

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

**R.S.A. No. 2580 of 2012 (O&M)
Date of decision:- 10.07.2015**

Harjinder Kaur & others

...Appellants

Versus

Charanjit Kaur and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Avtar Singh Bhatti, Advocate
for the appellants

Mr. Anupam Sharma, Advocate
for the respondents/caveator.

RITU BAHRI J.

This regular second appeal is directed against the concurrent findings of facts recorded by both the Courts below whereby the suit of the plaintiff-respondent No. 1 (herein after to be referred as 'respondent No. 1') was partly decreed by the trial Court and on appeal filed by the appellants as well as respondent No. 1, the lower Appellate Court partly allowed the appeal of the appellants and dismissed the appeal of respondent No. 1.

Brief facts of the case put forth by respondent No. 1 is that originally Hazura Singh adopted son of Pale Singh was owner in

possession of the suit property as described in heading A of the judgment as well as electric motor connections bearing A/c No.s MA-442 MA-275 and 276. After the death of Hazura Singh, his son Mohinder Singh became owner of the suit property as well as electric motor and connections on the basis of the will. On 07.07.1987, Mohinder Singh executed registered will dated 07.07.1987 in favour of respondent No. 1. Mohinder Singh died in the year 1990 leaving behind his widow Hardial Kaur, three daughters i.e present appellants and one son Nirbahi Singh. Thereafter, the appellants took forcible possession of the suit land after the death of Hardial Kaur widow of Mohinder Singh. Hardial Kaur widow of Mohinder Singh obtained collusive decree from the Court on 25.07.1985 alleged to have been suffered by Mohinder Singh of the suit property i.e 74 bighas 10 biswas situated in the revenue estate of village Bhadson. As per Respondent No. 1, the alleged judgment and decree is void. Hardial Kaur on the basis of the aforesaid judgment, got sanctioned mutation in her favour vide mutation No. 1066 and Hardial Kaur died on 16.07.1999 and after her death, the appellants got sanctioned mutation No. 1382 in their favour regarding the above said property.

On notice, the appellants appeared and filed their joint written statement and defendant Nos. 4 to 6 failed to appear in the

Court and they were proceeded ex parte. On merits, it was alleged that Mohinder Singh during his life time never executed a registered will dated 07.07.1987 in favour of respondent No. 1. The alleged will is forged and fabricated document prepared at the back of her husband Nirbhai Singh who murdered his mother Hardial Kaur on 10.07.1999 and in this regard, a criminal case has been registered against him. It was admitted that Mohinder Singh died in the year 1990 leaving behind his widow-Hardial Kaur and three daughters i.e present appellants and one son Nirbhai Singh. It was admitted that Hardial Kaur become owner and in possession of the suit land vide decree dated 25.07.1985. It was denied that they ever took forcible possession of the above said property.

Respondent No. 1 in order to prove the will dated 07.07.1987 examined Jagdish Chand Garg, Deed Writer as P.W.1 who stated that on 07.07.1987 Mohinder Singh got scribed from him a will in favour of his daughter-in-law Charanjit Kaur i.e respondent No. 1. The will was read over to the testator who signed the same in the presence of the witnesses namely Dalip Singh, Lamberdar and Gurnam Singh, resident of Dhuri. He proved the will as Ex P1 while photostat copy of the relevant entry in his deed writer register was proved as Ex P2. P.W.2 and P.W.3 i.e Dalip Singh, Lamberdar and Gurnam Singh,

resident of Dhuri, attesting witnesses of the will also stated that the will was duly executed by Mohinder Singh in favour of respondent No. 1 in their presence and without any pressure, coercion. At the time of execution of the will, Mohinder Singh was in sound disposing mind.

On the other hand, the appellants examined E.Rai, Chief Medical Record Officer of CMC Ludhiana as D.W.5 who produced the file of medical treatment of Mohinder Singh bearing No. B558757 as Mark A. Navdeep Gupta, Hand Writing and Finger Print Expert was examined as D.W.7, who prove his report as Ex D5. The photographic charts were proved as Ex D6 to Ex D9. He proved his second report with regard to signatures of Mohinder Singh as Ex D21.

Respondent No. 1 while leading evidence in rebuttal examined Harbax Singh Mander, Handwriting and Finger Print Expert Barnala as P.W.5, who proved his report as Ex PW5/1 and proved the photographs as Ex PW5/2 to Ex PW5/12, the negatives of the photographs were proved as Ex PW5/13 to Ex PW5/23.

The trial Court found that the report of Harbax Singh Mander is more detailed report and the same compares the signatures of Mohinder Singh appearing on the will dated 07.07.1987 with the signatures of Mohinder Singh on the registered sale deeds dated 08.08.1977 and 07.10.1985 and also with the signatures of Mohinder

Singh appearing on the written statement, power of attorney etc in the suit titled as Smt Hardial Kaur v. Mohinder Singh, decided on 25.07.1985 by the Court of Additional Senior Sub Judge, Sangrur. The trial Court was of the view that the will has been duly scribed by a regular deed writer and the entry of the register of the deed writer has also been proved. The witnesses of the will are well known to the testator and after scribing the will, Mohinder Sinnggh appeared before the Sub Registrar to get the same registered.

As far as judgment dated 25.07.1985 is concerned, the trial Court came to a conclusion that this collusive decree was an attempt to save the land from being declared surplus.

The argument of learned counsel for the defendants that Mohinder Singh was not in sound disposing mind on the alleged date of execution of will i.e 07.07.1987, as he was suffering from Alcoholic hepatitis, hepatic, encephalopathy (rade I) was also rejected as no document was produced on record to show that on the date of execution of the will, Mohinder Singh was not in sound disposing mind. Mohinder Singh was admitted in CMC Ludhiana on 8.7.1987 with excessive alcohol related ailments but at the time of his admission in the hospital, he was fully conscious.

There is no document proof on the file that one of the

daughters of Mohinder Singh was unmarried at the time of his death. It was held that the testator was a rich man. His wife Hardial Kaur and son Nirbhai Singh has sufficient property in their names to have solemnized the marriage of his daughter. It is the natural tendency of the agricultural families of Punjab to avoid landed property passing to son in laws through daughters as long as male heirs are alive. Thus, the testator had sufficient reasons to exclude all his children from his legacy.

Thus, the Court was of the considered view that the plaintiff has duly proved the will to have been duly executed. The same is a registered document. The defendants were failed to show that the will is surrounded by suspicious circumstances.

The trial Court partly decreed the suit of the plaintiff for the relief of declaration that plaintiff has inherited the motor connection as detailed and described in the head note of the judgment located in village Fatehgarh Bhadson on the basis of the will dated 7.7.1987. Defendant Nos. 5 and 6 were directed to transfer the motor connection in the name of the plaintiff.

Against the judgment of the trial Court, the defendants preferred appeal before the Lower Appellate Court, which was partly allowed and it was held that the ownership of the tube well and

electric motors would with the ownership of the land in question in view of this judgment.

The Lower Appellate Court in para 29 of its judgment has held that the deceased had already a decree regarding land measuring 78 bighas 10 biswas in favour of his wife, his son Nirbhai Singh has already got about 86 bighas of land from his grand father. So far as the daughters were concerned, namely Harjinder Kaur and Rupinder Kuar, they were married prior to the execution of the will. Only Devinder Kaur was unmarried at the time of execution of the will. The deceased did not feel necessity of making any provision for the marriage of the said daughter as his wife and son were having sufficient properties and will was being executed by him in favour of his daughter-in-law. The marriage of Devinder Kaur was solemnized in the year 1993 and Hardial Kaur remained alive up to 1999 i.e for about 12 years after the death of her husband. However, nobody challenged the will for a long period and suit challenging the will was filed by appellant Rupinder Kaur only in the year 2001. Thus, there was no dispute in the family regarding the will in question.

After going through the detailed judgments passed by both the Courts below, it transpires that the will in question had been duly proved being a registered document by the depositions of P.W.1 to

P.W.3 that Charanjit Kaur was given the land in the village. Mohinder Singh transferred the land 74 bighas 10 biswas situated in the revenue estate of village Bhadson in favour of his wife, vide collusive decree dated 25.07.1985. His son Nirbhai Singh has already got about 86 bighas of land from his grand father. Thus, the will dated 07.07.1987 was not held to be surrounded by any suspicious circumstances.

The judgments passed by both the Courts below, calls for no interference. No substantial question of law arises for adjudication by this Court.

Accordingly, appeal is dismissed.

10.07.2015

G Arora

(**RITU BAHRI**)
JUDGE