

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

**RSA No.864 of 2012 (O&M)
Date of Decision: 11.12.2015**

Iqbal Singh

.....Appellant

Versus

Tripta Kumari and others

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Puneet Jindal, Sr. Advocate with
Mr. Parambir Singh, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

[1]. Plaintiff is in second appeal against the concurrent judgments and decrees passed by the Courts below in a suit for declaration and permanent injunction.

[2]. Plaintiff filed the suit on the basis of Will dated 28.08.1990 executed by Manjit Singh real brother of the plaintiff. Mutation in favour of defendants No.1 and 2 has been claimed to be null and void. Plaintiff further sought relief of permanent injunction, restraining the defendants from interfering in the suit land. Plaintiff alleged that plaintiff and Manjit Singh were living in UAE. Manjit Singh was having strained relations with his wife. There were various civil and criminal litigations between them.

Plaintiff was serving his brother Manjit Singh. Even they were living in UAE prior to marriage of Manjit Singh. On account of love and affection, Manjit Singh executed a Will dated 28.08.1990 in favour of plaintiff ignoring the defendants in respect of property. Manjit Singh ultimately died on 11.01.1991. Plaintiff became owner of property of Manjit Singh by the dint of Will in question.

[3]. Plaintiffs further alleged that defendants were making attempts to get the property of Manjit Singh by inheritance. Plaintiff sought jurisdiction of Revenue Court on the basis of Will but failed in his attempt right upto the stage of Financial Commissioner and Will was discarded by the Revenue Authorities.

[4]. The suit was contested by the defendants on various grounds of non-maintainability of the suit, res judicata and locus standi of the plaintiff. Defendants also alleged that the Will was adjudicated by the Assistant Collector Grade-I in favour of defendants. Thereafter, plaintiff remained unsuccessful in appeal before Additional Deputy Commissioner-cum-Collector, Jalandhar and finally on reference, the Will was discarded by the Financial Commissioner, Revenue in ROR No.515 of 1997-98. On the basis of Will, the claim of the defendants was accepted. The suit is claimed to be hopelessly time barred. The

mutation sanctioned in favour of the defendants and the order of the Revenue Authorities had attained finality. Defendant No.1 also admitted her strained relations with Manjit Singh but claimed that at a subsequent stage there was reconciliation and he was living with defendant before his death. Will is claimed to be the result of fabrication and is unregistered document which has been procured in connivance with Parlhad Kumar, Gurmail Singh, Shiv Singh, close friends and relations of Jaswinder Singh attorney of the plaintiff.

[5] After filing replication, following issues were framed:-

“1. Whether the plaintiff is entitled to the relief of declaration to the effect that he is owner over the suit property on the basis of the Will dated 28.08.1990, if so its effects? OPP

1-A) Whether the mutation No.2696 sanctioned in favour of defendant is null and void and is not binding upon the rights of plaintiff? OPP

2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP

3. Whether the suit of the plaintiff is not maintainable as he has no locus standi to file the same? OPD

4. Whether no cause of action has

accrued to the plaintiff to file the present suit? OPD

5. Whether the suit of the plaintiff is hit by the principle of res judicata? OPD

6. Whether the suit of the plaintiff is barred by limitation? OPD

7. Relief.”

[6] To prove their case, both the parties led their respective evidence.

[7] Trial Court after considering the material on record held that Will in question is shrouded by mysterious circumstances and dismissed the suit vide judgment and decree dated 27.08.2009. Plaintiff remained unsuccessful in first appeal before the Lower Appellate Court who dismissed the appeal vide judgment and decree dated 11.11.2011.

[8] In the present appeal, plaintiff has formulated following substantial questions of law:-

“i) Whether in the facts and circumstances of the case, the Will Ex.P1 disinheriting respondent with whom the testator was in deep litigation can be said to be shrouded with suspicious circumstances?

ii) Whether the plaintiff/appellant could have been non-suited merely on the ground that he was unsuccessful

before the Revenue Authorities while challenging mutation of inheritance sanctioned in favour of respondents?

iii) Whether in the facts and circumstances of the case testimony of PW3, real brother of testator and real brother-cum-attorney of plaintiff could have been ignored on the ground that plaintiff himself has not stepped into the witness box?

iv) Whether signatures in Punjabi by testator can be said to be suspicious circumstances if sometime the testator has been signing in English as well?

v) Whether the Will could be ignored on the ground that the same has not been scribed by a regular deed writer?

vi) Whether the Courts below have appreciated the material facts that testator will not bequeath in favour of wife who had filed false civil and criminal proceedings against the testator till his death?

vii) Whether the fact that in Punjab normally the persons want the agricultural land to be given to male ancestor only could have been ignored by the Courts below?

viii) Whether the principle that the

Court is to sit in the arm chair of testator and read his mind while considering the existence or otherwise of suspicious circumstances could have been ignored by the Courts below?”

[9] I have heard learned counsel for the appellant and have also gone through the material on record.

[10] Learned counsel for the plaintiff-appellant has contended that Manjit Singh was well within his right to ignore his wife in the Will in question due to pending litigation between them. There cannot be any doubt that Will is always meant to dislodge someone who is legally entitled to the property, but execution of Will has to be proved beyond all suspicious circumstances. Fraud vitiates all solemn acts. Gurmit Singh was examined as PW1 and he was one of the attesting witness. The witnesses stated that Will was scribed by Parlhada in August, 1990 at the instance of Manjit Singh and after scribing the Will, he read over the same and he along with another attesting witness Shiv Singh attested the same. Cross-examination of witness was deferred. Later on this witness ultimately died without any cross-examination and the factum of his death was brought on record, therefore, testimony of PW1 has to be ruled out of consideration being incomplete. Scribe i.e. Parlhada

Kumar was examined as PW2 who has tendered his affidavit Ex.PW3/1. He deposed that Will was scribed by him at the instance of Manjit Singh. After scribing the Will the contents were read over to Manjit Singh, who signed in his presence as well as in the presence of other attesting witnesses. Manjit Singh was in his sound disposing mind at that time. The scribe made an entry of Will in his register at serial No.93/1990. Both the attesting witnesses also signed along with Manjit Singh in the register. He produced the Will Ex.P1 on record and copy of his register Ex.P1/A. Witness has admitted in his cross examination that he is not a registered deed writer, rather he is a RMP Doctor. He has not obtained any qualification of medical study from any college or University, nor he is having any diploma or degree. The witness further admitted that he was not knowing the parties personally, nor could he say that person came to him was in fact Manjit Singh or not. He further admitted that there are official deed writer in Adampur and Manjit Singh never disclosed to him that he had any child or not. The witness further admitted that entry in respect of Will is on the last of date 28.08.1990 and the digit of word '3' is overwriting over digit No.93 in the last. In the last column of register, there is signature of some Prithvi Singh and cancellation has been made with the pen. Witness further admitted that register was

lying deposited in the Court of SDM, but he could not tell the name of the Court and the date on which it was given in the Court of SDM. The witness also failed to produce any receipt regarding handing over of register in the Court of SDM with reference to date, month and year. PW 3 Jaswinder Singh has been examined who is brother of Manjit Singh and is General Power of Attorney of the plaintiff. Witness has admitted the birth of Gurpreet Kaur from the wedlock of Manjit Singh with defendant No.1. He also deposed about strained relations between Tripta Devi PW-1 and Manjit Singh. Manjit Singh was living with his brother Iqbal Singh who was serving him during his lifetime and Manjit Singh executed valid Will in favour of Iqbal Singh in his sound disposing mind out of love and affection. He identified the signatures of Manjit Singh on the Will. In cross examination witness has faltered and he stated that he does not know if Will was executed by Manjit Singh in his presence or not? The witness was confirmed with his earlier statement given before the Court of SDM, where it was mentioned that he was not present at the time of execution of Will. The witness admitted that Power of Attorney was given to him for the first time in the year 1991. He could not depose with reference to date, month and year of said Power of Attorney. Factum of proceedings before the Revenue Courts has been

admitted by the witness. Further cross examination of the witness revealed that on 05.05.1987 a sale deed was executed in favour of his father by Manjit Singh for land measuring 2 kanals 15 marlas and on seeing the same he identified the signatures of Manjit Singh and admitted its certified copy as Ex.DE but in the same breathe, he took U-turn and stated that he only admits the signature of his father and not of Manjit Singh as he can identify the signature of Manjit Singh in Punjabi. The signatures of Manjit Singh on the deed are in English. The witness was confronted with the Special Power of Attorney by the Consulate General of India of Manjit Singh in the year 1988 Ex.R1. The witness further stated that he cannot say whether it bears the signatures of Manjit Singh or not. Thereafter, the witness was also confronted with original Special Power of Attorney dated 16.03.1987 (Ex.R2) attested by Consulate General of India, but the witness again stated that he cannot say if both these documents are signed in English by Manjit Singh. The aforesaid exercise has been made to counter the witness that in fact Manjit Singh used to sign in English and was not in the habit of signing the document in Punjabi. Son of second attesting witness i.e. Shiv Singh PW4 has been examined who deposed that his father died in the year 2002 and he identified the signature of his father on the Will. In the cross

examination the witness admitted that in the identity card brought by him, name of his father is not mentioned. The other witnesses namely PW 5 Balbir Kaur, PW 6 Mohinder Singh and PW 7 Balwinder Singh son of Mehanga Ram have also been examined in the context of proving the proceedings before the Revenue Authorities and execution of Power of Attorney.

[11] Defendant No.1 has also appeared as DW 2 and deposed in the context of her stand in the written statement. Factum of marriage with Manjit Singh was admitted and birth of defendant No.1 from this wedlock was also admitted. Witness stated that before the death of Manjit Singh, they had started living as husband and wife and relations were cordial. She further stated that conspiracy has been hatched by the plaintiff with the help of Parlhad Kumar, other close friends and relatives to grab the property. Will is claimed to be manipulated document as her husband used to sign in English. She identified the signature of her husband upon the sale deed Ex.DE dated 05.05.1987 executed by Manjit Singh in favour of Darshan Singh (father). She also relied upon Special Power of Attorney dated 24.04.1987 executed by her husband in favour of one Joga Singh. She further deposed that Manjit Singh while living in Dubai also executed a Special Power of Attorney in favour of Udham Singh on 24.06.1988 which was attested by the

Consulate General of India in Dubai. She also identified the signatures of her husband on original Special Power of Attorney. The defendant has stated that her husband used to sign in English and not in Punjabi and therefore, will besides being unregistered is proved to be fraudulent.

[12] Plaintiff Iqbal Singh in whose favour Will was allegedly executed has not stepped into the witness box to depose in respect of his claim. Jaswinder Singh attorney has been produced as PW3. Plaintiff must prove the facts of his personal knowledge by appearing in the witness box and statement of power of attorney qua such facts is not admissible in evidence.

[13] In such a situation an adverse inference has to be drawn against the plaintiff. In case of personal knowledge appearance of General Power of Attorney cannot be allowed to depose. Plaintiff should have appeared as his witness in his own capacity as a principal in the matter of personal knowledge and he should have stood the test of cross examination.

[14] Reference can be made to **Janki Vashno Vs. Indusind Bank 2005 (1) RCR (Civil) 240 (SC) and Manmohan Singh Vs. Narinder Kaur, 2008(4) RCR (Civil), 81.** If a party does not appear in the witness box and states the things on Oath and does not offer himself to be examined by the opposite side, then a presumption arises that the case set up by him is

not worth acceptance. Reliance can also be placed on ***Vidhyadhar Vs. Manikrao, 1999(3) SCC-573.***

[15] The factum of Will has been discarded by the Revenue Courts up to the highest level. Even the plaintiff witnesses have admitted the factum of Will having been discarded by the revenue Courts and even upto High Court.

[16] Both the Courts have appreciated the evidence on record with reference to suspicious circumstances appearing from the statement of scribe as well as attesting witnesses and non-examination of plaintiff himself in the witness box and not offering himself for cross examination by the defendants. The signatures of Manjit Singh appearing in Punjabi have also been considered as one of the consideration with reference to other documents on record which were duly attested by the Consulate General of India in Dubai and all these documents are carrying signatures of Manjit Singh in English. In overall assessment of facts and circumstances of the case, the Will is proved to be shrouded with suspicious circumstances. Disinheritance of defendant No.1 on account of pendency of criminal cases could have been justified if plaintiff proves other evidence in his favour, but disinheritance of Gurpreet Kaur i.e. the only unmarried daughter of Manjit Singh in the Will without any rhyme and reason is also proved to be an act of mala fide at the

instance of plaintiff who procured the unregistered Will which is proved to be shrouded with suspicious circumstances. The attempt has been made by the plaintiff in connivance with others to usurp the property in the manner which is not legally recognized. The questions as formulated do not involve at all. Question No.1 even though does not arise in respect of defendant No.1 but still it has relevancy in the context of disinheritance of defendant No.2 particularly when no reason has come forth. If other suspicious grounds are not proved, the disinheritance of respondent alone would not be a relevant factor for discarding the Will in question, but in the present case there are other factors which make this factor also one of consideration that the disinheritance of defendants in the unregistered Will is not lawful and is shrouded with suspicious circumstances.

[17] Question No.2 has to be answered against the appellant. Revenue Authorities have lawfully appreciated the controversy in favour of defendants, thereby rejecting the Will being shrouded with suspicious circumstances. The sanctioning of mutation was solely under the domain of the Revenue Authority and mutation has been rightly sanctioned in favour of the defendants. The order passed by the Revenue Authorities have been upheld the highest level. No fault could be pointed

out in the orders passed by Revenue Authorities. Question No.3 is a question of fact and does not arise. Question No.4 arises inasmuch as that the testator was found in the habit of signing in English. The material on record produced by the defendants is an authentic evidence and in the absence of any rebuttal, the same cannot be discarded only on conjunctures. Question No.4 has to be answered against the appellant. Non-scribing of Will by regular deed writer coupled with factors which have been openly admitted by the deed writer, make the will to be shrouded with suspicious circumstances. Question No.5 has to be answered in favour of all the defendants. Courts below have lawfully appreciated the material on record. In the absence of any divorce, defendant No.1 even, if, involved in civil and criminal litigations with her husband cannot be presumed to have lost right of her being the legally wedded wife. The entire case of the plaintiff is dependent upon proving the execution of Will which has not been proved on any satisfactory note. Therefore, this issue does not arise. Question No.7 is not a substantial question of law. Question No.8 is also not a substantial question of law, rather the same has been adequately answered in preceding discussion of other questions.

[18]. This Court, having considered the issue in the light of

available material on record feels that the plaintiff has miserably failed to prove the execution of Will in his favour. This Court does not intend to interfere in concurrent judgments and decrees passed by the Court below. Consequently, this appeal is dismissed.

11.12.2015

Prince

(RAJ MOHAN SINGH)
JUDGE