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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.191 of 2018

Decided on: 18.05.2026

Gopal Sood

.Appellant

Versus

Mohan Inder Singh (deceased) & Kiran
Inder Singh (deceased) through LRs and others

...Respondents

Coram

Hon'ble Mr. Justice Romesh Verma, Judge

Whether approved for reporting?

For the appellant: Mr. Mukul Sood, Advocate.

For the respondents: Mr. Divya Raj Singh, Advocate, for
respondent No.1(ii).

Mr. Ajay Sharma, Senior Advocate with
Mr.Tarun Brakta, Advocate, for
respondents No.2(a) and 2(b).

Mr. Rajesh Verma, Advocate, for
respondents No.6, 8 and 9.

Romesh Verma, Judge(oral)

The present appeal arises out of judgment and decree dated 21.07.2017, whereby the appeal filed by the present appellant/plaintiff was dismissed and the judgment and decree as passed by learned Civil Judge (Senior Division), Court No.11, Palampur, District Kangra, H.P. dated 15.10.2012 was affirmed, whereby the suit filed by the plaintiff/appellant was ordered to be dismissed.



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2. Brief facts of the case are that the plaintiff/appellant filed a suit for declaration to the effect that the plaintiff and proforma defendants No.3 to 7 have inherited the estate of late Smt. Yasodha Devi, wife of late Maharaja Bhupinder Singh of Patiala Estate, on the basis of registered Will dated 21.07.2004 in equal shares. The plaintiff is owner-in-possession of the land comprised in Khata no. 195, Khatoni no. 379, Khasra nos. 977, 982, 985, 993, 969, 984, 987, 988, 991, 971, 980, Kita 11, measuring 06-23-07 hecets situated at Mohal and Mouza Dhoran, Tehsil Palampur Distt. Kangra H.P. vide jamabandi for the year 2001-2002, Khata no. 151, Khatoni no. 237, Khasra no. 1156, Land measuring 01-93-80 hecets situated at Mohal and Mouza Dadh Uperla, Tehsil Palampur Distt. Kangra H.P. vide jamabandi for the year 2000-2001, 2/3 shares of Khata no. 26, Khatoni no. 44, Khasra nos. 168, 171, 176, 177, 179, 181, 184, 186, 189, 537, Kita 10, land measuring 20-51-25 hecets (2/3 share comes to 13-67-50 hecets) situated at Mohal Dhanota Mouza Gopalpur, Tehsil Palampur Distt. Kangra H.P. vide jamabandi for the year 1999-2000, Khata no. 71, Khatoni no. 94, Khasra no. 19, 60, 63, 65, 88, 90, 92, 93, Kita 8, Land measuring 19-68-17 hecets, 2/3 share of Khata no. 72, Khatoni no. 96, Khasra no. 121, 123, 125, 127, 128, 130, 134, 161, 168, 170, 225, 228, 246, Kita 14, Land



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measuring 15-25-62 hecets (2/3 share comes to 10-17-08 hecets), 714/1383 share of Khata no. 73, Khatoni no. 101, Khasra no. 48, 52 Kita 2 land measuring 01-03-42 hecets (714/1383 share comes to 0-53-40 hecets) situated at Mohal and Mouza Gopalpur, Tehsil Palampur Distt. Kangra H.P. vide jamabandi for the year 1998-1999, Khata no. 36, Khatoni no. 129, Khasra no. 270, 274, Kita 2, land measuring 0-20-05 hecets situated at Gujrehra, Mouza Gopalpur, Tehsil Palampur, District Kangra, H.P.

3. The case as set up by the plaintiff is that Yashodha Devi executed a legal and valid Will in favour of the plaintiff and proforma defendants No.3 to 7 on 21.07.2004 and the same was registered in the office of Sub Registrar, Patiala. The said Will was the last and final Will of deceased Yashodha Devi. She expired on 01.06.2008 leaving behind the plaintiff and proforma defendants No.3 to 7 as her legal heirs on the basis of Will dated 21.07.2004. Defendants No.1 and 2 who are clever persons and are claiming that defendant No.1 has procured a Will of the property of deceased Yashodha Devi in his favour in the year 2007 and he is claiming himself owner of the suit property through Yashodha Devi. It has been stated that Yashodha Devi was not mentally fit since March 2005 and was not in a position to execute the Will.



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4. As per plaintiff, she has not voluntarily executed any Will in the year 2007 as claimed by defendant No.1. Therefore, the said alleged Will dated 14.08.2007 and gift deed as claimed by Shri.Mukesh Sood have been got prepared by defendant No.1 in connivance with the Scribe, witnesses and Sub Registrar and the same are result of misrepresentation, undue influence, threat and coercion. Therefore, the suit was filed for seeking decree of declaration to the effect that the plaintiff and proforma defendants No.3 to 7 have inherited the estate of late Smt. Yashodha Devi on the basis of registered Will dated 21.07.2004 in equal shares and they are owners-in-possession of the suit land. It was prayed that the Will dated 14.08.2007 and the gift deed as claimed by Sh. Mukesh Sood, son of Sh. Dina Nath Sood alleged to be executed by deceased late Smt.Yashodha Devi are the result of threat, undue influence, misrepresentation and fraud. Further, mutation No.386, dated 11.08.2008 attested on the basis of the alleged Will is wrong and illegal and the same be declared as null and void with consequential relief of permanent and prohibitory injunction restraining defendant No.1 from alienating and encumbering the suit land by way of sale, gift, transfer, mortgage etc. The suit was instituted on 05.09.2008.



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5. The suit was contested by the defendants by filing separate written statements. Defendant No.1 in his written statement raised preliminary objections with respect to cause of action, non-joinder, maintainability etc. On merits all the contents as made in the plaint were denied and refuted. It was stated by the defendant that the Will dated 21.07.2004 is result of fraud, misrepresentation and undue pressure exercised on Smt. Yashodha Devi by the plaintiff through defendant No.2, witnesses and the Sub Registrar, Patiala with a sole motive to grab her property by all means. The alleged Will dated 21.07.2004 is no Will in the eyes of law when Smt. Yashodha Devi executed her last Will dated 14.08.2007 and got the same registered. Therefore, a stand was taken that the Will dated 21.07.2004 is illegal, null and void, whereas Will dated 14.08.2007 is last and final Will of deceased Yashodha Devi.

6. Defendant No.2 filed separate written statement-cum-counter claim by raising objections with respect to maintainability, estoppel, locus stand non-joinder etc. It was prayed by defendant No.2 that decree may be passed in their counter claim to the effect that defendants No.1 and 2 are the exclusive owners-in-possession of the suit land in equal shares as per Will of Smt. Yashodha Devi dated 17.10.1994. It was



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stated that the only Will which is genuine and also signed and executed with the sound mind and free will of the executant is dated 17.10.1994. Therefore, defendant No.2 prayed for the dismissal of the suit as filed by the plaintiff.

7. The plaintiff filed written statement to the counter claim as preferred by the defendants.

8. Learned trial Court vide its order dated 07.07.2011 framed the following issues:

- (1) Whether the plaintiff and proforma defendants no.3 to 7 are owners in possession of the suit land on the basis of registered Will dt.21.7.2004, as alleged ?
OPP
- (2) Whether the Will dated 14.8.2007 purported to have been executed late Yashodha Devi in favour of defendant no.1 is the result of threat, undue influence, misrepresentation and fraud, as alleged?
OPP
- (3) Whether the mutation no.386 dated 11.8.2008 is null and void, as alleged ?OPP
- (4) Whether the defendants have been causing interference in the suit land, as alleged ? OPP
- (5) Whether late Yashodhah Devi executed valid Will dated 14.8.2007 in favour of defendant no.1, as alleged? OPD I
- (6) Whether the plaintiff is entitled for the relief of permanent prohibitory injunction as prayed for? OPP
- (7) Whether the instant suit is bad for non-joinder and mis joinder of necessary parties, as alleged ? OPD1, 2, 2a and 2b



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- (8) Whether the plaintiff has no cause of action to file the present suit, as alleged? OPD1,2a,2b
 - (9) Whether the suit is not maintainable,as alleged ? OPD 1,3 to 5
 - (10) Whether the plaintiff has not approached the court with clean hands and has suppressed the material fact,as alleged, if so its effect? OPD1
 - (11) Whether the plaintiff is estopped to file the instant suit by their act an conduct,as alleged ? OPD 2
 - (12) Whether the plaintiff has no locus standi to sue, as alleged? OPD2,2a, 2b
 - (13) Whether this court has no jurisdiction to trv the present suit, as alleged? OPD2
 - (14) Whether the Will dated 21.7.2004 is a forged document,as alleged? OPD2
 - (15) Whether the suit is barred by limitation,as alleged? OPD2,2a, 2b
 - (16) Whether the proceedings of this court are lying stayed, as alleged? OPD 2a, 2b.
- Relief.

9. On the same date, the case was ordered to be fixed for plaintiff's evidence on taking steps within four days, failing which they shall be liable to produce evidence on self responsibility for 05.08.2011. It was further observed that that no further date shall be given for plaintiff's evidence as the case is to be decided shortly .Therefore, long date was given at the request of learned counsel for the plaintiff as he has stated that he would be out of station.



10. Learned trial Court directed both the parties to adduce evidence in support of their contentions, however, since the plaintiff failed to lead evidence, therefore, the learned trial Court vide its judgment and decree dated 15.10.2012 dismissed the suit as filed by the plaintiff.

11. Feeling dissatisfied, the plaintiff preferred an appeal in the court of learned Additional District Judge II Kangra at on 24.11.2012. Learned first appellate Court vide its judgment and decree dated 21.07.2017 dismissed the appeal as preferred by the plaintiff.

12. Feeling aggrieved, the plaintiff has approached this Court by filing the instant regular second appeal against the impugned judgments and decrees as passed by learned Courts below.

13. It is contended by Mr. Mukul Sood, learned counsel for the plaintiff, that the judgments and decrees as passed by learned Courts below are erroneous and liable to be quashed and set aside. He submits that the learned Courts below have erred by dismissing the suit filed by the plaintiff, which findings have been affirmed by the learned first appellate court. He submits that after accepting the present regular second appeal, the suit filed by the plaintiff deserves to be decreed.



14. On the other hand, Mr. Ajay Sharma, learned Senior Counsel, duly assisted by Mr. Tarun Brakta, Advocate, appearing for respondent No.2(a) and 2(b) has defended the judgments and decrees as passed by learned Courts below. It is contended by learned Senior Counsel that while invoking the provisions of Section 100 of CPC, the scope of interference by this Court is very narrow and limited. There are concurrent findings of fact as returned by learned Courts below which do not call for any interference. He further submits that since the plaintiff has failed to adduce any evidence in support of his contention, therefore, only remedy which was left available to the learned Courts below was to dismiss the suit filed by the plaintiff.

15. I have heard learned counsel for the parties and perused the case record. With the consent of learned counsel for the parties, the case is decided finally on the following substantial question of law.

Whether both the courts below have erred in declaring that sufficient opportunities have been granted to plaintiff to adduce evidence?

16. That the plaintiff/appellant filed a suit for declaration and injunction before the learned trial Court on the basis of the Will dated 21.07.2004. He instituted the suit seeking declaration



that the Will dated 14.08.2007 alleged to have been executed by Smt. Yashodha Devi in favour of defendant No.1 is null and void. The said suit was contested by the defendants. Defendants No.1 and 2 filed their separate written statements and they have denied the claim as set up by the plaintiff. Defendant No.1 has based his claim on Will dated 14.08.2007, whereas defendant No.2 has filed the written statement and based his claim on Will dated 17.10.1994.

17. Admittedly, the learned trial Court framed issues on 07.07.2011, and thereafter on the same day, the case was fixed for the evidence of the plaintiff. It was observed on the said day that the plaintiff shall take steps within four days failing which they shall be liable to produce evidence on self-responsibility for 05.08.2011. It has further been elaborated by learned trial Court that the long date was given at the request of learned counsel for the plaintiff as he had stated that he would be out of station. On 05.08.2011, no evidence was adduced by the plaintiff, as the process for the witnesses was not issued because PF and DM were filed late as per report of the concerned Ahlmad. Thereafter, the case was posted on 30.07.2011 for PWs. On the said date, report was received stating that the summons had not been returned, dasti summons were received back by the learned trial



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Court, which stated that PW, Sub Registrar Patiala was not served properly and PW Rakesh Gupta Advocate was also not served. Thereafter, the case was posted on 15.09.2011. On the said date, learned counsel for the plaintiff stated at the bar that he had not taken dasti notices as his client was ill. On the very same day, an application under Order 11 Rule 14 of CPC and Order 13 Rule 1 read with Section 151 of CPC was filed by learned counsel for the plaintiff. The case was adjourned for 16.09.2011. On the said date, the application filed by the plaintiff under order 11 Rule 14 of CPC and Order 13 Rule 1 read with Section 151 of CPC was dismissed as not pressed. Thereafter, the case was listed for plaintiff's evidence on taking steps within two days for 15.10.2011.

18. On 15.10.2011, the case was posted for 19.10.2011. On the said date, the case was listed for PWs on taking steps within two days for 09.11.2011, subject to last opportunity. On 09.11.2011, no evidence was adduced by the plaintiff as process issued to the witnesses through the ordinary process was not received back, whereas the dasti summons were not procured. On the said day, learned counsel for the plaintiff sought further time for adducing evidence, and the said request was accepted by learned trial Court. It was ordered that, subject to last opportunity in the interest of justice, summons be issued through



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regular process as well as dasti for 06.12.2011. On 06.12.2011, it was ordered that no PWs present and PW-1 Sodha Singh was not properly served and summons was received back unserved. Thereafter, the case was posted on 06.01.2011, and on the said date, the Presiding Officer was on medical leave. Therefore, the case was posted on 16.01.2012. On the said day, the case was listed for 03.03.2012 as a last opportunity. On 03.03.2012, summons was not received back, therefore, it was ordered that order dated 06.12.2011 be complied with for 07.04.2012 as a last opportunity. The Civil Ahlmad was warned to be careful in future and to do the needful. On 07.04.2012, no evidence was adduced by the plaintiff as the summons issued to the witnesses were not received back.

19. Learned counsel for the plaintiff also filed an application for adjournment of the case, submitting that the son of the plaintiff is seriously ill and admitted in Fortis Hospital. On the said date, the application filed by the plaintiff was considered and allowed. It was ordered that fresh summons to the witnesses through dasti be issued for 05.05.2012. On 05.05.2012, though PW Rakesh Gupta and Sub Registrar, Patiala, were duly served but they were not present despite service. On the said date, the learned counsel for the plaintiff filed an application for amendment



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of the plaint. Time was granted to the learned counsel for the defendants to file reply to the said application. On 22.05.2012, learned counsel for the defendants No.6, 8 and 9 and defendants No.3 to 5 made a joint statement that they do not intend to file reply to the application under Order 1 Rule 10 of CPC read with Order 6 Rule 17 of CPC. Thereafter, the case was fixed for 29.05.2012 on application under Order 1 Rule 10 read with Order 6 Rule 17 of CPC. On 06.06.2012, the case was listed and the same was posted on 12.06.2012. On the said date, the application under Order 1 Rule 10 of CPC for impleadment of Mukesh Sood was allowed by learned trial Court. Thereafter, the case was listed for filing of amended written statement on 19.06.2012. On the said date, the case was adjourned for 20.06.2012. On 20.06.2012, learned trial Court amended issue No.2 and re-casted the same which was framed earlier. Thereafter, the case was posted for plaintiff's evidence being last opportunity on taking steps within two days for 13.07.2012. On 13.07.2012, it was ordered that no PWs are present nor summons received back. It was stated by learned counsel for the plaintiff that the plaintiff could not appear in the Court due to ill health. Thereafter, the case was listed for leading of plaintiff's evidence on self-responsibility for 04.08.2012. On the said date,



the case was adjourned for 18.08.2012. On the said date, learned counsel for the plaintiff filed an application under Order 18 Rule 3-A of CPC for grant of permission to the plaintiff to appear as a witness at later stage. The said application was allowed and the case was fixed for evidence of the plaintiff on 28.08.2012. On 28.08.2012, learned Presiding Officer was on medical leave and the case was adjourned for 30.08.2012. On the said date also, the learned Presiding Officer was on medical leave. On 31.08.2012, the case was adjourned for evidence of the plaintiff on 12.09.2012. On 12.09.2012 summons of PWs received back un-served, therefore, request was made by learned counsel for the plaintiff for adjournment and the same was allowed. Thereafter, the matter was posted on 06.10.2012 and learned trial Court by invoking the provisions of Order 17 Rule 3 CPC, ordered the evidence of the plaintiff to be closed. Learned trial Court proceeded to dismiss the suit as filed by the plaintiff on 15.10.2012 since the plaintiff failed to adduce any evidence in support of his contention.

20. The plaintiff filed a suit for declaration and injunction, but failed to prove the same by leading evidence in the matter. Learned trial Court was left with no other option, but to close the evidence of the plaintiff, who, despite availing more than 11



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opportunities failed to do so. Learned trial Court observed that since the plaintiff has failed to lead evidence on the issues as framed, the suit filed by him was ordered to be dismissed. Learned first appellate Court also took into consideration that various opportunities were granted to the plaintiff, but despite that fact, he failed to plead and prove his case by leading independent witnesses. Therefore, the findings of the learned trial Court were affirmed and the appeal filed by the plaintiff was ordered to be dismissed. This Court is in agreement with the findings returned by learned Courts below. A perusal of order sheets, which are part and parcel of the Court records, shows that sufficient and ample opportunities were granted to the plaintiff to lead evidence in support of his case, however, the plaintiff has failed to do so. Therefore, the only option available to the learned Courts below was to dismiss the suit. In the absence of any evidence, the plaintiff failed to prove his case. Therefore, the judgments and decrees as passed by learned Courts below do not suffer from any infirmity. Both the Courts below have taken into consideration the material facts, including the opportunities granted to the plaintiff to lead evidence, and have rightly come to the conclusion that the plaintiff failed to plead and prove his case.



21. This Court concur with the judgments and decrees as passed by learned Courts below. Since the plaintiff failed to adduce any evidence, therefore, the findings as returned by the learned Courts below do not suffer from any infirmity, illegality and the same are sustainable.

22. It is contended by the learned counsel for the plaintiff that the issues onus of which lie upon the defendants, could not have been decided by the learned Courts below. It is a basic principle of law that a person who alleges has to prove. The plaintiff has approached the Court seeking declaration and injunction. The primary onus to prove his case lies upon the plaintiff. Once, the issues which were framed by the learned trial Court, the onus of which was on the plaintiff, and the plaintiff failed to adduce evidence in support of his contention, therefore, non-decision of said issue will not make any difference and the said submission is not sustainable.

23. The learned Courts below have rightly determined the point in controversy concurrently and there is no infirmity in the impugned judgments and decrees passed by the learned Courts below.

24. No other point urged by the learned counsel for the parties.



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25. The substantial question of law is answered accordingly.

26. In view of above discussions, the present appeal being devoid of any merit is dismissed. Pending applications, if any, also stand disposed of.

(Romesh Verma)
Judge

May 18, 2026
(vt)