

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 1900 of 2012 (O&M)

Date of decision : **July 09, 2015**

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Charanjit Kaur

.....Appellant

Versus

Avtar Singh and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. J.S Cooner, Advocate for the appellant.

Mr. R.P Singh, Advocate for respondent no.2.

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1. *Whether Reporters of Local Newspapers 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?*

RITU BAHRI, J

The appellant-defendant no.1, Charanjit Kaur has come up in this regular second appeal against the judgment of reversal dated 24.1.2012 passed by the Additional District Judge, Ambala whereby, an appeal against the judgment and decree dated 23.1.2010 passed by the Civil Judge (Junior Division), Ambala City was allowed and the judgment of the trial Court was set aside.

The plaintiffs-respondents no. 1 & 2 had filed suit against the appellant-defendant no.1 with the averments that they are owners in possession of the land in dispute and sought consequential relief of permanent injunction restraining defendant no.1 Charanjit Kaur

from interfering in any manner in peaceful possession over the suit land.

Plaintiff no.1 and his brother Amarjit Singh (deceased) were sons of plaintiff no.2 and they were joint owners in possession of the suit land in equal shares. The suit land was ancestral and was initially owned and possessed by Sh. Bachan Singh, grandfather of the plaintiff no.1. Deceased Bachan Singh executed a Will dated 30.8.1982 vide which the suit property was inherited by plaintiff no.1 and his brother Amarjit Singh. Amarjit Singh got married with appellant-defendant no.1 Smt. Charanjit Kaur. However, the marriage did not succeed. Charanjit Kaur wife of Amarjit Singh got aborted her first conception without caring for her husband. Amarjit Singh was under mental tension and litigation ensued between them. Amarjit Singh son of plaintiff no.2-respondent no.2 executed a valid Will dated 25.1.2000 in the presence of witnesses in favour of plaintiff no.2 bequeathing his property in the name of his father. Thereafter Amarjit Singh died in a motor vehicular accident on 17.8.2000 and after his death, plaintiff no.2 inherited his $\frac{1}{2}$ share in the suit land and became the joint owner in possession of the land in question on the basis of the Will dated 25.1.2000.

After the death of Amarjit Singh, appellant-defendant no.1 got the mutation sanctioned in her favour without issuing notice even to the mother of deceased on 5.12.2000 vide mutation no. 3453. She tried to forcibly interfere in the land in question with the help of her parents. Hence the present suit was filed.

Before the trial Court, appellant-defendant no.1 contested the suit and filed written statement. She admitted that plaintiff no.1 and deceased Amarjit Singh were sons of plaintiff no.2. It was denied that the suit land was joint and ancestral property. Suit land was inherited by deceased Amarjit Singh and plaintiff no.1 after the death of Sh. Bachan Singh but it was divided by them with mutual consent and she was in possession of the same after partition. She denied having strained relations with her husband Amarjit Singh. She denied that she had ever tried to abort her first conception. Rather it was an act of God. She admitted that Amarjit Singh had died in an accident but execution of Will dated 25.1.2000 in favour of his father by deceased Amarjit Singh was denied. She pleaded that the Will in question is a forged and fabricated document. The mutation was correctly sanctioned by the revenue authorities in favour of defendants. After the death of her husband, she had been thrown out of her matrimonial home. Defendant no.2, mother of plaintiff no.1 vide her separate written statement admitted the claim of the plaintiffs. She was proceeded ex parte vide order dated 9.1.2008.

The following issues were framed by the trial Court:

- 1. Whether the suit property is joint between the parties? OPP.*
- 2. Whether the plaintiffs are owner in possession of the suit land? OPP.*
- 3. Whether Amarjit Singh son of plaintiff no.2*

*executed a valid Will dated 25.1.2000 in favour of
defendant no.2? OPP*

After hearing counsel for the parties and going through the evidence led by them, trial Court dismissed the suit of the plaintiffs. Plaintiffs filed appeal against the judgment of the trial Court.

As per Ex. PC, petition under Section 9 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') was filed by Amarjit Singh on 30.9.1999, wherein he mentioned that appellant-defendant no.1 was pregnant and she got her baby aborted without his permission causing him great mental tension. It was also stated that Ex. PA was the certified copy of the order dated 7.3.2000 passed in bail application filed on behalf of Amarjit Singh and others in the Sessions Court at Patiala whereby arrest of the petitioners no. 2 to 5 was stayed. As per Ex. PA and Ex. PB, Amarjit Singh and his other family members had sought anticipatory bail in a case under Section 498-A and 304 IPC. The above facts were sufficient to prove that Amarjit Singh and his wife defendant no.1 Charanjit Kaur were not having cordial relations and they were not residing together. Petition under Section 9 of the Act dated 30.9.1999 while the order seeking anticipatory bail by Amarjit Singh and others are of March, 2000 and the Will in question is of 25.1.2000. In the Will it was mentioned that Charanjit Kaur had made life of Amarjit Singh a hell and that she had got aborted their first child and there was litigation between them which was causing mental tension to him. The objection of the

defendant that normally a person of the age of 25 years would not execute a Will has been rejected by the appellate Court on the ground that there was no age bar for execution of the Will. In the backdrop of his matrimonial dispute, he executed the Will in favour of his father. In the given facts of the case execution of the Will by Son in favour of father cannot be said to be surrounded by suspicious circumstances. The attesting witnesses Sardara Ram PW-1 and Ajit Singh PW-2 stated that testator had put his signatures in their presence. The witnesses were examined in the year 2007 and there were minor discrepancies in their depositions. A perusal of the Will further shows that there were cutting and two signatures on the Will. The correction on the Will and signatures of the testator at that point of correction would not be a circumstance to doubt the Will as the deposition of both the attesting witnesses has been consistent even in the cross-examination.

Moreover another important fact which the appellate Court has taken into consideration is that defendant no.1 did not appear as her own witness to substantiate that she had cordial relations with deceased or there was no abortion of their child or she was in possession of the suit land. She did not offer herself to be cross-examined and it led to draw a presumption against her.

In view of the above facts, the appellate Court allowed the appeal filed by the plaintiffs-respondents no. 1 & 2 and set aside the judgment passed by the trial Court. The suit of the plaintiffs was decreed and they were declared owners in possession of the suit

land with further consequential relief of permanent injunction restraining defendant no.1 from interfering in any manner into the peaceful possession of the plaintiffs over the suit land.

The appellate Court observed that defendant no.1 did not chose to enter into the witness box to substantiate the facts stated in her written statement coupled with the fact that the Will had been duly proved by the two Witnesses PW-1 and PW-2. The lower Appellate Court has further examined the contents of the Will and held that the reasons for exclusion of Charanjit Kaur had been given in a natural way by Amarjit Singh in favour of his father. The same reasons have been given in a petition under Section 9 of the Act which had been filed on 30.9.1999. Defendant no. 1 and Amarjit Singh were not residing together as is apparent from the anticipatory bail orders in March 2000. The lower appellate Court has rightly reached to a conclusion that the Will was free from any suspicious circumstances and stood duly proved in accordance with law. Minor discrepancies in the statements of the witnesses and corrections in the Will itself would not be sufficient to doubt the execution of the Will.

In view of all that has been discussed above, the judgment of the Appellate Court does not require any interference. After appreciating the facts in correct perspective, no substantial question of law arises for consideration in this regular second appeal, hence the same is dismissed.

July 09, 2015

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**(RITU BAHRI)
JUDGE**