

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Regular Second Appeal No.2836 of 1986 (O&M)
Date of Decision: November 07, 2016.

Niranjan Singh (deceased) through his LRs and another

.....APPELLANT(s).

VERSUS

Mukhtiar Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

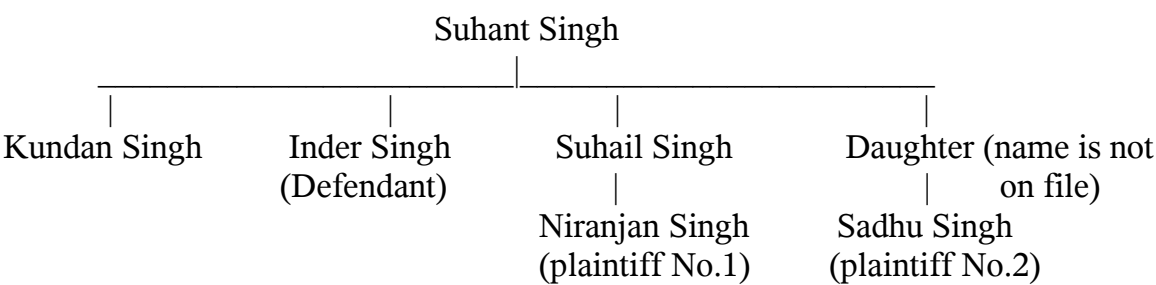
Argued by: Mr. Sunil Chadha, Senior Advocate with
Mr. Kirpal Singh, Advocate
for the appellant (s).

Mr. Aalok Jagga, Advocate
for the respondents.

SURINDER GUPTA, J.

This is second appeal by plaintiffs Niranjan Singh and Sadhu Singh (since deceased) now represented by their legal heirs against the concurrent judgments of the Courts below dismissing their suit claiming 2/3rd share in the property left by Kundan Singh, who died on 19.09.1978, on the basis of Will dated 22.08.1978.

2. Pedigree table as below will help in understanding the relationship of the parties:-



3. Plaintiffs have alleged that Kundan Singh, who was ordinarily resident of village Nurpur Kirpal Ke, Tehsil Muktsar came to Tarn Taran and executed will dated 22.08.1978, whereby he bequeathed his property in equal shares in favour of Niranjana Singh, Sadhu Singh and Inder Singh. In this way, the plaintiffs became owner of 2/3rd share of suit property but mutation No.1659 was wrongly sanctioned in favour of defendant Inder Singh, ignoring the Will. They sought declaration of their title and joint possession of the suit land to the extent of their share.

4. The defendant contested the claim of plaintiffs denying execution of Will dated 22.08.1978 and also date of death of Kundan Singh, alleging that he died on 19.08.1978.

5. Learned Sub Judge 1st Class, Muktsar held that date of death of Kundan Singh is proved as 19.09.1978, however, Will dated 22.08.1978 propounded by the appellants-plaintiffs was discarded on the grounds as follows:-

(i) This Will is shrouded by suspicious circumstances as Kundan Singh lived at village Nurpur Kirpal Ke but the Will is alleged to have been executed at Tarn Taran, far away from the native village of testator and there is no explanation as to why testator travelled such a long distance.

(ii) When the testator has gone to tehsil office Tarn Taran to execute the Will, there is no explanation as to why it was not got registered. Had the Will been registered, it would have proved the presence of testator at Tarn Taran at the time of execution of the Will.

(iii) The execution of Will is entered on the last page of the register of deed writer, which is a pointer that it is a forged document. In this

regard, learned Sub Judge observed in para 14 as follows:-

“14. Admittedly, the will is entered at last page of the register of the petition writer. The register was not signed by the Tehsildar though it bore his office stamp. It is very easy to incorporate a document on the last page of the register. It, therefore, becomes obvious as to why the Will was executed at Tarn Taran and not Jhubal though village Gehri falls in Sub Tehsil Jhubal where admittedly there are also document writers and Sub Registrar's Office. It, therefore, appears that no deed writer at Jhubal was available to forge the will and therefore the services of Pirthipal Singh Deed writer at Tarn Taran were attained as the last page of his register was found blank.”

(iv) It is nowhere the case of the plaintiffs that Kundan Singh resided with Sadhu Singh at village Gehri, Tarn Taran. It is proved that at the time of his death, he was residing in village Nurpur Kirpal Ke. Niranjana Singh plaintiff is also resident of village Nurpur Kirpal Ke and even Niranjana Singh was not definite that Kundan Singh ever resided at village Gehri.

(v) PWs are also not resident of village of testator. Both the marginal witnesses of the Will are residents of village Gehri from which plaintiff No.2 Sadhu Singh belongs. Ordinarily, persons of confidence are associated by the testator to attest the Will. Learned Sub Judge found it surprising that Kundan Singh would have travelled such a long distance simply to arrange for the witnesses in order to execute the will which could easily be done at Muktsar.

(vi) Plaintiffs are not legal heirs of Kundan Singh. According to rule of succession, the suit property would have been inherited after his

death by his brother brother Inder Singh with whom he was living. In the absence of any pleading or proof that Kundan Singh ever lived with or was served by the plaintiffs, learned Sub Judge found it highly suspicious that he would have travelled such a long distance few days before his death to execute the Will. It was also observed that the Will was prepared in favour of plaintiffs and defendant in order to give it a colour of naturalness.

6. Learned counsel for the appellants has argued that the reasons given by the Courts below are not sound or depict that Will in question is a suspicious document. Tarn Taran was not a strange place for the testator. Even if, he has not been living with plaintiffs, there is nothing that he had any enmity with them. In case, the plaintiffs had to forged the Will, they could do so at Muktsar. When the Will is executed at Tarn Taran, it is natural that the witnesses were taken from that area as the testator would not be carrying witnesses from his village. The execution of the Will is quite natural and the fact, that the Will was not got registered, in no manner reflect on the genuineness of the Will. In support of his contention, he has placed reliance on observations in case reported as ***Parkash Chand Vs. Raksha Devi 2011(2) Him.L.R. 961.***

7. Learned counsel for respondent has argued that plaintiffs are the sons of step brother and step sister of Kundan Singh. Suhant Singh father of testator was having two marriages. From his first wife Suhail Singh and a daughter were born; and from second wife Kundan Singh and Inder Singh were born. The reasons given by learned Sub Judge and approved by the first Appellate Court are sound enough to indicate that the Will by all means is a forged and fabricated document. It is nowhere case of

the plaintiffs that they ever resided with or served deceased Kundan Singh or there was any reason for him to execute the Will in their favour and that too at a far distant place. All the facts and surrounding circumstances when taken together, are sufficient to indicate that will dated 22.08.1978 is shrouded with suspicious circumstances, which appellants have failed to explain.

8. On giving a careful thought to the submissions of learned counsel for the parties and on perusal of the judgment of the Courts below and the lower Court record, I find no fault with the observations therein or any reason to interfere with the concurrent findings of fact recorded by the Courts below.

9. Before proceedings further, I take the citation relied by learned counsel for the appellant which in no manner is helpful to the appellants-plaintiffs to prove that even if the witnesses are of different place than the ordinary place of residents of testator, the same cannot be taken as a suspicious circumstance. In that case, the Will was a registered document and one of the witness was from Hamirpur (HP), where the executant was living in a village. Testimony of both the marginal witness was also found reliable. In this case, though the marginal witnesses and deed-writer have supported the execution of the Will executed by the testator but the suspicious circumstances as pointed by learned Sub Judge are indicative of the circumstances under which this Will was prepared.

10. It is quite strange that Kundan Singh, who was an old person went to a far of place to execute the Will. Plaintiff No.1 is resident of the village of testator. Plaintiff No.2 is the son of (step) sister of testator. There

is no pleading that both have ever served the testator during his life time. In these circumstances, there was no reason for testator to go to Tarn Taran which is a place about 150 kilometres from Muktsar to execute the Will. In case, he had an intention to create testament in favour of plaintiffs he would have certainly got it registered at Tarn Taran. This is particularly so when he has gone to tehsil compound for execution of the Will, otherwise, there was no reason for him to go to Tehsil Tarn Taran to execute the Will and find the deed writer who will make entry on the last page of his register, which was not bearing the signature of Sub Registrar. This indicate that the plaintiffs have procured services of the deed writer, who connived with them in creating this document. The Courts below have rightly observed that the Will was got prepared at Tarn Taran because the plaintiff could not get the services of a deed writer of Muktsar, who could agree with them in forging the Will.

11. I have also seen Will (Ex.A1) on file. Perusal of it shows that the spacing between lines after 13th line of the Will had started reducing and in last few lines, it has reduced to a great extent. This fact was pointed out by learned counsel for the respondents and learned counsel for the appellants has not come up with any arguments in this regard. The Courts below have not taken note of this fact, as such, I also find no reason to ponder over it while declining the plea raised by learned counsel for the appellant as the reasons recorded by the Courts below are sufficient, sound, credible and no fault can be found with the same. The facts of the case depict that the conduct of the appellants-plaintiffs who have tried to usurp the land of Kundan Singh by forging the Will.

12. As a sequel of my above discussion, I find no legal or factual infirmity in the judgments passed by the Courts below, calling for any interference.

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

Dismissed.

November 07, 2016
Sachin M.

(SURINDER GUPTA)
JUDGE

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

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