

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

**Regular Second Appeal No.2304 of 1986 (O&M)
Date of Decision: November 21, 2016.**

Dalip Singh and others

.....APPELLANT(s).

VERSUS

Gurudwara Shaheed Ganj and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Ms. Samya Singh, Advocate
for the appellant (s).

Mr. R.S. Rai, Senior Advocate with
Mr. Mohinder Nain, Advocate
for the respondents.

SURINDER GUPTA, J.

This is appeal against the concurrent judgments of the Courts below partly decreeing the suit filed by Gurudwara Shaheed Ganj Baba Khadag Singh and Nishan Singh, Patti Akal Mehna for declaration to the effect that plaintiff Gurudwara is owner in possession of the suit land except the land comprised in khasra No.37/15(8-0) 16(8-0) and 17(8-0) which had already been gifted by Gurdial Singh in favour of his wife vide gift deed dated 29.11.1971. The suit land was earlier owned by Gurdial Singh, predecessor-in-interest of appellants, who as per plaintiff, bequeathed the same to Gurudwara Sahib vide Will dated 03.09.1975. The decree passed by then Sub Judge 1st Class, Moga, reads as follows:-

“16. As held in issue No.1 above, Gurdial Singh

deceased executed a valid will dated 3.9.1975 (copy Ex.P-1) in favour of the plaintiff Gurudwara. The wishes of the testator have to be given due weight by the courts and the plaintiff Gurudwara is entitled to succeed to the estate of Gurdial Singh deceased on the basis of that will. However, it may here be stated that the suit filed by the plaintiff inter alia includes land comprised in khasra No.37/15(8-0), 16(8-0) and 17(8-0) which had already been gifted away by Gurdial Singh deceased in favour of his widow Mst. Narain Kaur vide Tamlik deed dated 29.11.1971 Ex.D1/A and the plaintiff Gurudwara cannot claim any right or title/interest in that land. The suit of the plaintiff Gurudwara regarding the remaining land must however succeed. As discussed above, under the will (copy Ex.P-1), Mst. Narain Kaur defendant No.1 Mukhtiar Singh defendant No.12, Rajinder Kaur defendant No.13 and Mst. Sham Kaur since deceased were entitled to an annuity of Rs.1000/- each in their life time. Mst. Sham Kaur has since died. However, Mst. Narain Kaur defendant No.1, Mukhtiar Singh defendant No.12 and Rajinder Kaur defendant No.13 are entitled to an annuity or Rs.1000/- each from the plaintiff Gurudwara for the whole of their lives and the same is to be a charge on the disputed land. Mutation of the estate of Gurdial Singh appeared to have been sanctioned in favour of the defendants, but the same does not in any way affect the right or title of the plaintiff Gurudwara in the disputed land. Kapur Singh PW-3 stated that the plaintiff Gurudwara is in possession of the disputed land through its tenants. Even otherwise, the plaintiff Gurudwara is entitled to possession of the disputed land on the basis of title. In these circumstances, the suit of the plaintiff Gurudwara must succeed regarding the disputed land except the disputed land comprised in khasra No.37/15(8-

0), 16(8-0) and 17(8-0) already gifted in favour of Narain Kaur defendant No.1 vide Tamlik deed Ex.D1/A, I accordingly pass a decree for a declaration to the effect that the plaintiff Gurudwara is owner in possession of the disputed land except the land comprised in khasra No.37/15(8-0), 16(8-0) and 17(8-0) in village Mehna and is also entitled to possession of the same as an alternative relief. It is further ordered that in terms of the will (copy Ex.P-1) Narain Kaur defendant No.1, Mukhtiar Singh defendant No.12 and Rajinder Kaur defendant No.13 will be entitled to an annuity of Rs.1000/- each from the plaintiff Gurudwara for the whole of their lives and the amount of annuity payable to them would be a charge on the disputed land. Further that in terms of the will, the managing committee of the plaintiff Gurudwara would utilise the usufruct of the disputed land in connection with the affairs of the plaintiff Gurudwara but would not be competent to mortgage, sell or gift away the disputed land to some other person.”

2. Defendant No.1, wife of Gurdial Singh appears to have felt satisfied with the decree and did not file any appeal but the other defendants who are the sons and daughters of pre-deceased daughters of Gurdial Singh filed appeal before the first Appellate Court which was dismissed by Additional District Judge, Faridkot.

3. Learned counsel for the appellants has laid major emphasis on non-production of original Will by the plaintiff and has argued that it was also not duly proved by leading secondary evidence. The Will was stated to have been lost but loss of Will was not duly proved. The expert examined by the appellant has proved that thumb impression affixed by Gurdial Singh in the register of deed writer against the entry of Will dated 03.09.1975 did

not tally with his thumb impression on the gift deed and mortgage deed, which were also bearing thumb impression of Gurdial Singh. One of the marginal witness namely Surkha Singh PW3 has stated that the Will was not read over to him, as such, his testimony has been wrongly relied by the Courts below.

4. Learned counsel for the respondent has argued that the Will was executed by Gurdial Singh in favour of Gurudwara Sahib in the year 1975. He died three years after the execution of the Will but never challenged the same. The original Will was not with the Management Committee. It was a registered Will, copy of the registered Will was produced. Official of the office of Sub Registrar, both the marginal witnesses and scribe of the Will were examined. The Will is not shrouded by any suspicious circumstances. Gurdial Singh was not having any son and in order to secure interest of his wife, he had given land measuring 24 kanals to her vide gift deed dated 29.11.1971 and also fixed annual maintenance for her payable by the plaintiff. Similar provision was also made for Mukhtiar Singh (defendant No.12), Rajinder Kaur (defendant No.13) and Sham Kaur (since deceased). Gurdial Singh was having three daughters who have pre-deceased him. The appellants are legal heirs of daughters of Gurdial Singh. Even otherwise, Gurudwara Sahib Management Committee has no occasion to forge any Will of Gurdial Singh in favour of Gurudwara Sahib. The report of finger prints expert examined by the appellants was procured one and this fact was taken note by the first Appellate Court and it was observed that the expert examined by appellants had tried to mislead the Court by giving a false report. Gurdev Singh PW2,

marginal witness has duly proved the execution of the Will. Surkha Singh PW3 has stated that the Will was read over by the deed writer and Gurdial Singh after admitting the same as correct and testator had put his thumb impressions on it. In cross-examination, he has stated that the Will was not read over to him, but it does not mean the Will was not read over to testator. The deed-writer had read over the Will to the testator in the presence of marginal witnesses. There is sufficient compliance of provisions of Section 69 of Indian Evidence Act and the Will is duly proved.

5. The arguments of learned counsel for the appellants are only with regard to the findings of fact recorded by the Courts below. In order to find out whether any substantial question of law requiring determination arises or findings of fact are recorded on the basis of evidence on record, I proceed to have a look at the findings recorded by Courts below and evidence on record.

6. The first argument of learned counsel for the appellants is that the original Will was not proved to have been lost, while allowing permission to lead secondary evidence.

7. Learned Sub Judge 1st Class, Moga looked into this aspect and observed in para 9 as follows:-

“9. Secondly, the learned counsel for the defendant has contended that the original will has not been placed on the file and the same also raises doubt about the genuineness of the impugned will. As already stated above, the impugned will was made by Gurdial Singh deceased in favour of plaintiff Gurdwara and the same was to operate after his death. In case Gurdial Singh deceased kept the original will in his house and did not

hand over the same to any member of the managing committee of the plaintiff Gurdwara and the same subsequently fell into the hands of the defendants or some other persons that will not in any way create doubt about the genuineness of the impugned will. There is absolutely no evidence on the record, whether the impugned will was subsequently revoked by the testator. In these circumstances, non-production of the original will, will not in any way create any doubt about the genuineness of the same, when from the copy of the registered will Ex.P1, it is clearly evident that Gurdial Singh deceased had bequeathed away his estate in favour of the plaintiff Gurdwara.”

8. This point was again argued before the first Appellate Court which on appraisal of evidence observed in para 12 as follows:-

“12. Mr. Garg, learned counsel for the appellants, has contended that the plaintiff-respondent had purposely with-held the original will as the same was not thumb marked by the deceased and the learned trial Court should not have permitted the plaintiff to lead the secondary evidence of the contents of the will when the loss had not been proved. This contention is again without any force. The will was a registered document. The plaintiff in application dated 9.1.81 had clearly stated that the original will had been lost and is not traceable and thus, prayed for permission to lead secondary evidence. The application was accompanied by an affidavit dated 9.1.81 of Sh. Surain Singh son of Prem Singh, member of the Managing Committee, of the Gurdwara and the said affidavit is on page 263 in the record. Surain Singh on solemnly affirmation had declared that the will had been lost and the same is not traceable. While allowing secondary evidence, it is not required that the loss of document must

be absolutely proved. The affidavit of the person in custody of the document about its loss is sufficient to establish loss of document. Their Lordships of the Privy Council in AIR 1922 (P.C.) 1956 have clearly ruled that loss is not to be absolutely proved and evidence of a witness who deposes to the loss of deed which should be in his custody is sufficient to allow the secondary evidence. The defendants at the time the secondary evidence was permitted had not even filed any affidavit to show that the will was in custody of the Managing members of the plaintiff Gurdwara. It thus does not now lie in their mouth to contend that secondary evidence should not have been allowed. When the will had been lost, it can not be even held that the original had been with-held with any oblique motive. Moreover, from the trend of the cross-examination of the attesting witnesses Gurdev Singh and Kapur Singh PW3, it is evident that the execution of the Will was not even seriously disputed and it was only stated to be result of undue influence. I am thus not impressed that the original will had been with-held for any oblique motive.”

9. Plaintiff is the management of Committee of Gurudwara Sahib and could not have any reason to have access to the Will executed by Gurdial Singh, until or unless it had been handed over to Gurudwara Sahib. This Will is a registered document. Even in her written statement, Narain Kaur, defendant No.1 has stated that Gurdial Singh has not handed over any Will to the plaintiff. On the other hand, defendants No.2 and 3 i.e. appellants stated that the original Will was produced before Sub Divisional Officer exercising powers of Asstt. Collector 1st Grade, Moga where it was ignored. However, no evidence was produced on file that the original Will

was produced before the Assistant Collector 1st Grade, Moga or any order vide which this Will was ignored, was placed on file. The plaintiff could have no reason or motive for withholding the original Will particularly when it is a religious place to which a person had bequeathed his property after safeguarding the interest of his wife. Even Narain Kaur wife of Gurdial Singh appeared to have felt satisfied after judgment of learned Sub Judge 1st Class and has not come forward to file appeal to challenge the legality and validity of Will of her husband. Perusal of written statement filed by defendant No.1 Narain Kaur shows that she is not denying the execution of the Will, rather has taken the plea that the Will might have been executed under undue influence and fraud and Gurdial Singh was not of sound mind at the time of alleged Will. Respondent-plaintiff had produced on file certified copy of the Will and also examined official of the Sub Registrar Office who brought the original record and proved certified copy of the Will. Gurdev Singh is the marginal witness of the Will and has stated that the Will was executed by Gurdial Singh. Scribe had read over the Will to the testator, who after admitting the same as correct, put his thumb impressions on the Will. Surkha Singh, other marginal witness has also stated that Gurdial Singh had put his thumb impressions on the Will after admitting the same as correct. He has further stated that the Will was again read over and explained to Gurdial Singh by Sub Registrar and after accepting the same as correct, he put his thumb impression. In cross-examination, he has stated a line that the Will was not read over to him which carries no significance in view of his statement in examination-in-chief. The requirement that Will should be read over and explained to

testator by scribe and registration authority, are duly proved in this case.

10. From the direct evidence, this fact is proved that the will was bearing thumb impressions of Gurdial Singh. Appellants-defendants examined an expert Gian Parkash Sharma, who after examination of thumb impression of Gurdial Singh on the registered mortgage deed dated 21.07.1973, 24.08.1975 and Tamliknama dated 29.11.1971, made a report that the same do not tally with the thumb impression of Gurdial Singh at entry No.521 dated 03.09.1975 (Ex.DX) in the register of deed writer. He gave the reason in his report as follows:-

“After a thorough examination and comparison, I have come to the conclusion that the disputed thumb impression marked Q1 does not tally with the standard thumb impression marked S1 to S15, stated above, because the disputed thumb impression marked Q1 is of loop type having trend of the central ridges to the right down side whereas the standard thumb impressions marked S1 to S15 are of loop type having trend of the central ridges to the left downside.

Principle is that thumb impressions having trend of the ridges in different directions can never be identical even if they are of the same type.”

11. Dewan K.S. Puri, document-expert, Patiala was examined in additional evidence under the orders of first Appellate Court, who on examination of questioned thumb impressions gave the report as follows:-

“In the above case, we have critically and exhaustively examined the disputed thumb impression marked as Q1 against entry No.521 Ex.DX, with the help of epidiascope (sic epidiascope) through photographs Universal Dactyloscopic outfit, microscopic lenses, Falmer

magnifiers and other necessary instruments.

As a result of our examination and comparison of the disputed thumb impression at Q1 in the petition writer's register against entry No.521:-

- (1) The disputed thumb impression has been super imposed with another thumb impression so as to make it undecipherable (sic indecipherable) in its original form.
- (2) The superimposing thumb impression has its contour over the original thumb impression. However, on the left side, the two contours are clearly visible to show that the original thumb impression has been superimposed.
- (3) The original contour is beneath the superimposing thumb impression. The contour of the superimposing thumb impression is at a and b as marked on the photographs, and the original contour is also visible at c & d, marked on the same photograph to show the superimpose.
- (4) **The trend of the ridges of the original thumb impression was to the left side as arrow marked on the photographs, and the trend of the superimposing thumb impression is to the right side. It appears that the original thumb impression was of the left hand and the superimposing thumb impression of the right hand, and therefore, its trend is to the right down side.**
- (5) The intermingling of the original and the superimposing thumb impressions also indicate that the original thumb impression has been made undesipherable (indecipherable) by superimposition and obviously now the superimposing ridges are more visible being the upper layers after superimposition.

After considering the above characteristics, we are of the opinion that the original thumb impression had its trend of ridges to the left side and to make it undesipherable (indecipherable) or to baffle identification, another right hand thumb impression has been placed over the original thumb impression.”

12. The first Appellate Court took note of both the reports and rejected report of expert examined by the appellants-defendants with observation in para 15 and 16 of the judgment, which reads as follows:-

“15. Gian Parkash Sharma has certainly tried to mis-lead the Court by not giving the truthful evidence. In the appeal, I had allowed the application for additional evidence and Dewan K.S. Puri who is renowned expert was examined as RW1. Mr. Puri with the help of photographic enlargement and direct magnification opined that the original thumb impression in the register of the scribe had been super imposed with a right hand thumb impression and thus the original thumb impression has been rendered undecipherable (sic indecipherable). **Even a careful look of the photographic enlargements with naked eye makes it evident that the original thumb impression has been super-imposed with another thumb impression. This fact is even visible in photographs Ex.DW11/A and Ex.DW11/C taken by Sh. Gian Parkash Sharma.** However, Mr. Sharma, did not say a word that the original thumb impression had been super imposed with another thumb impression and rather gave his evidence in a clever manner by stating that the disputed thumb impression does not tally with standard thumb impression because in the disputed thumb impression the trend of central ridges is to the right down side, whereas in the standard thumb impression, the central ridges are to the left down side. However, from the statement of Sh. Puri and his report which is based on the photographic enlargements of the original thumb impression, it is plain that even in the original thumb impression, the trend of the central ridges is to the left side. It is thus apparent that Mr. Sharma has give a biased opinion and not disclosed the true picture.

16. Now the question arises, as to who could be interested in destroying the evidence regarding the original thumb impression in the register of the scribe. The plaintiff had not produced the scribe in the witness box. It were only the defendants who brought him to the witness box, much after close of the evidence, by the plaintiff. It is thus obvious that it were the defendants who somehow prevailed upon the scribe Kehar Singh and got super-imposed some other thumb impression on the original thumb impression to seek the favourable testimony from Gian Parkash expert to show that the thumb impression on the gift deed did not tally with thumb impression in the register of the scribe. The plaintiff had closed its evidence on 3.9.81. Kehar Singh PW9 was only brought to the witness box on 14.9.82 and he produced the original register maintained by him. Gian Parkash gave his testimony on 4.1.83. The chain of events show that the defendants finding that they were not even in a position to lead evidence that the will was a result of undue influence resorted to unfair means (sic means) by creating doubts about its genuineness, through comparison of the thumb impressions on the gift deed and the register of the scribe. The tacit silence of Mr. Sharma in not pointing out that the original thumb impression was super-imposed with another thumb impression is quite enigmatic. He also only remained satisfied in his comparison by mentioning the pattern of ridges. No effort was made by him to find similar or dis-similar points in the disputed and standard thumb impressions on the gift deed. This only shows that Mr. Sharma, Kehar Singh and some of the defendants had joined hands in bringing colourable evidence about the thumb impressions being of a different person on the gift deed and the register of the scribe. Gian Parkash apparently has not given his honest

opinion.”

13. On perusal of photographic chart of the thumb impression of Gurdial Singh prepared by experts examined by parties, I agree with the observations of learned first Appellate court that these have been super-imposed. The original register of scribed containing the entry of the Will was produced by Kehar Singh PW9 and perusal of the original thumb impression show that it was super-imposed. The opinion given by Dewan K.S. Puri had been rightly relied upon and is based on facts and report of expert examined by appellant was worth rejection, which has rightly met its fate and commented upon by the first Appellate Court. Will of Gurdial Singh was duly proved and findings of Courts below suffer from no infirmity in this score.

14. No other argument has been addressed.

15. On perusal of the record and judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

16. No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

November 21, 2016
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***