swarana Rani is the only natural heir of Kharaiti Lal. As such, she is entitled to inherit the entire estate of Kharaiti Lal on the basis of natural succession.

16. In view of the aforesaid discussion, it is held that learned First Appellate Court did not commit any error in decreeing the suit by setting

aside the judgment of the trial Court. This Court does not find any merit in the present appeal and as such, the same is hereby dismissed.

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17. As far as the Civil Revision in question is concerned, an application under Section 372 of the Indian Succession Act was moved by Swarana Rani, claiming the movable assets of Kharaiti Lal, lying in the banks, as per the details given in the petition, wherein general public was impleaded as defendant No.1 and defendants No.1 & 2 of the suit were impleaded as respondent No.2 & 3. Respondent No.2 & 3 were allegedly claiming their rights in the assets of Kharaiti Lal on the basis of the Wills in question. The Courts below found that Wills in question were not proved and accordingly, trial Court allowed the application under Section 372 of the Indian Succession Act vide order dated 25.11.2014 by issuing necessary succession certificate in her favour. The appeal filed by Balwinder Singh was dismissed by the First Appellate Court on 11.04.2017 and this Revision was filed against the aforesaid concurrent findings.

18. For all the reasons, as have been discussed in RSA No.204 of 2018 as above, this Court does not any find any merit in the revision as well and therefore, the said CR No.3582-2017 is also dismissed.

A photocopy of this order be placed on the file of connected case.

03.05.2025

Vivek

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?

Yes

Whether reportable?

No