

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

RSA No.2867 of 1997

Date of decision:1.7.2015

Gind Kaur and another

....Appellants

VERSUS

Sarwan Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

Present: Mr. Jai Bhagwan, Advocate for the appellants.

Mr. Kashmira Singh, Advocate for the respondent.

HEMANT GUPTA, J.

The defendants are in second appeal aggrieved against the judgment and decree passed by the Courts below whereby the suit for possession filed by the Plaintiff stands decreed.

Though, the appellants have not framed any substantial question of law but the Presiding Officer of Permanent Lok Adalat framed the following substantial question of law:-

“Whether the Will propounded by the defendants has been duly executed and free from suspicious circumstances?”

The said question of law arises out of a fact that one Norata Singh was owner of land measuring 34 bighas 9 biswas situated in the revenue estate of village Sidhuwal, Tehsil and District Patiala. Norata Singh has three sons namely Sarwan Singh, Sher Singh and Ishar Singh. Ishar Singh died issueless. Sarwan Singh is

the plaintiff whereas wife of deceased-Ishar Singh is defendant No.1 and son of defendant No.1 is defendant No.2.

The plaintiff filed a suit for possession claiming 1/3rd share of land of Ishar Singh (deceased) on the basis of natural succession on the ground that Ishar Singh died on 05.01.1987 unmarried and issueless, therefore, the plaintiff is the sole surviving heir of Class II category, therefore, he is entitled to 1/3rd share of suit land.

The defendants admitted the relationship of the plaintiff with Ishar Singh (deceased) and also the fact that he died on 05.01.1987 and he was unmarried and issueless. However, the defendants relied upon registered Will executed in favour of defendant-Gind Kaur on 18.12.1986 in a sound and disposing state of mind whereby the deceased is said to have bequeathed his moveable and immoveable property in favour of defendant-Gind Kaur. The stand of the defendants is that Ishar Singh (deceased) used to live with defendant and also used to treat defendant No.1 as his daughter. The last rites of Ishar Singh were also performed by the defendants.

Learned trial Court framed the following issues:-

1. Whether the plaintiff is the sole surviving heir of deceased Ishar Singh? OPP
2. Whether the suit land is ancestral property and had developed upon Ishar Singh from his father Norata Singh? OPP

3. Whether the deceased Ishar Singh executed a registered Will dated 18.12.1986 in favour of defendant No.1 in sound and disposing mind? OPD
4. Whether the plaintiff is entitled to possession of 1/3rd of deceased Ishar Singh? OPP
5. Relief.

The plaintiff appeared as his own witness as PW-1 and also examined Ajmer Singh as PW-2, an attesting witness of the Will executed by the deceased-Ishar Singh on 15.12.1986 (Ex.P1). The plaintiff also examined Harbans Singh, Registration Clerk, office of Sub Registrar Patiala as PW-3; Dalip Singh as PW-4 and Dewan K.S. Puri, Document Expert, as PW-5.

On the other hand, the defendants examined Jagdish Chander, Pharmacist as DW-1 who has proved the Bed Head record of deceased of his admission in the hospital from 22.12.1986 to 05.01.1987 and also examined scribe of the Will dated 18.12.1986 Mahesh Inder Sharma as DW-5, one of the attesting witness of the Will, Mohinder Singh as DW-6. The defendant herself appeared as DW-2 and also examined Harish Kumar and Bachan Singh as DW-3 and DW-4, respectively. Both the Courts have returned a concurrent finding of fact that the Will dated 18.12.1986 though proved to be executed but is surrounded by suspicious circumstances. Thus the suit for possession stands decreed.

The suspicious circumstances taken into consideration by the Courts below are that Ishar Singh (deceased) is said to have

executed Will dated 15.12.1986 (Ex.P1) in favour of her grandson i.e. Amrik Singh-defendant No.2. Ajmer Singh PW-2 is one of the attesting witnesses of the Will. However, when the Will was presented for registration, the Sub-Registrar refused to register the Will for the reason that the testator was unable to identify the attesting witnesses. The factum of execution of the Will, its non-registration by the Sub Registrar stands deposed by PW-2 Ajmer Singh. Just three days later, the Will in question has been registered but this time in favour of mother of Amrik Singh-defendant No.2. The deceased was admitted in hospital on 22.12.1986 i.e just four days later where he breathed his last on 05.01.1987. The question is as to whether the deceased was in sound and disposing state of mind on 18.12.1986 when the Will Ex.DW5/B is said to have been executed.

I find that if three days earlier on 15.12.1986, the deceased was unable to identify the attesting witnesses who were of the same village where the deceased was residing shows that the deceased was not in sound and disposing state of mind. The witnesses who are of the same village possibly would be recognized had the testator be in sound and disposing state of mind but from the testimony of PW-2 Ajmer Singh and of PW-3 Harbans Singh, Registration Clerk, it leaves no manner of doubt that on 15.12.1986, the Will (Ex.P1) said to be executed by Ishar Singh-deceased was not registered for the reason that he was unable to identify the attesting witnesses as the witnesses of his Will. The Will in question is dated 18.12.1986, in fact, that is the date on which the Will (Ex.P1) was returned by the Sub Registrar. The said Will (Ex.DW5/B) is not

attested by the residents of the same village as that of testator but of different village i.e. village Tohda, Tehsil Nabha. Such Will was registered. It could not be explained that how a person who is not able to identify the residents of his village as the attesting witness would execute a Will in the presence of total strangers. Thus, mere fact that the scribe has proved the thumb impression of the testator and one of the attesting witnesses has proved that the deceased has signed in his presence does not dispel the suspicious circumstances surrounding the Will. Another fact which cannot be brushed aside is that the testator was admitted in hospital on 22.12.1986. The Bed Head record (Ex.D1) shows that the deceased was a patient of diabetes and had cardiac problems. He died on 05.01.1987. Though, there is some evidence that the deceased was unconscious and was in coma when he was admitted in hospital but the hospital record does not show that he was in coma. The fact remains that three days before the execution of the Will, he was not in a position to identify that who are the witnesses of the execution of the Will and four days later of the date of execution of the Will, he was admitted in hospital. The precarious health condition of the deceased is further supported by the fact that the deceased breathed his last on 05.01.1987 in hospital. Therefore, both the Courts have rightly found that the Will (Ex.DW5/B) is surrounded by suspicious circumstances.

Still further, the deceased has not given any reason to exclude his brother Sarwan Singh while bequeathing property in favour of Gind Kaur, daughter of his another brother. Though, the plaintiff is the Class II heir but mere fact that he is not a Class I heir

does not mean that the testator was not required to record any reason of excluding him in preference to his niece. The choice was between brother and niece. There is no apparent reason to choose niece over his brother except a generic statement that she looked after him and that she used to stay with him.

We find that both the Courts below have examined the entire evidence in minute detail. It cannot be pointed out that any evidence has been misread or not taken into consideration. Therefore, the finding that the Will is surrounded by suspicious circumstances is a finding of fact. Such finding does not give rise to any question of law. The inferences drawn by the Courts below on the basis of evidence led by the parties are the possible inferences.

I do not find that such inferences drawn on the basis of evidence led raised any substantial question of law which may warrant interference in the present second appeal.

However, the argument of the defendant that the parties are both Class II heirs, therefore, both succeed to the property in equal shares is not tenable. The plaintiff is brother of the deceased and therefore, he is a preferential heir to the estate of the deceased falling in Entry 2 of Class II of the Schedule of the Hindu Succession Act, 1956 whereas brother's daughter, the defendant is in Entry 4 of Class II of heirs. In terms of Section 9 of the Hindu Succession Act, 1956, the heirs in the Entry 1 in Class II are to be preferred to those in the second Entry and so on. Therefore, the brother who is in Entry 2 as

against brother's daughter who is in Entry 4 is a preferential Class II heir of estate of Ishar Singh (deceased).

In view thereof, I do not find any merit in the present Regular Second Appeal.

Dismissed.

(HEMANT GUPTA)
JUDGE

JULY 1, 2015
'D. Gulati'