

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Regular Second Appeal No.3621 of 1987
Date of Decision: 19.8.2015

Jarnail Singh and another

..Appellants

versus

Gurbachan Singh (since deceased represented by his LRs) and
others

..Respondents

and

Regular Second Appeal No.1412 of 1988
Date of Decision: 19.8.2015

Basheshar Singh and others

..Appellants

versus

Jarnail Singh and others

..Respondents

CORAM: HON'BLE MR JUSTICE RAJIVE BHALLA

Present: Mr. Aashish Aggarwal, Senior Advocate
with Mr. Kulwant Singh, Advocate and
Mr. K.G.Chaudhary, Advocate, for the appellants.
(in RSA No.3621 of 1987).

Mr. Vikas Singh, Advocate
for the appellants (in RSA No.1412 of 1988)

Mr. Vishal Aggarwal, Advocate,
for the respondents.

Mr. Udhamjit Singh, Advocate.

RAJIVE BHALLA, J. (ORAL)

The dispute in these appeals relates to inheritance to the
estate of one Arjan Singh. The appellants, in both appeals, claim
succession to the estate of Arjan Singh, on the basis of separate
unregistered wills, namely, will dated 25.12.1981, Ex.D1, (RSA
No.3621 of 1987), and Ex.DW9/A, will, dated 6.9.1981, (RSA

No.1412 of 1988). The original plaintiff (since deceased), however, claims ownership by natural succession.

Gurbachan Singh, son of Udham Singh (since deceased) real brother of Arjan Singh, filed a suit for declaration, claiming that as his brother Arjan Singh, has died issueless and his wife had pre-deceased him, the land in dispute has devolved to him by natural succession. The appellants, in RSA No.3621 of 1987, Jarnail Singh and Karnail Singh, minor sons of Gurnam Singh (defendant nos. 1 and 2), filed a written statement propounding a will, Ex.D1, dated 25.12.1981, bequeathing the property in dispute to them. The appellants 1 to 7 in RSA No.1412 of 1988 (defendant nos. 3 to 9 in the suit) Basheshar Singh, Mewa Singh, Jasbir Singh, Gian Singh sons of Shri Nihal Singh, Rajbir Singh, Sukhbir Singh and Ranbir Singh sons of Shri Jagir Singh, filed a written statement propounding will, dated 6.9.1981, Ex.DW9/A.

Gurbachan Singh filed a replication controverting averments in both sets of written statements. On the pleadings of parties, the trial Court framed the following issues:-

- “1. Whether Arjan Singh executed his last will dated 25.12.1981 in favour of the defendants number 1 and 2 as alleged in para number 4 of the written statement?OPD 1 and 2
2. Whether the defendants no.10 and 11 are tenants under the defendants number 1 and 2?OPD
3. Whether Pooran Singh defendant has surrendered the tenancy rights in favour of the defendants number 1

and 2, if so its effect?OPD

4. Whether the plaintiff is in possession of the house in question?OPP

5. Whether the plaintiff consented for mutation in favour of the defendants number 1 and 2 on the basis of the will, if so its effect?OPP

6. Whether Arjan Singh deceased executed his will dated 6-9.1981 in favour of the defendants number 3 to 9?OPD

7. Relief.

After parties led their respective evidence, the trial court accepted, will dated 25.12.1981, Ex.D1, rejected will Ex.DW9/A, dated 6.9.1981 and consequently, dismissed the suit by holding that succession would open on the basis of will Ex.D1, dated 25.12.1981.

Aggrieved by this judgment and decree, Gurbachan Singh as well as the appellants in RSA No.1412 of 1988, filed separate appeals. The Additional District Judge, Patiala, accepted the appeal filed by Gurbachan Singh, dismissed the appeal filed by appellants, in RSA No.1412 of 1988, thus, rejecting both wills and holding that succession to the estate of Arjan Singh would open by natural succession, in favour of Gurbachan Singh.

Both sets of defendants who propounded separate wills, are in appeal.

Before referring to the arguments, it would be appropriate to point out that during pendency of this appeal, Gurbachan Singh

passed away on 23.11.1991. Gurbachan Singh was unmarried and issueless. Jagir Singh son of Mihan Singh, father of Rajbir Singh, Sukhbir Singh and Ranbir Singh (appellants in RSA No.1412 of 1988) filed CM No.129-C of 1992 for being impleaded as the legal representative of Gurbachan Singh on the basis of a registered will dated 25.9.1984. The application was allowed on 6.5.1992.

Charanjit Singh, Nachhattar Kaur, Jarnail Kaur, Karamjit Kaur, Beant Kaur and Satwant Kaur also filed Civil Misc. Application No.1321-C of 1992 for being impleaded as legal representatives of Gurbachan Singh, deceased by pleading that Gurbachan Singh passed away on 23.11.1981, leaving behind the applicants, Jarnail Singh and Karnail Singh sons of Gurnam Singh (appellants no.1 and 2 in RSA 3621 of 1987) and the others as his legal heirs. The application was allowed on 3.4.1992. Thus, two sets of applicants have been impleaded as legal heirs of Gurbachan Singh.

Civil Misc. Application No.2273-C of 1997 filed for impleading the legal representatives of Jagir Singh son of Mehar Singh, namely, Rajbir Singh, Sukhbir Singh and Ranbir Singh sons of Jagir Singh and Rajinder Kaur d/o Jagir Singh, was allowed on 09.7.1997.

The inter-se dispute between the alleged heirs of Gurbachan Singh can not be decided in these appeals and is, therefore, left open to be decided in appropriate proceedings.

The controversy, in the present appeals, as already noticed, is whether succession to the estate of Arjan Singh, would open on the basis of Ex.D1 will, dated 25.12.1981, Ex.DW9/A will,

dated 6.9.1981, or by natural succession.

Counsel for the appellants, in RSA No.3621 of 1987, submits that the trial court affirmed the execution and proof of the will, Ex.D1 dated 25.12.1981. The first appellate court has, however, reversed these findings on mere conjectures and surmises. Counsel for the appellants submits that in the absence of any medical evidence or any evidence adduced by the contesting respondents that Arjan Singh was not of sound disposing mind, the mere fact that DW4 Karam Singh, one of the attesting witnesses, may have inadvertently admitted that Arjan Singh was running temperature, does not raise an inference that he was unconscious or not fully conscious. The first appellate court has, by a selective reference to a part of his deposition, recorded an erroneous finding that Arjan Singh was not of sound disposing mind. The finding that Gurnam Singh was an active participant in the execution of a will, disregards the fact that Arjan Singh's wife had just passed away and he had no other relative who could look after him. Arjan Singh was, therefore, residing with the appellants. The mere fact that attesting witness has admitted the presence of Gurnam Singh or that Gurnam Singh paid some money, to the scribe has been wrongly construed as active participation by Gurnam Singh, in the execution of the will. The presence or even participation of a beneficiary is not sufficient by itself to infer undue influence. The participation of a beneficiary should be such as would raise an inference that the beneficiary prevailed upon the free will of the testator. The fact that Arjan Singh died 4 to 5 days after the execution of the will, is also irrelevant. The

sequence of the testator and the attesting witnesses, affixing their thumb impressions criticised by the first appellate court, is contrary to the record. Counsel for the appellants further submits that Gurbachan Singh, appeared before a revenue officer, accepted the correctness of the will and even filed an affidavit, Ex.A1, in support of his statement. Gurbachan Singh is estopped from filling the suit but the first appellate court has disregarded the statement and the affidavits. Counsel for the appellants relies upon Naranjan Singh versus Mst. DPOI and others, 1976 PLJ 523, Smt. Malkani versus Jamadar and others, 1987 AIR (SC) 767, Gulzara Singh versus Balram Kumar and Ors, 2010 (5) R.C.R. (Civil) 832, Mukand Singh versus Maghar Singh, 1994 PLJ 468, Surendra Pal and others vs. Dr.(Mrs.) Saraswati Arora and another, 1974 AIR (SC) 1999 and Ishwardeo Narain Singh versus Kamta Devi and others, 1954 AIR (SC) 280. Counsel for the appellants submits that will Ex.DW9/A has been rightly rejected by both courts below.

Counsel for the appellants (in RSA No.3621 of 1987) submits that the following substantial questions arise for adjudication:-

- 1.“ Whether the will dated 25.12.1981 (Ex.D-1) executed by Arjan Singh (testator) in favour of defendant nos. 1 and 2 has been duly proved in view of the statement of attesting witnesses of the above will?
2. Whether the execution of the will and its proper attestation has been duly proved on the record as per the provisions of sections 63 and 68 of the Evidence Act?

3. Whether it has been fully proved on the record that at the time of execution of will the testator was residing with the appellants and he was being looked after and served by the parents of the appellants?
4. Whether it has been wrongly presumed by the learned Appellate Court that the present appellants are not related to the testator?
5. Whether the mutation (Ex.D-2) and affidavit (Ex.A-1) have been misread and misinterpreted by the learned appellate Court?
6. Whether grave and manifest injustice has been caused to the appellant in the matter.
7. Whether the impugned judgment and decree of the appellate court is patently illegal, ultra vires, void and without jurisdiction and is liable to be set aside?

Counsel for the respondents, i.e., the appellants in RSA No.1412 of 1988, submit that the first appellate court has rightly rejected will, Ex.D1, dated 25.12.1981, as it is surrounded by suspicious circumstances but has erred in rejecting will dated 6.9.1981 Ex.DW9/A. The will has been duly proved by examining DW8, Jagjit Singh, the scribe and DW9 Waryam Singh, an attesting witness but has been rejected for reasons that are neither germane to nor relevant for the execution or proof of a will. The mere fact that the respondents, who are appellants in RSA No.1412 of 1988, are not related to Arjan Singh, cannot be a ground to reject the will as it is specifically recorded that he has already gifted a part of the land to

other persons. The fact that the will was not scribed by a regular scribe or that it is not registered, is irrelevant as there is no statutory provision that mandates that a will has to be executed by a trained scribe or that a will must be registered. The respondents (appellants in RSA No.1412 of 1988) having proved the execution of the will, in accordance with Section 68 of the evidence Act. The trial court as well as the first appellate court were, therefore, bound to accept will dated 6.9.1981, Ex.DW9/A.

Counsel for the appellants in RSA No.1412 of 1988 states that the following substantial questions of law arise for an answer.

- “1. Whether the will dated 25.12.1981 (Ex.D-1) executed by Arjan Singh (testator) in favour of defendant nos. 1 and 2 has been duly proved in view of the statement of attesting witnesses of the above will?
2. Whether the execution of the will and its proper attestation has been duly proved on the record as per the provisions of Sections 63 and 68 of the Evidence Act?
3. Whether grave and manifest injustice has been caused to the appellant in the matter.
4. Whether the impugned judgment and decree of the appellate court is patently illegal, ultra vires , void and without jurisdiction and is liable to be set aside?”

I have heard counsel for the parties, appraised the pleadings, the record, the impugned judgments as well as the substantial questions of law. The questions of law in both appeals

are primarily, whether the wills propounded by the respective appellants, have not been wrongly rejected. The appellants, in RSA No.3621 of 1987, raise another question, namely, the effect of mutation, Ex.D2 and affidavit Ex.A1, sworn by Gurbachan Singh on the rights of parties.

A will, reduced into writing, is required to be executed in the manner prescribed by Section 63 of the Indian Succession Act and proved, in accordance with the mode set out in Section 68 of the Evidence Act. The proof of the execution of a will, however, does not absolve the propounder of his obligation to dispel suspicious circumstances.

At the outset, will, Ex.DW9/A (RSA No.1412 of 1988) shall be considered. The questions framed by counsel for the appellants relate to execution and proof of the will. The trial Court has, while rejecting will, Ex.DW9/A, dated 6.9.1981 (RSA No.1412 of 1988), recorded a finding of fact that the will, is the handiwork of a person who was well conversant with legal terminology but the scribe of the will, DW8 Jagjit Singh and Arjan Singh were laymen with Arjan Singh being illiterate and both being unacquainted with legal terminology. This apart, it was also held that the attesting witnesses were not residents of the village, where Arjan Singh resided, no respectable from the village was asked to witness the will, the will was kept as a secret as it was not produced before revenue authorities during mutation proceedings, the propounders of the will are not related to Arjan Singh and they have not proved that they served Arjan Singh during his life time. The first appellate court has

affirmed these findings. The cumulative effect of the circumstances pointed out by both the trial and the first appellate court are sufficient to raise a serious doubt as to the execution of this will by Arjan Singh. The concurrent findings of fact recorded by the courts below that will, Ex.DW9/A, dated 6.9.1981, do not suffer from any error, whether in appreciating the evidence or the pleadings much less, do they give rise to any substantial questions of law. The questions framed by the appellants being mere questions of fact are answered against the appellants.

As regards will, Ex.D1, dated 25.12.1981, subject matter of RSA No.3621 of 1987, the trial court has held that execution of the will has been proved and that propounders of the will have been able to dispel suspicious circumstances. The trial court, however, failed to note certain significant suspicious circumstances which were eventually pointed out by the first appellate court, namely, admission made by DW4 Karam Singh, an attesting witness, during his cross-examination that Arjan Singh was not fully conscious. The exact words used by this witness are "POORE POORE HOSH NAHI SAN, MADA MADA HOSH SI", i.e., was not in his complete senses. The attesting witnesses have admitted that Gurnam Singh, whose children are beneficiaries of this will, was present during the execution of the will and paid money to the scribe etc., thereby raising an inference of active participation and raising a credible doubt about prevailing upon the will of the testator. The first appellate court has also recorded that a recital in his will that the will is being executed as beneficiaries were looking after the testator, is

factually incorrect as Arjan Singh had only started living with the beneficiaries three to four months before his death after his wife passed away.

A due consideration of the factors, noticed by the first appellate court, namely, an admission by one of the attesting witnesses that the testator was not fully conscious, the fact that father of the beneficiary played an active role in execution of the will, the fact that the appellants could not be serving the testator as he had only started living with them 3-4 months before the will, does tend to raise a credible doubt as to the execution of the will by the testator. The findings recorded by the first appellate court are, in no manner, perverse or arbitrary or have been recorded without considering the pleadings or the evidence on record, so as to give rise to the substantial questions of law framed by counsel for the appellants in relation to the will.

An argument that mutation, Ex.D2 and affidavit, Ex.A1 sworn by Gurbachan Singh admitting the will, operate as estoppel, have not been considered by the first appellate court, must also fail. A mutation neither confers nor divests a party of title as it is a mere fiscal entry recorded to update revenue record. The affidavit, Ex.A1, allegedly, sworn by Gurbachan Singh admitting the will, does not enure to the benefit of the appellants as it was for the appellants to dispel suspicious circumstances. The failure of the appellants to dispel suspicious circumstances, pointed out by the first appellate court, does not entitle them to any benefit on account of affidavit, Ex.A1. The questions relating to the mutation and the affidavit are

also answered against the appellants.

As noticed in a preceding paragraph of the judgment, the plaintiff Gurbachan Singh has passed away. The appellants, in RSA No.3621 of 1987 along with their sisters, have been impleaded in place of Gurbachan Singh deceased plaintiff. Jagir Singh father of Rajbir Singh, Sukhbir Singh, Ranbir Singh and Rajinder Kaur have also been impleaded in place of Gurbachan Singh on the basis of a will. The question as to which of this so called "heirs", would inherit the estate of Gurbachan Singh, is left open for parties to agitate in appropriate proceedings.

Consequently, finding no merit or error of jurisdiction or of law in the impugned judgments and decrees that may give rise to any substantial questions of law, much less the substantial questions of law framed by counsel for the parties, the appeals are dismissed, with no order as to costs.

19.8.2015
VK

(RAJIVE BHALLA)
JUDGE