



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(105)

RSA No.1922 of 2018 (O&M)
Date of Decision: 21.02.2025

Karnail Singh

...Appellant

Vs

Gian Kaur and another

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Jagmohan Ghuman, Advocate and
Ms. Apoorva Arya, Advocate for
for the appellant

VIKRAM AGGARWAL, J (ORAL)

CM-5302-C-2018

Prayer in the present application filed under Section 151 CPC is
for condonation of delay of 123 days in re-filing the appeal.

Heard.

For the reasons mentioned in the application, which is duly
supported by an affidavit, the same is allowed and the delay of 123 days in
re-filing the appeal is condoned.

CM-5303-C-2018

This is an application moved by the applicant-appellant under
Order 41 Rule 27 of the Code of Civil Procedure, 1908 (for short 'CPC') for
leading additional evidence. It has been averred that the applicant-appellant
wishes to place on record mortgage agreement dated 18.04.2000, affidavit of
the mortgagee and witness of the mortgage agreement dated 18.04.2000 and
carbon copy of voter list of deceased Mehnga Singh dated 02.01.1998 as
Annexures A-1 to A-4 respectively. It has been averred that the said
documents were not in the possession of the applicant-appellant at the time

of the trial of the case but were traced out from the old boxes belonging to Mehnga Singh. It has been averred that the documents would show that Mehnga Singh used to affix signatures also on documents. It has been averred that under the circumstances, the documents are essential for the just decision of the case.

Learned counsel for the applicant/appellant submits that despite due diligence, the said documents could not be produced on record as they were found later on.

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

The applicant-appellant has been non-suited and one of the grounds was that Mehnga Singh used to put his thumb impressions whereas on the Will alleged to have been executed in favour of the applicant-appellant, signatures of Mehnga Singh were appearing. To cover up the said finding, it appears, the applicant-appellant wishes to place on record documents to prove that Mehnga Singh used to affix his signatures as well.

In the considered opinion of this Court, no occasion arises to permit the applicant-appellant to produce these documents by way of additional evidence, for, no details have been given as to when and under what circumstances, the documents were found. It appears that the documents are sought to be produced only in view of the findings recorded by the Courts which is not permissible.

In view of the above, I do not find any merit in the present application and the same is accordingly dismissed.

This is plaintiff's appeal against the judgment and decree dated 27.01.2016 passed by the Court of learned Additional District Judge, Hoshiarpur, dismissing the appeal filed against the judgment and decree dated 28.08.2014 passed by the Court of learned Additional Civil Judge (Senior Division) Garhshankar vide which the suit filed by the appellant-plaintiff for declaration that he was the owner in possession of land measuring 67 kanals (hereinafter referred to as the suit land) (fully described in the plaint) situated at Village Todarpur and Sarhala Kalan Tehsil Garhshankar was dismissed.

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

3. The dispute is with regard to the estate of one Mehnga Singh. Dharam Singh had two sons and one daughter namely Mehnga Singh, Karnail Singh-plaintiff and Gian Kaur-defendant No.1. The plaintiff filed a suit for declaration to the effect that he was owner in possession of the suit land on the basis of a Will dated 29.10.2000 executed by Mehnga Singh in his favour and that the order sanctioning Mutation No.5061 regarding Village Todarpur and 3172 regarding Village Sarhala Kalan in favour of the plaintiff and defendant No.1 in equal shares as per natural succession were illegal null and void and further that the sale deed dated 25.11.2002 executed by defendant No.1 in favour of defendant No.2 with regard to some land out of the suit land was also illegal null and void and not binding upon the rights of the plaintiff.

3.1. The case set up was that Mehnga Singh was married to one Gian Kaur. From the wedlock, one Manjeet Singh was born. Both Gian Kaur and Manjeet Singh had expired. After the death of the son of Mehnga Singh,

the plaintiff and his wife had started looking after and serving Mehnga Singh. Plaintiff had gone abroad and in his absence, his wife Harbhajan Kaur looked after Mehnga Singh and plaintiff use to send money from abroad. In lieu of the services rendered, Mehnga Singh executed a Will dated 29.10.2000 in favour of the plaintiff. Mehnga Singh expired on 11.01.2001. Before that, Mehnga Singh had fallen ill and was admitted in a private hospital. However, on account of non-grant of *Visa*, the plaintiff could not come to India but his wife came and paid all the expenses of treatment. Since Mehnga Singh did not survive, all last rights were performed by the wife of the plaintiff and at the time of the Bhog Ceremony, Giani Kishan Singh told the wife of the plaintiff about the execution of the Will dated 29.10.2000.

3.2. It was the case of the plaintiff that he had orally instructed the son of his sister namely Karnail Singh to look after Mehnga Singh and manage the property and a photocopy of the Will had also been sent to defendant No.1 from Australia for getting the mutation entered in his name. However, she got mutation sanctioned in the names of both the plaintiff and defendant No.1 and further alienated a part of the suit land while sale deed dated 25.11.2002 in favour of defendant No.2 leading to the filing of the suit.

4. Defendant No.1 opposed the suit. In the written statement, certain preliminary objections as regards estoppel, the land not having been described properly in the plaint, *locus standi*, cause of action, the Will dated 29.10.2000 being a false, forged and fabricated document etc. were raised. On merits, all averments were denied. A stand was taken that the plaintiff and his wife had never served Mehnga Singh and had gone abroad 15 years

ago. It was she who had looked after her brother and after his death, the land was mutated in favour of both the plaintiff and defendant No.1 in equal shares.

5. Defendant No.2 also filed a separate written statement raising the plea of being a *bona fide* purchaser for consideration.

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

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

- 1. Whether Mehanga Singh had executed Will dated 29.10.2000 in favour of plaintiff? OPP**
- 2. Whether the plaintiff is owner in possession of the suit property being sole legal heir of Mehanga Singh deceased in addition to his already recorded share? OPP**
- 3. Whether the plaintiff is entitled to the relief of declaration as prayed for ?OPP**
- 4. Whether the sale deed dated 25.11.2000 pertaining to the land measuring 10 kanals 9 marlas out of the suit land is illegal, null and void and having no effect on the right, title or interest of the plaintiff?OPP**
- 5. Whether the mutation No.3194 sanctioned on the basis of sale deed dated 25.11.2000 is also legal and valid one?OPP**
- 6. Whether the plaintiff is entitled to relief of permanent injunction as prayed for ?OPP**
- 7. Whether in the alternative, the plaintiff is entitled to joint possession of the suit property?OPP**
- 8. Whether the plaintiff is stopped from filing the present suit by his own act and conduct?OPD**
- 9. Whether the land in dispute is not properly described in the plaint?OPD**
- 10. Whether the plaintiff has no locus standi to file the present suit?OPD**

11. Whether the plaintiff has no cause of action to file the present suit?OPD

12. Whether the Will dated 29.10.2000 set up by the plaintiff is false, forged and fabricated document?OPD

13. Relief.”

8. Parties led their respective evidence. The trial Court dismissed the suit vide judgment and decree dated 28.08.2014 and the appeal filed by the plaintiff against the judgment and decree dated 27.01.2016 was also dismissed, leading to the filing of the present Regular Second Appeal.

9. I have heard learned counsel for the appellant.

10. Learned counsel has strenuously urged that the Courts erred in holding that the execution of the Will did not stand proved and that the same was shrouded by suspicious circumstances. Learned counsel took pains to take the Court through the judgments of the trial Court as also the First Appellate Court and the record and efforts were made to convince the Court that the judgments under challenge are not sustainable. Learned counsel referred to the oral and documentary evidence on the record of the case and also referred to the specific findings recorded by the Courts on the issue of Will. Learned counsel submits that it was erroneously recorded that Mehnga Singh was unwell or that he only used to put his thumb impressions whereas it was duly proved that he used to append his signatures as well. Learned counsel submits that under the circumstances, the judgments under challenge deserves to be set aside and the suit filed by the plaintiff deserves to be decreed.

11. I have considered the submissions made by learned counsel for the appellant-plaintiff but find the same to be devoid of merit.

12. Mehnga Singh expired on 11.01.2001. The plaintiff is his brother and defendant No.1 is his sister. The plaintiff claims that he became the owner of the land in dispute on account of Will dated 29.10.2000 having been executed in his favour by Mehnga Singh. The Will was produced on record as Ex.P1. The scribe of the Will, Kishan Singh was examined as PW-1 and marginal witness-Joginder Singh was examined as PW-2. The plaintiff himself stepped into the witness box as PW-3. The Will mentions the fact of the wife and son of Mehnga Singh having expired. It mentions that Mehnga Singh had two sisters and one brother out of which one sister had also expired. The Will further states that the two brothers had helped their sisters in all regards as per their capacity and that his brother had gone abroad after which his wife use to take care of him. It further mentions that she had also gone abroad and being happy with the services of his brother, he wanted to give his entire property to his brother- Karnail Singh.

13. Both the Courts have consistently found that the Will was shrouded by suspicious circumstances. The Will mentions that Mehnga Singh was not in good health and had difficulty in walking. It was held that under the circumstances, it was unlikely that Mehnga Singh would walk to the house of the attesting witnesses and then to the house of the scribe-Gian Singh for getting his Will drafted/executed. It was also observed that if he could walk for this much distance, he could have got the Will registered as well. Mehnga Singh had executed one registered mortgage deed also (Ex.D-8) and once the mortgage deed had been registered, there was no reason for getting the Will registered.

14. Both the Courts also found that Mehnga Singh has allegedly put his signatures on the Will but it had been established on record that prior to

his death, he had started putting his thumb impressions on all documents on account of weak eye sight and old age. PW-4-Jasvir Singh and PW-9-Jasbir Singh deposed in this regard. In the documents produced on record as Ex.D-1 to D-3 also which were the account opening forms of Mehnga Singh, there were thumb impressions of Mehnga Singh, whereas the Will which was stated to have been executed only a couple of months prior to his death had signatures.

15. Both sides examined experts i.e. PW-5- Sh. N.K.Jain and DW-5- Sh. Arvind Sood. PW-5-Sh.N.K.Jain stated that the signatures of Mehnga Singh, whereas DW-5-Sh. Arvind Sood stated that the signatures were not of Mehnga Singh. The First Appellate Court commented upon the conduct of Sh. N.K.Jain-PW-5 and held as under:-

“17. This court has further found that both the parties have led the expert witnesses by examining the Finger Prints and Handwriting Experts in support of their pleas and report of PW5 NK Jain Handwriting and Finger Prints Expert is not reliable rather report Ex.DW5/A of Finger Prints and Handwriting Expert examined by the defendants as DW5 Arvind Sood is reliable vide which it has been clearly mentioned that the questioned signatures Q1 is not in the handwriting of the person who has written standard signatures marked as S1 to S4 of Mehnga Singh and the questioned signatures Q1 is the product of copied forgery because as Ex.D6 proved by the defendant which is order of the Hon'ble High Court dated 15.09.2011 in case titled as Shashi Bala Vs. Bhola Nath in which the Hon'ble High Court observed that an affidavit of NK Jain, who is present in person, has been filed and the same is taken on record. At the most, it can be inferred that finger print expert NK Jain lacks necessary expertise and knowledge and learned counsel has further stated that to save the litigants, NK Jain has decided to

leave the profession of handwriting/finger print expert. A specific stand to this effect has been taken by NK Jain in his affidavit in its para no.4, which has been find mentioned that" the deponent is now aged 65 years and has virtually stopped the work of document expert and also for the reason that the deponent is to look after his ailing wife, who is bed ridden since 21.12.2010, as she is suffering from brain hemorrhage and paralysis. The deponent, with folded hands submits that he is at the mercy of this Hon'ble Court and seeks tenders unconditional apology before this Hon'ble Court for mistake on his part" and accordingly the Hon'ble High Court taking into consideration the age, family circumstances and the fact that NK Jain has decided not to pursue the profession of hand writing/finger print expert, notice issued against the finger print expert for taking necessary action was dropped and after the passing of the order of the Hon'ble High Court this witness NK Jain PW5 appeared before the trial court for deposition to support the case of the appellant-plaintiff to prove his report subsequently in the month of February 2014 and despite giving affidavit before the Hon'ble High Court for not doing the profession of finger prints expert, he appeared before the trial court for which adverse inference is liable to be drawn against the evidence of the expert NK Jain PW5 and in this manner the report given by PW5 NK Jain cannot be relied upon rather this court has relied upon the report of Arvind Sood DW5 which is in favour of the respondents-defendants and against the appellant-plaintiff.

A perusal of the aforesaid would show that Sh. N.K.Jain had decided to quit the profession and had stated so in his affidavit also which was filed before a Coordinate Bench. On this statement, no further action was taken against him. However, thereafter Sh. N.K.Jain appeared as PW-5 before the trial Court in February 2014. Under the circumstances, the First

Appellate Court stated that no reliance could be placed upon the testimony of Sh. N.K.Jain.

16. It also came in the evidence that Karnail Singh and his wife had in-fact never served Mehnga Singh and it was defendant no.1 who had been serving Mehnga Singh.

17. In the considered opinion of this Court, there is no illegality in the findings of facts recorded by the Courts in holding that the Will alleged to have been executed by Mehnga Singh was shrouded by suspicious circumstances and that under the circumstances, there was no illegality in mutations having been sanctioned recording plaintiff and defendant no.1 as owners in equal shares of the suit land and further that there was no illegality in the execution of the sale deed dated 25.11.2002 by defendant No. 1 in favour of defendant No.2.

18. I do not find any reason to interfere in the said findings. No question of law, therefore, arises for the consideration of this Court.

In view of the above, I do not find any merit in the present appeal and the same is accordingly dismissed.

Pending application (s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

February 21, 2025

Rekha

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