

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1057 of 2011 (O&M)

Date of Decision: January 28, 2015

Gurnam Singh & others

...Appellants

Versus

Angrej Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Ms.Deepali Puri, Advocate,
for the appellants.

Mr.Bikramjit Arora, Advocate,
for the respondents.

AMIT RAWAL, J.

This is a Regular Second Appeal at the instance of the defendants against the judgment and decree of the Lower Appellate Court, whereby the appeal of the plaintiffs has been accepted and the suit had been decreed.

It would be apt to mention brief facts.

Angrej Singh and others-plaintiffs filed a suit for declaration that they are owners in possession of land measuring 37 kanals 12 marlas, i.e., 2/5th share out of land measuring 69 kanals 9 marlas, i.e., the share of Ajit Singh @ Jit Singh son of Mangal Singh as described in the head-note of the plaint and as well as for declaration that plaintiff Nos.2 to 4 are the exclusive owners in possession of the house and defendants and plaintiff

No.1 have nothing to do with the tubewell account No.N-564, now account No.N-75, which was in the name of Balwinder Kaur, who is exclusive owner in possession of Kotha/Tubewell and Will dated 21.10.1999 executed by Ajit Singh @ Jit Singh was false, fictitious document and had no bearing on the rights of the plaintiffs. Ajit Singh @ Jit Singh had five sons, namely, Gurnam Singh (defendant No.1), Baldev Singh (defendant No.2), Angrej Singh (plaintiff No.1), Sukhdev Singh (defendant No.3) and Niranjana Singh (since deceased) represented through L.Rs, namely, Smt.Balwinder Kaur, Lovepreet Kaur and Arshdeep Singh-plaintiff Nos.2 to 4. Ajit Singh @ Jit Singh alleged to have executed a Will dated 20.10.1999, registered on 21.10.1999 in respect of 14 kanals of land out of total land measuring 69 kanals 9 marlas and the said 14 kanals was bequeathed in favour of Harjinder Singh, Kuldip Singh sons of Baldev Singh and Hira Singh son of Sukhdev Singh in equal shares and rest of the property as per Will was ordered to be bequeathed in favour of all the five sons in equal shares. The plaintiffs claimed declaration of the suit land and as well as electric tubewell connection on the ground that Ajit Singh @ Jit Singh had never executed a Will in favour of the defendants and on 5.10.1999, Gurnam Singh, Baldev Singh, Angrej Singh and Sukhdev Singh had moved an application to the Sub Registrar to the effect that Ajit Singh @ Jit Singh was not of sound and disposing mind. It was further averred that plaintiff Nos.2 to 4 were in possession of the house as detailed in the head-note of the plaint.

The said suit was contested by the defendants on the premise that the Will was executed out of free will and there was no coercion and

pressure and neither it was surrounded by any suspicious circumstances.

In essence, the claim of the plaintiffs was that they claimed the property on the basis of natural succession. In order to prove the Will, Gurmej Singh Numberdar, witness to the Will, was examined as DW-1, though he belonged to different Patti of the village. The said witness stated that he was alone when he went to execute the Will and the Will was presented before the Sub Registrar on the same day when it was executed. The Will was proved through the testimony of the attesting witnesses, namely, Gurmej Singh and Virsa Singh, who unequivocally stated in their affidavits that they had seen the original Will, which was executed by Ajit Singh @ Jit Singh son of Mangal Singh, resident of Manochahal, whereby land measuring 14 kanals was bequeathed in favour of the grand-children and the rest of the land was bequeathed in favour of all five sons/their legal representatives in equal shares. The aforesaid witness complied with the provisions of Section 63-C of the Indian Succession Act (for short “the Act”) by stating that Ajit Singh @ Jit Singh had signed the Will (Ex.D1) in his presence and the Will for the purpose of registration was produced before the Sub Registrar, who had read the contents of the Will to Ajit Singh and Ajit Singh, after finding the contents of the Will to be correct, appended his thumb-impression. However, in the cross-examination, no dent, much less, any contradiction had surfaced and the said witness remained consistent to the stand taken in his affidavit submitted in the shape of examination-in-chief.

Virsa Singh, another attesting witness, also stated on the same lines to what other witness had stated and he further confirmed that Ajit

Singh @ Jit Singh had appended his thumb-impression in his presence.

The trial Court, on the basis of the aforementioned evidence, dismissed the suit of the plaintiffs. However, the Lower Appellate Court, by holding that the Will was surrounded by suspicious circumstances, allowed the appeal and decreed the suit of the respondent-plaintiffs.

It is against the judgment of the Lower Appellate Court, the present Regular Second Appeal has been filed.

Ms.Deepali Puri, learned counsel appearing on behalf of the appellants, *inter-alia*, contended that the Lower Appellate Court has committed an illegality and perversity in not referring to the provisions of Section 63 (c) of the Act as said Will had been held to be genuine document by the trial Court. She further stated that none of the legal heirs of Ajit Singh @ Jit Singh have been ignored and except that out of 69 kanals 9 marlas, only land measuring 14 kanals has been bequeathed to the grandchildren and rest of the land has been bequeathed in favour of all the five sons and, therefore, it cannot be said to be a suspicious circumstance in discarding the Will. Since there was no deprivation of natural heir in the Will, the Will cannot be said to be suspicious and this fact was not noticed by the Lower Appellate Court and, therefore, urged that the following substantial questions of law arise for determination in the present appeal by this Court:-

- “(i) Whether the question of suspicious circumstances not substantiated by evidence on record is a substantial question of law in view of 1997(2) IRCR Civil 89 (SC)?
- (ii) Whether the present suit for permanent injunction is

maintainable in the present form without the plaintiff-respondent being in possession?

(iii) Whether the rule of law 1971 (SC) 2236, 2004 (3) CCC page 80 and 2005(1) CCC 487 are fully applicable in the instant case and finding to the contrary by the appellate court is not legally sustainable?

(iv) Whether the judgment of the appellate court while reversing that of the trial court is perverse, based on inadmissible documents and on conjectures?

(v) Whether the photostat copies of application and compromise are admissible in evidence specially when no permission was obtained for proving by way of secondary evidence?

Mr.Bikramjit Arora, learned counsel appearing for the respondents, in support of his submission, stated that the judgment of the Lower Appellate Court is based on the appreciation of the facts and evidence and no fault can be found with the same. The Lower Appellate Court has rightly culled out the suspicious circumstance in order to disbelieve the Will and, therefore, decreed the suit of the plaintiffs and all the legal heirs have succeeded to the estate of Ajit Singh by way of natural succession. He has further argued that an application, Ex.P1 (though not proved) dated 5.10.1999 was submitted to the revenue authorities, whereby it was stated that Ajit Singh was not of sound and disposing mind. He further stated that there is a contradiction in the statements of the witnesses, which, *ex-facie*, leads to a conclusion that Will was surrounded by

suspicious circumstances. It was further stated that the witnesses have not been consistent in the cross-examination and actually the beneficiaries of the Will participated in the execution of Will and, therefore, the Will has rightly been held to be surrounded by suspicious circumstances.

Ms. Deepali Puri, learned counsel appearing for the appellants, in rebuttal, submitted that Angrej Singh in his cross-examination admitted that he did not submit any application to any authority to the effect that Ajit Singh @ Jit Singh was suffering from any disease, much less, was not of sound and disposing mind. She further submitted that the plaintiffs did not summon the witness from the concerned office to prove the submission of the application dated 5.10.1999.

I have heard the learned counsel for the parties and appraised the judgments and decrees of the Courts below and as well as the record of the trial Court with their able assistance and of the view that the judgment of the Lower Appellate Court suffers from illegality and perversity and, therefore, the same is liable to be set-aside.

The Lower Appellate Court, while allowing the appeal and decreeing the suit of the respondent-plaintiffs, did not refer to the provisions of Section 63-C of the Indian Succession Act. For the sake of brevity, the provisions of Section 63-C are extracted herein below:-

“63. Execution of unprivileged Wills.-Every testator, not being a soldier employed in an expedition or engaged in actual warfare, [or an airman so employed or engaged,] or a mariner at sea, shall execute his Will according to the following rules:-

(a) and (b)

XXX

XXX

XXX

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

Both the witnesses to the Will in their examination-in-chief had complied with the aforementioned provisions of law and there is no inconsistency, much less, any contradiction in their examination-in-chief. It is settled proposition of law that where each of the attesting witnesses have stated that they had seen the testator signing or affixing his mark to the Will and have also seen some other person signing the Will, in their presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or the signature of such other person; and each of the witnesses had signed the Will in the presence of the testator, the execution of the Will cannot be said to be suffering from non-compliance with the provisions of Section 63-C of the Indian Succession Act. In the instant case, both the witnesses have, as stated above, categorically stated with regard to the compliance of the provisions. Mere contradiction in the cross-examination with regard to the execution of the Will would not render the Will to be surrounded by suspicious

circumstances. The plaintiffs have succeeded the estate of Ajit Singh @ Jit Singh, except 14 kanals out of 69 kanals 9 marlas and, therefore, plaintiffs cannot be permitted to contend that the testator had deviated from the natural succession and had bequeathed the property in favour of some third person.

As per the Will, only 14 kanals of land has been given to the grand-sons of Ajit Singh @ Jit Singh. The submission of the learned counsel appearing for the respondent-plaintiffs that Ajit Singh @ Jit Singh was living with plaintiff Nos.2 to 4 is also repelled as the plaintiffs failed to produce any documentary evidence on record in support of the aforementioned contention. In the absence of any documentary evidence on record, it cannot be believed that Ajit Singh @ Jit Singh was living with Balwinder Kaur and her minor children and, therefore, he was also under obligation to transfer some portion of land to the minor children of Nirranjan Singh (since deceased).

The impugned judgment and decree are, thus, hereby set-aside and the suit of the respondent-plaintiffs is dismissed. The appeal is, accordingly, allowed and the aforementioned substantial questions of law are answered in favour of the appellant-defendants and against the respondent-plaintiffs.

There shall be no order as to costs. Decree-sheet be prepared accordingly.

January 28, 2015
ramesh

(AMIT RAWAL)
JUDGE