

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1)

RSA No.3467 of 2015 (O&M)

Lakhbir Singh

...Appellant

Versus

Smt.Jasbir Kaur

...Respondent

(2)

RSA No.3468 of 2015 (O&M)

Lakhbir Singh

...Appellant

Versus

Smt.Jasbir Kaur and others

...Respondents

Date of Decision: July 27, 2015

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vivek K. Thakur, Advocate
for the appellant.

INDERJIT SINGH, J.

Both the above-mentioned RSAs are taken up together being arisen from same judgment and decree passed by the Courts below.

Appellant Lakhbir Singh has filed both the above-mentioned regular second appeals against Smt.Jasbir Kaur and others respondents. Learned Addl. Civil Judge (Senior Division) Jalandhar vide judgment and decree dated 20.08.2013, decided two

civil suits, one filed by Smt.Jasbir Kaur against Lakhbir Singh and other civil suit filed by Lakhbir Singh against Smt.Jasbir Kaur and others, relating to the same subject matter. Learned Addl. Civil Judge dismissed the suit filed by Smt.Jasbir Kaur and decreed the suit filed by Lakhbir Singh. Appeals were filed by Smt.Jasbir Kaur against Lakhbir Singh and learned Addl. District Judge, Jalandhar, vide judgment and decree dated 21.04.2015, accepted both the appeals and suit filed by Lakhbir Singh was dismissed and the suit filed by Smt.Jasbir Kaur was decreed and held her owner on the basis of Will dated 16.04.2001 executed by Pakhar Singh and Lakhbir Singh was restrained from dispossessing her from the suit land.

Aggrieved from the above-said judgment and decree passed by learned Addl. District Judge, Jalandhar, the above-said two regular second appeals have been filed by Lakhbir Singh appellant.

The brief facts of the case are taken from the suit filed by plaintiff Jasbir Kaur. It is mainly stated that Pakhar Singh was her husband and joint owner in possession of the suit land. No issue was born from the wedlock of plaintiff and Pakhar Singh, who died on 10.07.2004. After the death of Pakhar Singh, the plaintiff being the only Class-I legal heir, has succeeded to his estate including the interest of Pakhar Singh and became joint owner in possession of disputed land. Pakhar Singh was treated and hospitalized till his death by the plaintiff because of advance stage of his disease. It is further stated that Pakhar Singh in his sound disposing mind, had executed a legal and valid Will dated 16.04.2001 bequeathing his

entire property in favour of the plaintiff. After the death of Pakhar Singh, plaintiff moved an application with Assistant Collector IInd Grade, Kartarpur, to enter mutation in the revenue record in her favour. The defendant Lakhbir Singh (present appellant), who is nephew of Pakhar Singh started claiming that he has become owner on the basis of the Will dated 30.06.2004 in favour of the defendant, alleged to have been executed by Pakhar Singh in his favour. It is also case of plaintiff Jasbir Kaur that Pakhar Singh did not execute any Will nor he was in position to execute the same. In fact, on 30.06.2004, Pakhar Singh throughout the day remained at his house on bed because he was in extreme pain and agony as he was suffering from cancer. The Will has been got forged in connivance with scribe and the witness.

Defendant Lakhbir Singh stated that Pakhar Singh was unmarried. Jasbir Kaur along with her daughter Paramjit Kaur, without getting divorce from her husband Didar Singh, had come from village Daburji and started living with Pakhar Singh, real uncle of the defendant. Under pressure, the plaintiff got a Will executed from Pakhar Singh in her favour on 16.04.2001. Thereafter, plaintiff started harassing and misbehaving with Pakhar Singh and she had been going frequently to meet her eldest daughter, which Pakhar Singh did not like. On this, quarrel started between Jasbir Kaur and Pakhar Singh. It is further stated that Jasbir Kaur threatened to alienate the entire property, so being annoyed with her, Pakhar Singh cancelled the earlier Will dated 16.04.2001 and in lieu of the services rendered

by the defendant, Pakhar Singh executed his last and final Will on 30.06.2004 in his sound disposing mind and free will in favour of the defendant, which was got registered on 01.07.2004 in the office of Joint Sub Registrar, Kartarpur. It is further the case of the defendant that he being nephew of Pakhar Singh, used to serve him and also used to cultivate the land of Pakhar Singh even during his life time.

After framing the issues, on the basis of evidence, learned Addl. Civil Judge (Senior Division) Jalandhar, dismissed the suit filed by Jasbir Kaur and decreed the suit filed by Lakhbir Singh vide judgment and decree dated 20.08.2013. Appeals were filed by Jasbir Kaur against the above-said judgment and decree passed in two suits which were decided by single judgment by consolidating both the suits. Both the appeals were accepted by learned Addl. District Judge, Jalandhar vide judgment and decree dated 21.04.2015 and both the suits are decided in favour of Jasbir Kaur.

Aggrieved from the judgment and decree dated 21.04.2015 passed by learned Addl. District Judge, Jalandhar, present regular second appeals have been filed by Lakhbir Singh.

At the time of arguments, learned counsel for the appellant argued that there is no evidence on the record regarding divorce of Jasbir Kaur with Didar Singh. There is no evidence that Jasbir Kaur was married with Pakhar Singh. He further argued that there is registered Will proved in favour of the appellant. The Will dated 16.04.2001 executed in favour of Jasbir Kaur was cancelled by last Will executed by Pakhar Singh on 30.06.2004. He next argued that

Will in favour of the appellant is not surrounded by any suspicious circumstance. The findings given by learned Addl. District Judge, Jalandhar in his judgment and decree dated 21.04.2015 are perverse, against the evidence and law and same are liable to be set aside.

I have heard learned counsel for the appellant and have gone through the record.

From the record, I find that it is admitted fact that Pakhar Singh was the owner of the suit property. It is also admitted by the appellant that Pakhar Singh executed a registered Will in favour of Jasbir Kaur on 16.04.2001 but his case is that Will was cancelled in the subsequent Will executed on 30.06.2004 and registered on 01.07.2004 in his favour. It is also admitted fact that appellant Lakhbir Singh is real nephew of Pakhar Singh. It is admitted at the time of arguments that Jasbir Kaur was residing with Pakhar Singh as his wife for the last so many years. The only dispute between the parties is whether the Will executed on 16.04.2001 has been duly proved by Jasbir Kaur or whether this Will has been cancelled and the Will dated 30.06.2004 is a validly executed Will by Pakhar Singh in favour of Lakhbir Singh.

Learned Addl. District Judge, Jalandhar, by appreciating the evidence in right perspective, held that Jasbir Kaur and Pakhar Singh were living together before the death of Pakhar Singh for a period of 10-12 years. While discussing the evidence of DW-2 Ranjit Singh, Lamberdar, attesting witness of the Will dated 30.06.2004, learned Addl. District Judge held that during the cross-examination

DW-2 deposed that Pakhar Singh died 9/10 days after the execution of the Will. Pakhar Singh was suffering from cancer. He also deposed that Jasbir Kaur has been often on living in village Cheema. He further deposed that he does not know if Jasbir Kaur was married to Pakhar Singh. He admitted that Pakhar Singh was suffering from cancer but does not know nature of cancer. He also stated that he does not know if Pakhar Singh had been got admitted in the hospital on 01.07.2004 in the morning on account of ailment of cancer. He also does not know if Pakhar Singh remained admitted in the hospital after 5/6.00 P.M. on 01.07.2004.

Jasbir Kaur has produced the attesting witness of the Will and has duly proved the Will in her favour. Jasbir Kaur also proved that she was serving Pakhar Singh till his death and she performed the last rites of Pakhar Singh. There is no cogent evidence on record to show that Pakhar Singh was not residing with Jasbir Kaur or having any strained relations with Jasbir Kaur or Lakhbir Singh was serving Pakhar Singh and Pakhar Singh was residing with Lakhbir Singh. Lakhbir Singh appellant has admitted the validity of the Will executed in favour of Jasbir Kaur but his case is that this Will has been cancelled and Will dated 30.06.2004 has been executed in his favour, so Lakhbir Singh is to explain the suspicious circumstance surrounding the Will executed in his favour. First suspicious circumstance which has not been explained by leading cogent evidence is that as to why Pakhar Singh would disinherit Jasbir Kaur with whom he was residing for the last 10-12 years and they were

residing as husband and wife. Secondly, there is no cogent evidence on record to show that Lakhbir Singh was serving him. Thirdly, it is on the record, specially in the doctor's evidence that condition of Pakhar Singh was very serious as he was suffering for a long period from cancer. This fact is further supported as Pakhar Singh died just after 10 days after the execution of the Will in favour of Lakhbir Singh. The case of Jasbir Kaur is that Pakhar Singh remained on bed on 30.06.2004 due to his ailment and was got admitted in hospital on 01.07.2004. The attesting witness of the Will in favour of appellant, showed ignorance to the suggestion whether Pakhar Singh remained admitted in the hospital on 01.07.2004.

Learned Addl. District Judge, Jalandhar has minutely discussed statement of each and every witness produced by the parties. Nothing has been pointed out as to which evidence has been misread. The Will propounded by Lakhbir Singh is surrounded by suspicious circumstances which are not explained by leading cogent evidence. The mere fact that validity of marriage has not been proved by Jasbir Kaur or the fact that she was earlier married with Didar Singh and has failed to prove that divorce has been taken legally by her from Didar Singh etc. are no ground to disinherit Jasbir Kaur, who was residing with Pakhar Singh for the last so many years as his wife, before his death.

In view of the above discussion, I find that findings given by learned Addl. District Judge, Jalandhar are correct, as per evidence and law and do not require any interference from this Court.

Learned Addl. District Judge, Jalandhar, vide judgment and decree dated 21.04.2015, has correctly set aside the findings given by learned Addl. Civil Judge (Senior Division) Jalandhar. No substantial question of law arises in both the appeals.

Therefore, finding no merit in both the regular second appeals, the same are dismissed.

July 27, 2015
Vgulati

(INDERJIT SINGH)
JUDGE