

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

RSA No.4147 of 2012 (O&M)
Date of decision : 12.02.2015

Jaswant Singh

...Appellant

Versus

Jaspal Kaur @ Rani and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Alka Sarin, Advocate
for the appellant.

Mr. Surinder Gaur, Advocate
for the respondent No.4.

AMIT RAWAL, J. (Oral)

This is a Regular Second Appeal at the instance of appellant-plaintiff against the judgment and decree dated 21.03.2011 passed by Civil Judge, Junior Division, Moga, whereby suit of the plaintiff declaring him owner in joint possession of 59/2838 shares in suit land had been decreed but vide judgment and decree dated 06.06.2012 passed by lower Appellate Court, whereby the suit of the appellant-plaintiff for declaration had been dismissed.

It would be apt to mention few facts.

The appellant-plaintiff filed a Civil Suit on 30.05.2008

claiming declaration that he is owner in possession of the suit property situated at Village Jhandewala, Tehsil and District Moga and in the alternative prayer for grant of joint possession as owner/co-owner to the extent & in the manner specified in the suit was sought. The plaintiff averred in suit that property in dispute, i.e. 59/2838 share was the ownership of Chhinder Kaur (since deceased) @ Manjit Kaur, who was sister of the appellant-plaintiff. Aforementioned property was, according to the averments made in the plaint, inherited from the father Puran Singh. Chhinder Kaur had married defendant No.4-Teja Singh and out of the wedlock, defendant Nos.1 to 3, i.e., her sons and daughters were born. Chhinder Kaur executed a valid and registered Will dated 23.05.1994 in favour of the plaintiff qua the suit land as the appellant-plaintiff had helped her and as well as served her in performing marriages of her two daughters, i.e., defendant Nos.1 & 2 and since she was happy to the services rendered, executed Will in favour of the plaintiff.

Unfortunately, Chhinder Kaur died on 19.08.2006 and, thereafter, the property was got mutated as by way of natural succession in favour of defendants Nos.1 to 3. In these circumstances, aforementioned suit was filed.

The respondents-defendants contested the suit by raising numerous preliminary objections and also disputed the fact that no services were rendered to Chhinder Kaur by appellant-plaintiff, much less, he never rendered any assistance or help or allegedly got married two daughters of Chhinder Kaur. Daughters of the Chhinder Kaur were minors at the time of the alleged date of execution of the Will. To the aforementioned categoric

averments, no replication was filed by the appellant-plaintiff.

The trial Court, on the basis of the aforementioned pleadings and as well as on the basis of evidence i.e. attesting witnesses of the Will, scribe of the Will and on documentary evidence, decreed the suit of the appellant-plaintiff.

The Lower Appellate Court in the appeal filed by the respondent-defendant while relying upon a Will, set aside the judgment and decree by holding that the same was suffering from numerous suspicious circumstances.

In view of the judgment and decree rendered by the lower Appellate Court, whereby the suit of the appellant-plaintiff was dismissed, the present Regular Second Appeal has been filed.

Ms. Alka Sarin, learned counsel appearing on behalf of the appellant-plaintiff, in support of grounds of appeal, contends that the lower Appellate Court has committed illegality and perversity in dismissing the suit and setting aside the well reasoned judgment and decree of the trial Court. She further submits that appellant-plaintiff has proved not only the execution of the Will but registration thereof by examining the scribe and one of the attesting witnesses.

In support of her contentions, she has further relied upon the following judgments to contend that mere execution has to be done in support of the registered Will and there is no absolute bar in alternating the natural succession in case the testator bequeaths the property in favour of the other person:-

1. Joginder Singh and others Vs. Surinder Singh (deceased) and others,

VOL.CXV-(1997-1), The Punjab Law Reporter, 83,.

2. Rabindranath Mukherjee and another Vs. Panchanan Banerjee (Dead) by LRs and others, (1995) 4 Supreme Court Cases 459.
3. Mangat Ram and others Vs. Dina Nath s/o Des Raj, VOL.CXV-(1997-2), The Punjab Law Reporter 223.
4. Pentakota Satyanarayana and others Vs. Pentakota Seetharatnam and others, (2005) 8 Supreme Court Cases 67.
5. Ramabai Padamakar Patil (D) through LRs and others Vs. Rukminibai Vishnu Vekhande, 2004(1) HLR 148,.

Mr. Surinder Gaur, learned counsel appearing on behalf of respondent No.4-defendant, in support of his contention, submits that judgment and decree of the lower Appellate Court is based on the appreciation of the oral and documentary evidence. There is no illegality and perversity, much less, no substantial questions of law arises to be adjudicated by this Court. Lower Appellate Court has discharged the obligation as enshrined in Section 96 of CPC referring to both oral and documentary evidence.

I have heard the learned counsels for the parties and appraised the judgment and decree and as well as the record of the trial Court.

I am of the view that appeal is devoid of merit and is liable to be dismissed.

To the categorical averment made in the plaint qua the rendering of service, respondent-defendants have specifically denied, much less, rendering of any assistance to Chhinder Kaur in the performance of the

marriage of her daughters as it has come in evidence, the daughters of Chhinder Kaur were minor at the time of execution of Will & later on marriage was performed by her husband.

The aforementioned pleadings for the sake of brevity, i.e. para No.6 of the plaint and as well as of the written statement is extracted hereinbelow:-

Para No.6 of the plaint of the trial Court:-

“6. That Chinder Kaur alias Chindo alias Manjit Kaur while she was in sound disposing mind executed a valid registered will dated 23.5.1994 in favour of the plaintiff qua the suit land which she had inherited from plaintiff's and her father, situated in village Jhandewala Tehsil and District Moga. The plaintiff had served Chinder Kaur in performing the marriages of her two daughters i.e. defendants Nos.1 and 2 and she was happy with the services rendered by the plaintiff.”

Para No.6 of the written statement:-

“6. That the para No.6 of the plaint is wrong and denied. Chindder Kaur @ Manjit Kaur did not execute any will. There was no need to execute any will. She was quite young and died in early age. In this age nobody executes the will. Moreover there is no reason to execute the will in favor of plaintiff as there are other brother and sisters of Manjit Kaur are alive besides her own minor children and husband, she will not disinherit his own children without any rhyme and reason. The will in question is forged and fabricated and is surrounded by many suspicious circumstances. It seems that plaintiff has fabricated the will with the help of petition writer and co-villager. She never thumb-marked any will.

Manjit Kaur was married at Village Ukandwala and use to reside at Vill. Ukandwala, So there is no question of rendering any services by the plaintiff to the deceased. It is wrong that plaintiff has spent money on the marriages of daughters of Manjit Kaur. Expenses of marriages of their daughter were borne by her husband. So there is no question of spending may money by the plaintiff.”

From the perusal of the averments culled out by the parties to the lis, it is evident that appellant-plaintiff did not rebut the aforementioned averments by filing the replication. It is settled proposition of law that in the absence of the denial of the specific pleadings made in the corresponding paragraphs of the written statement, the same are deemed to be admitted. There is no dispute to the proposition of law laid down in the aforementioned judgments relied upon by the learned counsel for the appellant-plaintiff but the fact remains that the facts in each and every case have to be examined on the basis of the oral and documentary evidence. It is equally settled law that testator can always alter the line of succession by bequeathing the property to third person but while doing so there has to be a specific reason. In the instant case, there is not only one suspicious circumstances for which Will is liable to be discarded but there are others.

Chhinder Kaur was stated to be residing at Village Ukandwala, whereas Will has been executed and registered at Village Jhandewala. The witnesses of the appellant-plaintiff admitted in their cross-examination that daughters of the Chhinder Kaur were married 6-7 years back.

Aforementioned submission surfaced from the cross-examination of PW3

Kartar Singh. Even plaintiff has appeared as PW1 and stated in his cross-examination that age of Chhinder Kaur was 45 to 46 years at the time of Will, whereas PW3 Kartar Singh stated in his cross-examination that age of Chhinder Kaur was 55 to 55 years at the time of Will. Though it has come on record in the testimony of Teja Singh in the year 2011 that he was married 14 years earlier. The few line in the cross-examination would not tilt the scale in favour of the appellant-plaintiff as other corroborated evidence has come on record to show that daughters of Chhinder Kaur at the time of the execution of the Will were minor. The oral testimony cannot override the pleadings.

Be it as it may, the contents of Will do not spell out that intention to the testator or indicate that what special love and affection Chhinder Kaur had for Jaswant Singh which led not only alter the line of succession but also disinherited the other collateral i.e. brothers with whom she had cordial relations.

The findings rendered by the Lower Appellate Court is based on the appreciation of the oral and documentary evidence.

There is no illegality and perversity in the findings recorded by the Courts below which are based on the facts and law.

No substantial question of law arises for adjudication of the present appeal.

Accordingly, the present appeal is dismissed.

12.02.2015

pawan

**(AMIT RAWAL)
JUDGE**