

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

Regular Second Appeal No.2374 of 2015 (O&M)

Date of decision: 28.5.2015

Gurdip Kaur

... Appellant

Versus

Harpreet Kaur and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Deepak Arora, Advocate,
for the appellant.

1. To be referred to the Reporters or not? **Yes.**
2. Whether the judgment should be reported in the Digest? **Yes.**

RAJIV NARAIN RAINA, J.

CM No.624-C-2015

For the reasons recorded in the application, the delay of 257 days in re-filing the appeal is condoned.

RSA No.2374 of 2015 (O&M)

1. This is defendant's second appeal against the appellate decree dated 29th April, 2014 passed by the learned District Judge, Jalandhar allowing the appeal of minor Harpreet Kaur daughter of late Inderjit Singh son of Gurdarshan Singh, instituted through her mother and substituted by her maternal grandfather Darshan Singh against her grandmother and mother arrayed as defendants # 1 and 2 in a suit for declaration that she

along with other defendants are joint owners in possession of the suit land described in the plaint to the extent of 1/12th share each in three parcels of suit land comprising 220K-18M, 16K-0M and 13K-8M respectively falling in village Ambgarh, Tehsil and District Jalandhar, Punjab.

2. The suit was based on a challenge to the testamentary will dated 1st July, 1991 allegedly executed by her father Inderjit Singh. She pleaded that it was a forged and fabricated document which deprived her of her birth rights in suit land as minor, without orders of the guardian court. A permanent injunction was also sought restraining the grandmother from transferring, alienating or selling the suit property in any manner beyond her 1/12th share. During his lifetime, the plaintiff's father Inderjit Singh bequeathed his property in favour of his mother Gurdip Kaur. Inderjit Singh unfortunately died on 5th September, 1991 when she was minor. On his death, she was entitled to succeed to the suit property along with her mother Jaswinder Kaur and grandmother Gurdip Kaur in equal shares being Class I heirs under the Hindu Succession Act, 1956. It was alleged that after the death of Inderjit Singh, the defendant # 1 in connivance with her sons manufactured a false will and testament dated 1st July, 1991 which was registered after the death of the testator on 27th December, 1991 and on the basis of this will, mutation No.1198 of the estate of Inderjit Singh was sanctioned in favour of the defendants.

3. The original lawsuit was filed by the minor daughter through her mother Jaswinder Kaur. After the death of Inderjit Singh, she got re-married which led to amendment of the suit in its cause title as one filed through her maternal grandfather. It was pleaded in the amended suit that

Inderjit Singh received 1/4th share in the entire disputed land and on his death, she succeeded to his estate by natural succession entitling her to succeed to 1/12th share i.e. $1/4 \times 1/3 = 1/12$. The case set up was that since she was minor on the date of death of her father, the testamentary will was liable to be ignored since it broke the chain of natural succession and disinherited her from ancestral property in the hands of her late father.

4. The suit was contested by the grandmother. The mother filed a separate written statement and admitted the claim of the plaintiff. Having filed the written statement, the mother did not contest the suit thereafter. A replication was filed by the plaintiff to the written statement and from the pleadings of the parties, the following issues were struck : -

1. Whether the plaintiff is entitled for declaration as prayed for ? OPP.
2. Whether the plaintiff is entitled for permanent injunction as prayed for ? OPP
3. Whether present suit is bad for non-joinder and mis-joinder of necessary parties? OPD
4. Whether present suit has been filed by an authorized and competent person? OPD
5. Relief.

5. Both the parties led their oral and documentary evidence in support of their respective cases and closed them by order on statements made by their respective counsel.

6. The only question which arises in this appeal is: “Whether the last will and testament dated 1st July, 1991 executed by late Inderjit Singh

excluding his minor daughter (the plaintiff) and wife (defendant # 2) from natural succession is a legal and valid document?”

7. In the suit the inter se relationships between the parties were admitted. The undisputed facts were that Inderjit Singh was only 26 years of age when he executed the will. The property was ancestral in nature. The plaintiff was only 2 years old at the time of execution of the alleged will. It was contended that there was no occasion for such a young man to have executed a will in favour of his mother and this was a suspicious circumstance surrounding the will. The registration of the will was after the death of plaintiff's father without notice or protection of the interests of the minor child. The attesting witness to the will, namely Ajit Singh was examined as DW2 and he deposed that he had actually not seen the original will and it was seen by him only when he saw its certified copy Ex.D5 in court. The original will was not placed on the judicial file and only its certified copy was. No permission was sought to lead it by way of secondary evidence. In all probability, the will was forged on the day of its registration but on the back date obviously to by-pass the rights of the minor and her mother.

8. However, the learned trial Judge dismissed the suit vide judgment and decree dated 21st August, 2012. He found nothing unnatural in Inderjit Singh executing a will in favour of his mother alone as beneficiary when there was nothing unnatural or suspicious in it. Besides, the trial court found the conduct of defendant # 1 equitable since she had later transferred 1/3rd share in the property in favour of the plaintiff and the remaining 2/3rd share in favour of her two surviving sons based on rights coming from the

testamentary will of her decedent son. From this, the trial Court inferred that there was good intention on the part of the grandmother of the plaintiff who treated all the family members equally without discrimination. But the trial Judge did not foresee that the will of the grandmother upset plaintiff's share and diluted it considerably, just as what the father's will did to exclude her altogether from inheritance. The subsequent registration of the will was not found remiss by the first court since registration of a will is optional.

9. Aggrieved by the judgment and decree of the learned trial Court, the plaintiff carried an appeal to the learned District Judge, Jalandhar on 1st October, 2012 which has been allowed on 29th April, 2013 and the trial court decree has been reversed by allowing the suit.

10. The learned District Judge, Jalandhar has held by a well reasoned judgment that when Inderjit Singh died, his estate devolved upon the plaintiff, her mother and the grandmother and all of them became owners to his estate to the extent of 1/3rd share each. It was the 1/3rd share coming to the defendant Gurdip Kaur that she transferred her 1/3rd share in favour of the plaintiff and the other two parts equally to her remaining sons Paramjit Singh and Amarjit Singh by transfer of property. The transfer is thus hit by the principle of *lis pendens* as contemplated under Section 52 of the Transfer of Property Act, 1882. The learned District Judge, Jalandhar applied his mind and re-framed and delineated the following questions for determination which I think was an excellent measure to analyze the evidence already adduced on the file in the correct perspective: -

- “a) Who are the natural legal heirs of deceased Inderjit Singh?
- b) What is the effect of remarriage of Smt.Jaswinder

Kaur?

- c) Whether Inderjit Singh executed an unregistered will dated 1.7.1991?
- d) What is the effect of transfer of 1/3rd share by defendant Gurdip Kaur in favour of Harpreet Kaur vide transfer deed No.216 dated 22.5.2006 (Ex.DX/4)?
- e) Whether plaintiff is estopped from filing the suit?

11. This was good thinking and he set about to reappraise the evidence by properly exercising his jurisdiction to identify the real issues involved in the case and did not follow in a routine manner the issues framed by the trial Court which were found inadequate to answer the issues. He then proceeded to re-examine the evidence on record threadbare arising for determination.

12. There can be no doubt that on the death of Inderjit Singh on 5th September, 1991, if he died intestate his class-I heirs only were his minor daughter, the plaintiff, his widow and his mother Gurdip Kaur. Learned District Judge relied on the Jamabandi Ex.P1 which recognized that Inderjit Singh is 1/4th owner in the suit property. Thus, they were entitled to 1/3rd share each out of the share left by Inderjit Singh in the suit property but for the will under challenge.

13. The learned District Judge examined the effect of re-marriage of Smt Jaswinder Kaur in the light of the evidence adduced before the learned trial Court. The factum of re-marriage was not disputed by the parties. The re-marriage had led Darshan Singh, the maternal grandfather of the minor plaintiff Harpreet Kaur, to move an application on 21st January, 2006 before the trial court for permission to sue as guardian of minor Harpreet Kaur being her natural blood relation in absence of the mother

living elsewhere in her newly acquired matrimonial home. The application was allowed. The suit was amended. So was the memo of parties. The re-marriage took place in August, 2003 prior to the filing of the suit. Jaswinder Kaur re-married after 12 years of the death of Inderjit Singh. For 12 years, she was dependent on the estate of the deceased but was awarded no maintenance by her mother-in-law to meet her reasonable wants. If she had remarried, she did not forfeit the property inherited by her from her late husband Inderjit Singh because succession opened immediately on the death of Inderjit Singh and she became joint owner to the extent of 1/3rd share out of the share of Inderjit Singh in ancestral property. The learned District Judge rightly held that her re-marriage had no effect on the succession. The plaintiff did not conceal the fact in the plaint that her mother was re-married. The suit was instituted on 11th November, 2003 through her mother who was then a widow.

14. The learned District Judge re-visited the unregistered will dated 1st July, 1992 Ex.D5. The will had to be proved in terms of the provisions of the Indian Succession Act and the Indian Evidence Act. Only when there exist suspicious circumstances, the onus would shift on the propounder to explain them to the satisfaction of the Court before the will could be accepted as a genuine disposition of property. He analyzed the entire evidence with care and circumspection from all possible angles. He read the recitals in the will which disclosed the following features in summarized form: -

- “a) That Inderjit Singh executant was about 26 years of age at the time of execution of the will;
- b) that he has a daughter and wife but their names are

not mentioned in the will and it is inserted therein that his wife is not keeping cordial relations with the executant and his parents rather she was interested in her parental family.

c) that immediately after the birth of the child, relations between husband and wife became strained;

d) that he had got prepared a passport and he would go abroad in near future but he apprehends that in his absence, his wife would not treat his parents properly.

e) that even at that time, his parents were keeping his minor daughter. It is also added in the will that now he wants to go abroad, therefore, he was executing the will in favour of his mother Smt.Gurdip Kaur.;"

15. He found not even an iota of evidence that the relationship between the husband and the wife was strained. They were living in a joint family in a cordial environment. Inderjit Singh held a passport from childhood and had travelled abroad. He concluded that the recital in the will with regard to issuance of passport of an intention of executant to go abroad in the near future was a false plea set up by defendant # 1 to show that since he was to leave ex India he made the will on prudence. The original part of the will was not produced by the defendant though it was in her possession. Learned Judge felt that a conspiracy was hatched by Gurdip Kaur, her husband and her living sons to deprive the rights of minor plaintiff Harpreet Kaur and her mother Jaswinder Kaur. He analyzed the unregistered will Ex.D5 and discovered that interline spacing is in reducing trend from top to bottom. Even the scribe had started writing his name and register number in the last line of the will in an unusual manner. He saw chicanery in the photostat copy of the scribe register Ex.DW4/A produced by the scribe and the will and suspected the documents as a trick played. The District Judge opined as follows : -

“It seems that earlier the last entry was vide serial No.366 dated 1.7.1991. This entry is signed and checked by Assistant Collector on 14.8.1991. It seems that at that time, it was last entry but subsequently in the space left blank, entry no.367 was added showing the date 1.7.1991. In the third column of the register, the interline spacing was reduced to minimum. It seems that earlier this space was left open but subsequently it was filled up by incorporating entry no.367. It appears to be chicanery on the part of defendant Gurdip Kaur and the scribe. It creates doubt in the execution of the will and is itself a suspicious circumstance.”

16. The learned District Judge examined the issue of non-production of the original will on record. He found that the plaintiff moved an application under Order 11 Rule 14 CPC on 30th July, 2004 praying for directions to the defendants to produce on record the original will dated 1st July, 1991. Reply of the defendant was that it was lying in the office of the Sub-Registrar, Jalandhar and the defendants had applied for a certified copy and that copy has been produced in the Court. When the original will was admittedly lying in the office of the Sub-Registrar, Jalandhar, it was not produced. It was even more remarkable that the learned counsel for defendant # 1 had suffered a statement on 5th September, 2009 that the defendant # 1 is not in possession of the original will dated 1st July, 1991.

17. The defendant # 1 was found to be in possession of the certified copy of the will issued by the Sub-Registrar. The defendant produced DW3 Joga Singh, Additional Head Registration Clerk from the office of the Deputy Commissioner, Jalandhar who proved the registration record of the unregistered will entered at serial No.70/3 dated 27th December, 1991. The Court concluded that Ex.D5 is not an original will. Rather it is a copy of the

same. The witnesses produced by the defendant were not shown the original will. PW1 Jaswinder Singh, Office Kanungo was examined by the plaintiff and in his examination-in-chief, there is discovered no original will in his record but in the cross-examination, he admitted that the original will lies in the mutation file. This led to a serious doubt as to where the original will could be found but then there was a statement of the learned counsel that the original will is lying in the office of the Sub-Registrar but that was not a true statement of fact. The Court concluded that the existence of the original will is not established and non-production thereof is fatal to the case of Gurdip Kaur. The defendant did not obtain permission to lead secondary evidence to prove the will. It has, therefore, no value as evidence. Learned Judge discussed the case law on the subject and appropriately so. There was evidence of DW2 Ajit Singh that Gurdip Kaur had actively participated in the execution of the will. Learned Judge reproduced the cross-examination in his judgment, the drift of which leaves no manner of doubt that there was something really amiss in the making of the will. There were contradictions in the statement of DW2-Ajit Singh that the will was scribed at Tehsil Complex on some paper which was brought by Gurdip Kaur but to the contrary the will is scribed on an ordinary paper. This also becomes a doubtful circumstance casting grave suspicion in the making of the will.

18. The learned Judge sitting in the appeal court also found from the evidence of DW2 Ajit Singh that Inderjit Singh and his family were joint in household and the story propounded by defendant # 1 that the husband and wife had strained relations was not a truthful account. Rather the evidence on record suggested to the contrary. This was also a suspicious

circumstance arising out of the recital in the will and a rather forced one doctored to support its genuineness. It was even stranger than fiction that the young testator aged 26 years would ignore his wife and his 1½ year old daughter from his property especially when his mother Gurdip Kaur defendant was well settled and living abroad during the relevant period. This was also a suspicious circumstance as to why the name of the plaintiff and his wife is not mentioned in the will.

19. Inderjit Singh had a passport issued to him on 28th February, 1974 when he was 10 years of age. To make matters more suspicious, Smt Gurdip Kaur admitted in her cross-examination that Inderjit Singh had been residing in a foreign country, i.e., in England since his childhood. Non-registration of the will dated 1st July, 1991 during the lifetime of Inderjit Singh was found fatal by the Court *a quo*. Mere subsequent registration lends no credence to the will. Surprisingly, no provision was made for the maintenance of minor plaintiff-Harpreet Kaur and her mother in the will who had no source of income and were solely dependent upon late Inderjit Singh. When the mother was residing in a foreign country then where was the dire need to execute the will in the first place. This was yet another unnatural circumstance thought the learned District Judge shrouding the will. On a critical examination of the evidence, learned District Judge, Jalandhar culled out the suspicious circumstances and deduced them articulately as follows : -

“a) The original will dated 1.7.1991 has not been produced in the court by defendant no.1 Gurdip Kaur.

b) The name of plaintiff and her mother Jaswinder Kaur is not mentioned in the will. They have been excluded

from the property without any acceptable reason and without making any provision for their maintenance.

c) The recitals in the will are found to be false and the beneficiary Smt.Gurdip Kaur had taken active part in the execution of the will.

d) The presence of Smt.Gurdip Kaur in India at the time of execution of will is doubtful as she claims that she arrived India much after the death of her son. It transpires that will was created only after her arrival in India and much after death of Inderjit Singh.

e) The original will has not been produced nor shown to the attesting witnesses or the scribe. No application for leading secondary evidence was moved by defendant no.1 before proving the certified copy of will Ex.D5.

f) No notice was given to the plaintiff or defendant no.2 before getting the mutation sanctioned in favour of defendant no.1 by A.C. 1st Grade.”

20. It has come in evidence that plaintiff-Harpreet Kaur attained the age of majority on 29th August, 2007. The transfer deed executed by Gurdip Kaur in favour of her sons Paramjit Singh and Amarjit Singh to the extent of 2/3rd share and Harpreet Kaur to the extent of 1/3rd share is dated 22nd May, 2006. It was neither signed by the plaintiff through guardian nor her mother and was made in their absence. Being a minor on 22nd May, 2006, the instrument could not affect the rights of the plaintiff. The transfer deed was with respect to her 1/3rd share through Inderjit Singh which share was transferred on 22nd May, 2006 vide Ex.D4. The argument raised was that the plaintiff had transferred 1/3rd share through transfer deed dated 22nd May, 2006 after attaining majority vide sale deed Ex.D4 then estoppel would apply as argued by the contesting defendant.

21. However, the learned District Judge did not agree, he reasoned that this act of plaintiff will not affect her rights because it could be related

to transfer of 1/3rd of her share which share Gurdip Kaur inherited from her son late Inderjit Singh. The principle of estoppel would not apply for the reason that she had transferred 1/3rd share vide sale deed Ex.D4. Learned District Judge rightly held that the judgment and decree of the learned trial Court could not hold the field, as there were grave errors in its reasoning in returning findings contrary to evidence. Hence, the judgment and decree under appeal was set aside and rightly so. The suit of the plaintiff was decreed to the effect that the plaintiff and the defendant have succeeded to the estate of Inderjit Singh being his natural heirs and thus, the plaintiff has become joint owner to the extent of 1/12 share just as Gurdip Kaur and her mother Jaswinder Kaur, inherited out of the suit property. The will dated 1st July, 1991 Ex.P5 was held not to be a valid and genuine document. Prayer for permanent injunction was found justified in restraining Gurdip Kaur in alienating the suit property or her share. However, the transfer made by Gurdip Kaur during the pendency of the suit will be subject to *lis pendens* and in continuation of litigation, if any.

22. I find myself in complete agreement with the opinion of the learned District Judge, Jalandhar on the question of the will and there are indeed present highly suspicious circumstances surrounding the disputed will which persuades this Court as well to conclude that it was a fake document engineered by “chicanery”; [as the First Appeal Judge put it so articulately to sum up the evidence and the case in one word] to exclude unscrupulously the valuable civil rights of the minor child and her mother to natural succession and I am convinced too, that in all likelihood and by probability on the preponderance of evidence the will was a document

manufactured after the sudden and untimely demise of Inderjit Singh only to deprive his heirs of their rights in property from the estate left behind by the decedent and to appropriate it to themselves without owners' consent or knowledge.

23. And for the foregoing reasons, this court finds that the judgment and decree of the court of first appeal is vivid in its reasoning and leaves nothing to imagination or doubt, either on appreciation of facts or on law, which is not open to interference as no question, much less a substantial question of law can possibly arise or be worth consideration in this case on the second appeal side and worthy of regular hearing after admission. The proposed questions of law in the memo of appeal do not arise for consideration at all. The question framed by court above is determined in the negative. In the facts of the case it is not a substantial question of law. Accordingly, the appellate decree dated 29th April, 2014 is affirmed. I have not an extra word to add to the analysis of the case and the admirable treatment it has received at the hands of the learned District Judge, Jalandhar. The appeal is accordingly dismissed in limine. The suit stands decreed with costs throughout till first appeal.

24. A copy of this order be sent by the Office to the author of the appellate judgment dated 29th April, 2014 for his record and in appreciation of his work in doing justice to the plaintiff and with such felicity of expression and thought.

(RAJIV NARAIN RAINA)
JUDGE

May 28, 2015