

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

**Regular Second Appeal No.372 of 2012 (O&M)
Date of Decision: February 05, 2015.**

Kuldeep Kaur

.....APPELLANT(s).

VERSUS

Baldev Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Amit Jain, Advocate
for the appellant (s).

Mr. Jai Bhagwan, Advocate
for respondent No.

SURINDER GUPTA, J.

The dispute in this case pertains to the land of Pritam Kaur situated at village Dhiro Majra, Tehsil Malerkotla. The appellant-plaintiff claims title over this property on the basis of unregistered Will of Pritam Kaur dated 25.10.1984 while the respondents-defendants, who are sons and daughters of Pritam Kaur, based that claim on natural succession. The relationship of parties is not disputed. Appellant-plaintiff is the wife of son of brother of Pritam Kaur. Both the Courts below have discarded the Will with the observation that it is shrouded by suspicious circumstances.

2. This regular second appeal has been filed against the concurrent finding of Courts below dismissing the suit of the appellant-plaintiff seeking the relief of declaration qua the ownership of 1/6th share of Pritam Kaur in the suit land and also the relief of injunction.

3. The case of the appellant-plaintiff Kuldeep Kaur, in brief, is that Pritam Kaur, father's sister of her husband had great love and affection with her and her husband Hardev Singh and in consideration of services rendered by them and out of love and affection, executed Will dated 25.10.1984 in favour of appellant-plaintiff with regard to her property situated at village Dhiro Majra, Tehsil Malerkotla. Respondents-defendants, who are sons and daughters of Pritam Kaur, in collusion with revenue officials, got the mutation No.1613 of inheritance of Pritam Kaur sanctioned in their favour with regard to the suit land. This mutation was sanctioned without notice to the appellant-plaintiff, as such, is liable to be set aside. After the mutation, respondents-defendants No.1 to 4 were out to alienate the suit land, which prompted the filing of the instant suit.

4. Respondents-defendants No.1 to 4, in their written statement, denied the averments of the appellant-plaintiff and alleged that during her life time, Pritam Kaur was cultivating the land in dispute. The appellant-plaintiff and her husband were not on speaking terms with Pritam Kaur. She was being looked after and provided all the necessities of life by respondents-defendants. She (Pritam Kaur) never executed any Will in favour of appellant-plaintiff and alleged Will dated 25.10.1984 was forged and fictitious document. The mutation of inheritance of Pritam Kaur was sanctioned in favour of respondents-defendants No.1 to 4 on 08.07.2002. After the death of Pritam Kaur (on 11.07.1985), the appellant-plaintiff never produced any Will before the revenue authorities. Mutation No.1613 was sanctioned in the presence of various persons of the village on the spot. As the appellant-plaintiff had no concern with the suit land, she was not required to be served with any notice before sanctioning of mutation.

5. Civil Judge (Junior Division), Malerkotla vide judgment dated 02.01.2009 dismissed the suit and the appeal filed by the appellant-plaintiff was also dismissed by Additional District Judge, Sangrur.

6. Learned counsel for the appellant-plaintiff has argued that the Will pertains to the land situated at village Dhiro Majra, which Pritam Kaur had inherited from her parents. The intention of Pritam Kaur while bequeathing this property to Kuldeep Kaur was that the property should remain with her parental family. Will dated 25.10.1984 was executed at village Dhiro Majra as suit property is situated there. It was scribed by one Naurang Singh of village Ladewal and Sarpanch and Lamberdar of village Dhiro Majra were marginal witnesses. It is recited in the Will that deceased Pritam Kaur wished to give the suit land to the appellant-plaintiff for two reasons; firstly, that this property, she had inherited from her parents and secondly, the appellant-plaintiff and her husband had been serving her as and when she fell ill. She did not touch the property, inherited by her from her in-laws or bequeathed it in favour of appellant. As there was no dispute between the parties, no action was taken on this Will to get the revenue record corrected. Plaintiff was given the land of her share at village Dhiro Majra by Pritam Kaur because of her status as wife of her nephew and this, in no manner, creates any suspicion about the genuineness of the Will. It is also immaterial that appellant-plaintiff got married with her (Pritam Kaur's) nephew only 2/3 months before execution of the Will. About the difference in spacing of lines in the Will, he submits that the Scribe was not a regular deed writer and he had written the Will in his own way. The finding of both the Courts below that the Will is shrouded by suspicious circumstances, is not based on proper appreciation of the facts of the case, evidence on record

and law on the point, as such, are liable to be set aside.

7. Learned counsel for the respondents-defendants has argued that a bare look at the Will and its perusal shows that it is a forged and fabricated document. Both the Courts below have gone in detail about the suspicious circumstances surrounding this Will. There was no reason for Pritam Kaur to deprive her sons and daughters and bestow her entire land situated at village Dhiro Majra to appellant-plaintiff, who was married with nephew of Pritam Kaur only two months prior to the execution of the Will. In case, she had intention to execute the Will of suit land, she would have done the same at village Ghangas, where she was happily residing after her marriage.

8. I have given careful thought to the submissions of learned counsel for the parties and have perused the paper-book and record of the Courts below with their assistance.

9. The factors which weighed before the Courts below while discarding the Will are enumerated as follows:-

- (i) The Will was not scribed by regular deed writer;
- (ii) It was an unregistered Will;
- (iii) The Will was executed at Dhiro Majra while Pritam Kaur was married at village Ghangas, Tehsil Payal, District Ludhiana.
- (iv) The plaintiff was married only 2-3 months prior to the execution of the Will with Hardev Singh, nephew of Pritam Kaur and two months' relation of the appellant-plaintiff with Pritam Kaur made out no reason to bestow on her entire property by Pritam Kaur depriving her real sons and daughters.
- (v) The Will did not see the light of the day for about 17 years till the suit was filed.
- (vi) There were no extraordinary circumstances for Pritam Kaur to prefer the appellant-plaintiff and to deprive her own children from inheritance of the suit property, particularly when there was no evidence that Pritam Kaur was residing with the

appellant-plaintiff.

- (vii) The first Appellate Court also observed that the manner of writing of Will is also suspicious which suggest that this Will was drafted on a paper which was already having the thumb impression of the deceased. While reaching this conclusion, the Court observed that the space between the lines of the Will at the top is more than the space at the bottom.

10. A very important and suspicious circumstance shrouding the Will is that it had not seen the light of the day for about 18 years, before filing of this suit in the year 2002. Kuldeep Kaur, while appearing as PW1, has stated that she was handed over the Will after two months of her marriage. She has further stated that Pritam Kaur died three months after her marriage and she (Pritam Kaur) did not own any other land at any other village. This shows that she owned only the suit land. The statement of appellant-plaintiff shows that she was aware of the Will executed by Pritam Kaur in her favour much prior to her death, as such, there was no reason for her to keep this Will a secret and not to raise any claim over the estate left by Pritam Kaur at village Dhiro Majra for a long period of about 17/18 years. In her statement, she had tried to make out that her husband was addicted to liquor, as such, she did not get the mutation on the basis of Will sanctioned. This plea of appellant-plaintiff being beyond pleading cannot be accepted. The appellant-plaintiff who claims to be a beneficiary under the Will was not knowing anything about Pritam Kaur, which belies the averment that the Will was result of services rendered by her to Pritam Kaur. She was ignorant about the age of Pritam Kaur at the time of execution of the Will, at the time of her death or even about her description.

11. Here a question which arises for consideration is as to why Pritam Kaur, who had four sons and daughters and was well settled in her

matrimonial house, will deprive her own sons and daughters of her only property which she owned at village Dhiro Majra and bequeath the same in favour of Kuldeep Kaur, who had just entered into a matrimonial alliance with her nephew and was new to the family. This plea that Pritam Kaur wanted her property of village Dhiro Majra to be with her parental family is a shaky plea as in that event, she would have executed the Will in favour of her brother or nephew, so that in any event, the property would not go from the hands of her parental family.

12. The suspicious circumstances as discussed by the Courts below reflect on the genuineness and validity of the Will. All the suspicious circumstances as described in para 9 above, when taken up altogether reflect in no uncertain term that Will dated 25.10.1984 propounded by the appellant-plaintiff is not proved to be genuine and valid Will. The first Appellate Court on perusal of the Will has rightly reached the conclusion that this Will has been scribed on a paper which was already having thumb impression of Pritam Kaur. It has been rightly observed that perusal of the Will shows that the spacing between lines decreases while going downwards in comparison to the space in first few lines and in the end it has come to meagre possible minimum level, particularly the spacing somewhere in between the second and third lines from bottom. The pattern of writing shows that scribe was under compulsion to finish the subject matter above the thumb impression and while writing words "*Wasiyat Karan Wala*", he had intruded over the thumb impression of Pritam Kaur to some extent. This reflects the state of mind of the scribe at the time of scribing the Will and these circumstances further aggravate the factor that the Will was not got scribed from regular deed writer, is not a registered document and had not seen the light of the day

for 17/18 years.

13. On perusal of the paper-book and the record of the Courts below, I find that both the Courts below have committed no error of fact or law while recording findings that the Will propounded by the appellant-plaintiff is shrouded by suspicious circumstances.

14. No substantial question of law requiring determination arises in this appeal, which has no merits. Dismissed.

February 05, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE