

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

R.S.A.No.3162 of 2011 (O&M)

Date of Decision: August 27, 2015

Hira Singh

...Appellant

Versus

Swaran Kaur & 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: Mr.Sandeep Singh Deol, Advocate,
for the appellant.**

**Mr.Puneet Jindal, Senior Advocate with
Mr.Paramjit Singh, Advocate,
for respondent Nos.1 & 9.**

AMIT RAWAL, J. (Oral)

The challenge in the present appeal is to the judgments and decrees of both the Courts below, whereby the suit filed by the appellant-plaintiff for declaration to the effect that land measuring 115 kanals 2 marlas described in the head-note of the plaint is owned and possessed by the appellant-plaintiff on the basis of the registered Will dated 6.7.1999 and the alleged mutation bearing No.2604 of inheritance of Gopal Singh in favour of defendant Nos.1 to 4 is illegal, void and the plaintiff is not bound by the same with a consequential relief of permanent injunction, has been dismissed.

Mr.Sandeep Singh Deol, learned counsel appearing on behalf of the appellant-plaintiff submits that Gopal Singh is none else but a maternal grand-father of the appellant-plaintiff. Gopal Singh had only four daughters and the appellant has been born out from the lions of Jagir Kaur and Lakhwinder Singh. He further submits that it is categorical case in the pleadings that the appellant-plaintiff was adopted by Gopal Singh and was not only looked after by him but raised by him from the age of six years. Gopal Singh executed a registered Will dated 6.7.1999 and thereafter he died on 2.9.1999. The Will was not exhibited by the trial Court and the mutation was entered as per natural succession in favour of four daughters, including their mother. In order to prove the Will, he has examined Scribe Resham Singh as PW-2 and one of the attesting witness Parduman Singh as per Section 68 of the Indian Evidence Act. Both the witnesses have made a statement, withstood cross-examination and rather proved that Hira Singh was adopted son of Gopal Singh. He also submits that Parduman Singh had made a statement in conformity with Section 63(c) of the Indian Succession Act. The defendants disputed the genuinity and authenticity of the Will and in order to disprove the same, got the Will examined from Handwriting Expert, who compared the signatures with the admitted signatures from a mortgage deed, but the said mortgage deed had not been placed on record, therefore, the alleged report had been discarded by the Courts below. He further submits that the Courts below embarked on a path by comparing the signatures of deceased Gopal Singh by stepping into the shoes of the Expert. He further submits that the plaintiff has proved the Will and there is no evidence contrary to the same. Documents Ex.D6, Ex.D7, Ex.D8, Ex.D9,

Ex.D10 and Ex.D11 have not been proved in accordance with law and they have been tendered by the counsel for the defendants vide statement dated 1.2.2007 and the said exhibition of the documents was seriously objected to. In support of his contention, he referred to the ratio decidendi culled out in **Sait Tarajee Khimchand And Ors. vs Yelamarti Satyam Alias Satteyya, AIR 1971 SCC 1865** to contend that mere exhibition of the document does not dispense with its proof. He further submits that since all those documents had not been proved, the same could not be looked into by the Courts below and this fact is not noticed and, thus, there is an illegality and perversity as both the Courts below have misread the documents. Misreading of the documents is a perversity, which leads to raising of a substantial question. Even the ration card (Ex.D2) does not prove the appellant to be son of Lakhwinder Singh. Ex.D3, the second page of the register of Depot holder, proves that the ration card was issued in favour of Gopal Singh, whereas the name of appellant-plaintiff has been scored off and it is the document of the defendants and not that of the appellant-plaintiff. He further submits that the present appeal, thus, involves the following substantial question of law for determination by this Court:-

- a) Whether the plaintiff/appellant even after having led affirmative evidence and the best evidence, the suit filed by the plaintiff/appellant should have been decreed?
- b) Whether in view of the over-whelming evidence produced by the plaintiff/appellant in proving the valid execution of the Will by the testator in his sound disposing mind, the suit filed by the plaintiff should have been decreed?

c) Whether the learned courts below should not have hazard a comparison of signatures, in view of the fact that the ocular testimony of the concerned witnesses of the plaintiff had not been disbelieved or rejected, thus indicating that the testator had himself signed the Will?

d) Whether the approach of the learned courts below in comparing the signatures of the testator *inter-se*, rather than comparing the disputed/question signatures with some standard/admitted/proved signatures of the testator, is contrary to law?

Mr.Puneet Jindal, learned Senior Counsel assisted by Mr.Paramjit Singh Advocate, appearing on behalf of defendant-respondent Nos.1 and 9 submits that both the Courts below have rendered a finding of fact and law, which could not be interfered with by exercising powers under Section 100 of the Code of Civil Procedure. No substantial question of law arises. Ex.D8 is the certified copy of the appeal filed by the appellant-plaintiff against the order of Assistant Collector Ist Grade, whereby the mutation has been sanctioned in favour of the successor-in-interest of Gopal Singh by way of natural succession. The school leaving certificate (Ex.D11) shows the parentage of the appellant-plaintiff to be Lakhwinder Singh. He further submits that Gopal Singh was not keeping good health and was suffering from cancer and, therefore, he could not have validly executed the Will on 6.7.1999 as he had died on 2.9.1999. He further submits that he was admitted in the hospital much prior to the execution of the Will. Diverting from the line of natural succession and executing the Will in favour of one

of the grand child is itself an act of suspicion. The Courts have assumed the role of the Handwriting Expert and examined the signatures of Gopal Singh and found that the signatures on the first page and on the endorsement are not of the same person and, therefore, rightly discarded the Will. Even the parents of Hira Singh have not come into the witness box to prove that Hira Singh was adopted by Gopal Singh. He further submits that umpteen number of documents have been brought on record. Had Hira Singh been adopted by Gopal Singh, the documents would have reflected the parentage of Hira Singh son of Gopal Singh instead of Lakhwinder Singh, the natural father. He further submits that as per Hindu Adoptions and Maintenance Act, the adoption has to be done by way of a registered deed and not in the manner as has been done in the present case.

Mr.Deol, in rebuttal, submits that DW-1 Dr.Vijay Kumar Dhawan examined by the defendants in cross-examination submitted that he had given the permission to Gopal Singh to travel and execute the Will. The relevant portion of the cross-examination has been extracted as Annexure A-5, which has not been disputed. He further submits that no issue of adoption was culled out by the trial Court and, therefore, the statements made on behalf of the defendants that the adoption is required to be done in the manner as prescribed in the Act would not come in the way of the appellant in proving the Will as the Will itself contained the recital that Hira Singh was adopted by Gopal Singh.

I have heard the learned counsel for the parties and appraised the paper book.

The documents Ex.D6, Ex.D7, Ex.D8, Ex.D9, Ex.D10 and

Ex.D11, referred to above, have not been proved in accordance with law.

The said documents were tendered into evidence on 1.2.2007 by the counsel representing the defendants, which fact is evident from page 219 of the trial court record. It is now well settled law that mere exhibition of the documents would not dispense with its proof. I rely upon the ratio decidendi culled out in the judgment (supra) in order to lend support to the aforementioned finding. Both the Courts below have committed an illegality and perversity in taking into consideration the contents of the documents, which have not been exhibited in accordance with the Indian Evidence Act. On the other hand, the appellant-plaintiff has proved the execution of the Will, which is a registered document through the testimony of Parduman Singh, one of the attesting witness and Scribe Resham Singh. Parduman Singh, in a specific question in cross-examination, has rather answered in affirmative that Hira Singh was adopted by Gopal Singh and Granthi Anokh Singh and all the sisters of Gopal Singh and their husbands were present at the time of adoption. The relevant portion of the cross-examination is available at page 106 of the trial court record. This fact of the matter has gravely been ignored by the Courts below while rendering the findings against the appellant-plaintiff. Since there was no issue of adoption, there was no need for the appellant-plaintiff to prove the adoption. Rather, the defendants have committed a folly by putting the questions to the attesting witnesses, vis-a-vis the adoption and as such proved the case of the appellant-plaintiff that he was actually adopted by Gopal Singh. Though there is one passing reference in the cross-examination that in the school leaving certificate, the name of Lakhwinder Singh was mentioned instead of

Gopal Singh, but equally so, it is settled law that only one line of the cross-examination has not to be read in isolation, but the cross-examination in whole has to be read. The trial Court could not have stepped into the shoes of the Handwriting Expert, who compared the signatures of Gopal Singh as the Handwriting Expert examined on behalf of the defendant has failed to prove that the signatures on the Will and on the back, i.e., on endorsement were not of Gopal Singh as the mortgage deed, which bore the standard signatures of Gopal Singh, has not seen the light of the day. Transferring the property by way of Will in favour of one of the grand father of the appellant does not deviate from the natural succession. The Will itself describes that Gopal Singh had four daughters and that he had willed away his self-acquired property in favour of his grand son Hira Singh, when the property in the hands of Gopal Singh was not ancestral.

Keeping in view the aforementioned pleadings, in my view, the impugned judgments and decrees of both the Courts below suffer from illegality and perversity and, thus, the substantial questions of law, noticed above, are answered in favour of the appellant-plaintiff and against the defendant-respondents. Accordingly, the impugned judgments and decrees are set-aside. The suit of the appellant-plaintiff is decreed. Decree-sheet be prepared. There shall be no order as to costs.

The appeal accordingly is allowed.

August 27, 2015
ramesh

(AMIT RAWAL)
JUDGE