

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

R.S.A.No.1854 of 2013 (O&M)

Date of Decision: January 19, 2015

Saranjit Kaur & others

...Appellants

Versus

Surjit Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Raghuvinder Singh, Advocate,
for the appellants.

AMIT RAWAL, J.

This is a Regular Second Appeal at the instance of the appellant-plaintiff Nos.3 to 6 against the judgments and decrees of the Courts below, whereby their claims for declaration that they are owners in joint possession to the extent of 6/9 share out of the property bearing khewat No.26, khatauni No.34, khasra No.26//15/1/3(1-17), 16/2(7-8), 24/1 (1-4), 25/1(7-8), 27/1(0-8), 32//2/2(3-0), 3/1(6-12), 9/1(0-12), 9/2(0-8), 7/2 (1-8), 8(2-10), 179(0-5), 180(0-3), Hadbast No.149, situated at Village Mansurwal Dona, Tehsil and District Kapurthala, as detailed in the jamabandi and land situated at village Tawankhan Jagir, Tehsil and District Kapurthala bearing khewat No.27, khatauni No.81, khasra No.493/229(0-9), 498/455/230(0-2) and also owners in joint possession to the extent of 6/9 share out of the property shown red in the site plan, situated within the Lal Lakir of Village Mansurwal Dona and property situated in Village

Tawankhan and further challenge to the mutation No.4145 in respect of the estate left by Dyal Singh (since deceased) being null & void and for permanent injunction, whereby the defendants have been sought to be restrained from alienating and creating charge over the property, has been dismissed by the trial Court vide judgment and decree dated 14.2.2006 and appeal filed against the said judgment and decree has also been dismissed.

Mr.Raghuvinder Singh, learned counsel appearing for the appellant-plaintiff Nos.3 to 6 has submitted that both the Courts below have committed an illegality and perversity in dismissing the suit as Will dated 13.8.1997 (Ex.D2) was surrounded by suspicious circumstances, much less, as per the report of the Handwriting Expert (Ex.PW8/1), the Will was found to be forged and the testimony of the Handwriting Expert remained un rebutted. He has further submitted that the signatures of Dyal Singh on the Will, from the perusal of naked eye, abundantly made clear that these were forged and fabricated and, therefore, the Will cannot be rendered as a genuine and both the Courts below have erroneously discarded the report of Documents and Handwriting Expert while holding that the comparison of Handwriting is a weak type of evidence and cannot be taken over upon the direct testimony of DW-3 Malkiat Singh, attesting witness of the Will and DW-2 Chaman Lal, Deed Writer and Scribe of the Will.

He has further submitted that the previous Will dated 29.5.1990 executed by Dyal Singh was later on cancelled through a registered cancellation deed dated 27.5.1993 and the signatures of Dyal Singh, if compared on Exs.D1 and D2, the same do not tally with each other. The earlier Will was executed in favour of his wife during his life time to be

owner and after her death intended to be devolved upon the sons and one house to a married daughter, namely, Harjit Kaur. The reason mentioned in the Will was that he was not happy with his sons being disobedient to him and, therefore, the second Will in favour of the sons was surrounded by suspicious circumstances as the respondent-defendants failed to dispel the document and there was no mention in the second Will with regard to the earlier Will and the cancellation. In the second Will, four daughters have been excluded and property has been bequeathed in favour of five sons.

I have heard the learned counsel for the appellant-plaintiffs and appraised the impugned judgments and decrees of both the Courts below with his able assistance and is of the view that the aforementioned arguments are devoid of merit, much less, do not have any substance and, therefore, are rejected.

The Will (Ex.D2) dated 13.8.1997 executed by Dyal Singh has been proved through the testimony of DW-3 Malkiat Singh and DW-2 Dhaman Lal, Deed Writer and both the witnesses have deposed in terms of the provisions of Section 63-C of the Indian Succession Act. Not only this, deceased Dyal Singh clearly mentioned in the Will that his wife Mohinder Kaur will not have any right to alienate the suit property left by him. Therefore, for all intents and purposes, she could not have become absolute owner in view of the provisions of Section 14(1) of the Hindu Succession Act, 1956. Merely because that married daughters have been excluded from the property would not be sufficient to doubt the due execution of the Will as the Will is always executed to devolve upon the siblings, i.e., the natural course of succession. In the Will dated 13.8.1997 (Ex.D2), Dyal Singh had

explained that he performed the marriage of his three daughters and they are well settled and the expenses were born on the marriages, so the exclusion of the married daughters from the property of the deceased cannot be considered to be suspicious circumstance. It was not unnatural to exclude the daughters from the property of the deceased as the testator did want his agriculture land to go out of the family.

It may not be out of place to mention here that Dyal Singh deceased was a Stamp Vendor and he knew the intricacies of the execution of the Will and as well as the cancellation of the previous Will. It is not necessary that the witnesses to the Will should hail from the same village. In fact, DW-3 Malkiat Singh hails from Village Ramidi and Karnail Singh Lambardar used to sit in Tehsil complex for the purpose of attestation. It is settled law that if a scribe is known to the deceased and unable to give the names of the family, even then it could not be a ground to discard his testimony as the testator had reposed a confidence and faith in the said witness. PW-8 B.R.Sharma, Documents Expert when submitted his report, the same was not believed by both the Courts below as the original Will, according to the respondent-defendants, was with the appellant-plaintiffs, but the plaintiffs did not produce, which led to the defendants to seek permission of the Court to prove the certified copy of the Will by way of secondary evidence, which was allowed and the certified copy of the Will was exhibited. The order granting the permission to prove the Will by way of secondary evidence had not been challenged. It is also settled law that the Handwriting Expert always toe to the line to the party which has engaged him and, therefore, both the Courts below have rightly discarded the report

of the Handwriting Expert. The Will was registered before the Registrar and it was read over and explained to deceased Dyal Singh and, who after admitting the contents as correct, signed the endorsement on the back of the Will in the presence of DW-3 Malkiat Singh and Karnail Singh Lambardar.

The learned counsel appearing for the appellants, in support of his argument, has relied upon the judgment of this Court rendered in **Joginder Singh Versus Veero (Smt.), 2007(1) PLJ 480** to contend that the facts of the case are identical to the facts of the present case and the Court had found that the Will was surrounded by suspicious circumstances and even in the cited case also, there was a previous Will, which was cancelled.

I have gone through the judgment in Joginder Singh's case (supra). The facts and the ratio decidendi of the judgment are not applicable to the facts and circumstances of the present case for the reason that in the cited case, the registered cancellation deed was not proved in accordance with law. Here in this case, it is admitted between the parties that the Will was cancelled. Therefore, the facts of the cited case are not similar to the facts of the present case. The judgment is based on the facts, i.e., the judgment in Personam and not Rem. Both the Courts below have rendered a finding of fact and law, based on the appreciation of oral and documentary evidence. No substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

January 19, 2015
ramesh

(AMIT RAWAL)
JUDGE