

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Regular Second Appeal No. 2380 of 2012 (O&M)

Date of decision : August 12, 2015

Shiv Bir Singh

... Appellant

vs.

Amrita Singh @ Amrit Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. N.P.S. Mann, Advocate
for the appellant.

Mr. A.P.S. Shergill, Advocate
for the respondents No.1 to 5.

Surinder Gupta, J

This regular second appeal has been filed against the concurrent findings of the courts below decreeing the suit of plaintiff-respondent.

The dispute pertains to the land of Gurcharan Singh, who was brother of Balbir Singh. Gurcharan Singh died unmarried and issueless. Amrita Singh @ Amrit Kaur (plaintiff-respondent No.1), Kuldeep Kaur (plaintiff-respondent No.3) are the daughters of Balbir Singh. Sudarshan Kaur is the wife of Balbir Singh. Amrit Kaur and Harpreet Kaur plaintiffs-respondents No.4 and 5 are the daughters of Jeet Kaur (deceased) daughter of Balbir Singh.

Gurcharan Singh died on 16.1.1972 leaving behind Balbir Singh his brother as his legal heir. Balbir Singh died on 25.1.2004 leaving behind plaintiffs-respondents No. 1 to 5 and Jasbir Singh son of Balbir Singh defendant-respondent No.6 as his legal heir. The plaintiffs sought declaration of their title and joint possession of the suit land claiming their 4/5th share therein. It was alleged that Gurcharan Singh died intestate and after death of Balbir Singh, suit land had devolved upon plaintiff Amrita Singh @ Amrit Kaur, Sudarshan Kaur and Kuldeep Kaur (1/5th share each), Amrit Kaur and Harpreet Kaur 1/5th share and defendant Jasbir Singh 1/5th share.

The plaintiffs alleged that on the basis of a forged and fabricated Will alleged to have been executed by Gurcharan Singh, Jasbir Singh-defendant got a mutation of suit land bearing No.2217 sanctioned in his favour on 19.9.2005 with regard to his land and defendant No.2 on the basis of said mutation claims to have purchased the suit land vide sale deed dated 23.9.2005. He also got mutation No. 2227 sanctioned in his favour on the basis of alleged sale deed dated 23.9.2005. Gurcharan Singh was also having property in village Wadala Kalan, Tehsil Baba Bakala and mutation of that property was sanctioned in favour of plaintiff and defendant No.1 (Respondent No. 1 to 6).

The defendant No.1 Jasbir Singh in his written statement took the plea that a Will dated 11.12.1968 was executed by Gurcharan Singh in his favour. After the death of Gurcharan Singh he had succeeded to his estate. It was admitted that Balbir Singh brother of Gurcharan Singh died on 25.1.2004 leaving behind Sudarshan Kaur his widow and defendant No.1. He denied that plaintiff No.1-Amrita Singh @ Amrit Kaur and Jeet Kaur are daughters of Balbir Singh and inherited the suit land along with other plaintiffs.

Defendant No.2 in his separate written statement supported the plea as taken by defendant No.1 and also pleaded that he had purchased the suit land from defendant No.1 and is a *bona fide* purchaser for consideration.

The trial court discarded the Will dated 11.12.1968 as shrouded by suspicious circumstance on the grounds as follows :-

- i) *The Will had not seen the light of the day for about 37 years and there was no explanation by the propounder of the Will in this regard.*
- ii) *Gurcharan Singh was himself an advocate practicing in Calcutta High Court. Jasbir Singh was aged about 17 years in the year 1968 and disbelieved his plea that the Will was executed in his favour in lieu of services rendered to Gurcharan Singh.*
- iii) *Jasbir Singh had disclosed that he was apprised about the Will for the first time in the year 2006 by one Lakhwinder Singh son of Baghail Singh who had read*

- over the contents of the Will to him. However, the Will was never handed over to him or he received this Will till the date he appeared as witness before the lower court.*
- iv) He was very specific while stating that before the year 2006, he had no knowledge regarding the Will of Gurcharan Singh. He had not produced the Will of Gurcharan Singh in any court of law.*
 - v) Said Lakhwinder Singh was not examined as witness by the defendants and this fact was admitted that Lakhwinder Singh was not the attorney of Jasbir Singh defendant-respondent No.6. The lower court took it as a suspicious circumstance that when Jasbir Singh had neither seen the Will in the year 2005 nor produced it before any authority, then how the mutation was sanctioned in his favour on the basis of the Will on 19.9.2005.*
 - vi) This fact was admitted that Gurcharan Singh owned other properties in Uttra Khand and village Wadala Kalan. The mutation of those properties was sanctioned in favour of plaintiffs-respondents and defendants No.1-respondent No.6. No claim was laid qua those properties on the basis of alleged Will of Gurcharan Singh dated 11.12.1968.*
 - vii) There is no mention of the appellants and even of Balbir Singh brother of the deceased Gurcharan Singh in the Will and no reason was given while ignoring them.*
 - viii) The Will was not scribed by a regular deed writer. It was scribed by Iqbal Singh sonof Bhagail Singh, who was just 21 years of age and his father was one of marginal witness of the Will.*
 - ix) On perusal of Will the lower court observed that there was space/gap between the signature of Gurcharan Singh and last line of the recital in the Will.*
 - x) At the time of sanction of mutation on the basis of Will dated 11.12.1968, a wrong pedigree table was prepared*

and no notice was given to the plaintiffs-respondents.

xi) The Will was not got registered. It was observed that being an advocate/barrister Gurcharan Singh was very well aware of the consequences and effect of the Will.

In the above facts and circumstances, the plea of appellant that he was *bona fide* purchaser was also declined.

Not satisfied, the appellant preferred appeal before the Additional District Judge, Amritsar, which was also dismissed vide judgment dated 26.4.2005. The first appellate court elaborately dealt with all the suspicious circumstances and the plea of appellant that he was the *bona fide* purchaser while affirming the findings of the lower court.

I have heard learned counsel for parties and perused the paper book with their assistance.

Learned counsel for appellant has first raised the plea that defendant No.1-respondent No.6 had examined son of one of the marginal witness of the Will and examination of one witness is sufficient to prove the execution of the Will. He has relied upon the observations in the case of ***Jatinder Singh and Another vs. Smt. Amar Devi and others***, 2009 (4) PLR 125.

The above contention of learned counsel for appellant cannot be disputed. The trial court as well as first appellate court have not rejected the Will propounded by Jasbir Singh defendant-respondent No.6 on the ground that it has not been duly proved but on the ground that it is shrouded by suspicious circumstances, as such, the above contention of learned counsel for appellant has no merits.

Learned counsel for appellant has further referred to the observations of the Apex Court in the case of ***Mahesh Kumar (Dead) by L.Rs vs. Vinod Kumar and others***, (2012) 4 SCC 387 and has argued that exclusion of a natural heirs cannot lead to inference that Will was not genuine.

The above argument of learned counsel for appellant carries no weight as both the courts below have not rejected the Will dated 11.12.1968 on the sole ground that it makes no reference of plaintiffs or Balbir Singh. This fact when coupled with the suspicious circumstances, as discussed above, rendered the Will a suspicious document.

The plea of the appellant that he was a *bona fide* purchaser of suit land was rightly discarded by the courts below. The *mala fide* in the purchase of suit land is evident from the fact that after 37 year of alleged Will the mutation was sanction on 19.09.2005 and sale deed was got executed and registered within four days thereafter. While discarding the plea of appellant that he was a *bona fide* purchaser of suit land, first appellate court observed in para no.24 as follows :-

“24. Another material point raised by the appellants is that the learned lower court has not appreciated the evidence of their witnesses while deciding their plea of bonafide purchaser which was taken by defendant No.2 Shiv Bir Singh, appellant. Jasbir Singh, defendant No.1, stated to have sold the suit property to defendant No.2 Shiv Bir Singh, who has filed the separate appeal challenging the findings recorded on issue of bonafide purchaser as well as other issues. Main contention raised by the learned counsel for the appellant is that he has purchased the property for consideration after verifying the ownership of Jasbir Singh from the revenue record. But I have paid a considerable thought to their submission and have carefully gone through the file. DW3 Shiv Bir Singh, in his affidavit Ex.DW3/A only in single line has made the deposition to the effect that he is the bonafide purchaser of the land. After inquiring about the ownership, he purchased the land for consideration, but what type of inquiry regarding ownership was made by him nothing has been stated. On the other hand, this fact stands established from the material that mutation No. 2217 on the basis of alleged Will dated 11.12.1968 was got sanctioned on 19.9.2005. Death of Gurcharan Singh occurred in the year 1972. On the backside of said mutation, plaintiffs, who are the daughters of Balbir Singh, brother of Gurcharan Singh, have not been shown in the pedigree table. After sanctioning of said mutation on 19.9.2005, Jasbir Singh defendant No.1 shown to have executed the sale deed on 23.9.2005 after four days. In the statement of witnesses of the sale deed i.e. DW2 and DW3 purchaser himself, different type

of version has come with regard to the payment of the alleged consideration amount. One witness stated that whole amount was paid at the house. Other stated that same was paid at the tea stall. Alleged consideration amount was not small one. Same was stated to be to the tune of Rs.16-17 lac. DW3 Shiv Bir Singh, who is claiming himself to be the bonafide purchaser has not brought any reliable or convincing evidence to show from where he made the arrangement of huge amount of Rs.16-17 lac. Whether he withdrew the same from any bank account or disposed of his any other property. That amount cannot be said to be small amount. So in this way, after a careful perusal of the whole above discussed evidence, this fact fully stands established that plea of bonafide purchaser of defendant No.2 cannot be said to be proved or established as per requirement of law. So the learned lower court after appreciating whole of the evidence in a fully reasoned manner discarded the said plea of defendant No.2 and has not held the defendant No.2 to be a bonafide purchaser. Said findings also do not suffer from any infirmities.”

No substantial question of law requiring determination arises in this appeal. As to whether the Will had been duly proved and/or was otherwise a genuine document is essentially a question of fact. It was so observed by the Apex Court in the case of **Rur Singh (D) through L.Rs and others vs. Bachan Kaur**, 2009 (2) RCR (Civil) 511.

As no substantial question of law requiring determination in this case arises on the perusal of judgment and decree passed by the courts below, I find no legal or factual infirmity therein calling for any inference, this appeal has no merits.

Dismissed.

(Surinder Gupta)
Judge

August 12, 2015
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