

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA No.3467 of 1985 (O&M)
Date of Decision: February 21, 2015**

Inderjit Kaur

..Appellant(s)

Versus

Hari Singh and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes

Present: Mr. Onkar Rai, Advocate
for the appellant.

Mr. P.K. Gupta, Advocate
for respondent no.1(iii).

ANITA CHAUDHRY, J.

1. This regular second appeal is by one of the defendant questioning the validity and correctness of the judgment and decree passed by the first appellate Court vide which the prayer made by the plaintiffs was allowed in entirety. Respondents filed a suit seeking declaration to the effect that they were the owners and in possession of 71 Kanals 1 Marla of land. A prayer for injunction was also made restraining the defendants from interfering in their possession except in due course of law. An alternative prayer was made

that if the plaintiffs were not found to be the owner of the entire land then they had a lien of Rs.52,000/-. The plaintiffs had pleaded that they were owners of half share of the land while the remaining half was owned by Hira Singh, their father who died in October 1979. The defendants were the daughters of Hira Singh. The plaintiffs set up a Will dated 18.10.1979 executed by their father. The plaintiffs approached the revenue authorities for sanction of mutation which was rejected and the property was mutated in favour of all the legal heirs. The plaintiffs had pleaded that Hira Singh owed Rs.52,000/- to the creditors regarding which a suit for recovery had been filed which had been decreed and the land owned by Hira Singh was put up for auction on 01.12.1980 and Ajit Singh son of Amar Singh had purchased the property. Plaintiff no.1 filed an application under Order 21 Rule 89 CPC and deposited the amount and got the sale set aside. The plaintiff no.1 had borrowed the amount from Gurcharanjit Kaur which was repaid to her. It was pleaded that if the Will was not proved then plaintiff no.1 had a lien of Rs.52,000/- on the estate left behind by Hira Singh. The defendants took the plea that the Will was fictitious. The plea of lien set up by the plaintiffs was denied.

2. On the pleadings of the parties, following issues were framed:-

1. Whether deceased Hira Singh executed a valid will in favour of the plaintiffs, on 10.10.1979 ? OPP

2. Whether plaintiff Hira Singh has got a lien to the extent of Rs.52,000/- on the suit land, as alleged? If so, its effect? OPP
3. Whether the suit in the present form is not maintainable? OPD
4. Whether the plaintiffs are estopped to sue by their act and conduct, as alleged? OPD
5. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD
6. Whether the suit is bad for multifariousness, as alleged? OPD
7. Relief.

3. The first Court recorded a finding against the plaintiffs on issue no.1. Issue no.2 was answered in favour of the plaintiffs. The plaintiffs were held to be the owner of half share owned by Hira Singh, clarifying that since the plaintiffs already owned half share, they became owner of 3/4th share of the land. The plea of lien was upheld.

4. Aggrieved by the dismissal of the main relief an appeal was preferred and the finding recorded on issue no.1 was reversed. It was held that there were no suspicious circumstances and the witnesses to the Will were related to both the parties in the same degree and the attesting witness to the Will had no enmity with the defendants and mere non registration of the Will was not sufficient to throw the Will out. The argument that the Will was not scribed by a regular scribe was also rejected. The lower appellate Court had noted that Hari Singh plaintiff in order to save the land from going into the hands of another person had filed objections and the sale in favour of Ajit was set aside and he had deposited the

amount and none of the defendants came forward to assist the plaintiffs financially, meaning thereby that the legal heirs accepted that there was a Will. It was observed that the testator had referred to his daughters and had given reasons for excluding them and there was no reason to ignore the Will.

4. The learned counsel for the appellant had raised three fold submissions before me. Firstly that the execution of the Will had not been proved and the testator had died within a day or two of execution of the Will and it was doubtful whether he was in the correct state of mind and therefore, the finding recorded by the lower appellate Court was illegal and perverse. The second submission was that the Will was surrounded by suspicious circumstances and the Courts below had not properly considered and appreciated the suspicious circumstances while considering the aspects of the validity of the Will and it had wrongly reversed the finding recorded by the first Court. It was submitted that the plaintiffs had approached the revenue authorities for getting the property mutated in their favour on the basis of the Will which was rejected. It was urged that the Will did not see the light of the day up to 10.05.1981 and no plausible explanation was given and the first Court had noted that no respectable of the village had attested the Will and the attesting witness was a chance witness and all these facts had been ignored by the appellate Court. It was lastly submitted that the thumb impressions on

the Will were super-imposed and the plaintiffs had made up a story that they had taken a loan to discharge the liability on the suit property. Reliance was placed upon ***H.Venkatachala Lyengar Vs. B.N. Thimmajamma & Ors., AIR 1959 SCC 443(1), Rani Purnima Debi and another Vs. Kumar Khagendra Narayan Deb and another, AIR 1962 SCC 567, Bharpur Singh and others Vs. Shamsheer Singh, AIR 2009 SCC 1766, Jagir Singh Vs. Ranjit Kaur 2000(2) RCR (Civil) 224, Jarant Singh and others Vs. Sukhjinder Singh and others 2008(1) RCR (Civil) 434, Sant Ram Vs. Brij Mohan Kaur and another 2006(2) RCR (Civil) 769 and Kartar Singh Vs. Tasvir Singh 2010(2) RCR (Civil) 439.***

5. Opposing the arguments, the learned counsel for respondent no.1(iii) had urged that there was no requirement of law that the Will should be registered and the defendant had not stepped into the witness box and she had produced her husband instead as she was not able to face the test of cross-examination. It was urged that there was no suspicious circumstances and the witnesses to the Will were related to both the sides in the same degree. It was urged that the finding recorded by the first Court that the thumb impressions were super-imposed was perverse as no Handwriting Expert had been examined. It was contended that merely depriving the daughters was not sufficient to hold that the Will was suspicious. It was contended that the scribe of the Will as well as attesting witness had appeared in the witness box and the

execution of the Will had been proved. Reliance was placed upon ***Krishna Kumar Birla Vs. Rajendera Singh Lodha & Ors. 2008(3) ACJ 578 (SC), Janki Narayan Bhoir Vs. Narayan Namdeo Kadam 2003(1) ACJ 186, Krishna Devi and Ors. Vs. Amarjit & Ors. 2004(2) CCC 593 and Sadasivam Vs. K. Doraisamy 1996(1) ACJ 1.***

6. On going through the record and the evidence, I find that there is no substance in the submissions made on behalf of the appellant. The plaintiffs had set up a Will and had proved its execution. They had examined Makhan Singh, Retired Superintendent Jail who was the attesting witness. He had deposed that the Will was scribed by Pishori Lal and Hira Singh was in a sound disposing mind at the time of the execution of the Will. He had explained the reason for his visit to the village on that day. He deposed that he was asked by the testator to accompany him to Nawashahar to execute the Will. Hira Singh in his last testament had referred to his two daughters and had mentioned that they were married and were settled and he was depriving them. The defendant failed to step into the witness box nor examined any witness to show that the thumb impressions were super-imposed.

7. Divesting a close relation by itself is not a suspicious circumstance. Merely because the Will was not registered is again no circumstance to hold that the Will was surrounded with suspicious circumstances. It has been seen that in the villages the parents prefer the sons to the daughters.

8. The Court is concerned only about the genuineness of the Will and if a Will is found to be valid then no further question would arise as to why the testator had executed a Will depriving the daughters.

9. No evidence was led by the defendant to show that the condition of the testator's mind was feeble or dilapidated. The fact that the Will was produced before the revenue authorities after about one and a half year again is not such a long period to suspect it. One of the daughters had chosen not to contest the suit while the other daughter who was contesting the suit did not come forward to make a statement. Merely because the mutation was rejected, was not a ground to hold that the Will in question was suspicious.

10. A submission was also made that the date of death of the testator has not been mentioned. The defendants were the real daughters. They would have known the exact date of death and could have provided the same but they choose not to come forward and instead produced the husband of one of the defendants. I do not find any illegality and irregularity in the findings recorded by the Courts below. The Will was not surrounded by any suspicious circumstances. I find no merit in the appeal and the same is dismissed.

(ANITA CHAUDHRY)
JUDGE

February 21, 2015
sunil