

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

**Regular Second Appeal No.1191 of 1987 (O&M)
Date of Decision: March 11, 2016.**

Sukhdarshan Singh and others

.....APPELLANT(s).

VERSUS

Harmel Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. J.R.Mittal, Senior Advocate with
Mr. Dhirinder Chopra and
Mr. Kashmir Singh, Advocates
for the appellants.

Mr. M.L. Sarin, Senior Advocate with
Mr. Nitin Sarin, Advocate
for the respondents.

SURINDER GUPTA, J.

Plaintiffs Sukhdarshan Singh and others filed suit pertaining to inheritance of Mangal Singh son of Nathu, resident of Hamjheri, claiming the relief as follows:-

- (i) Niranjan Singh, father of plaintiff Sukhdarshan Singh was adopted son of Mangal Singh, as such, plaintiff Sukhdarshan Singh being natural heir of Mangal Singh is entitled to inherit his entire estate.
- (ii) Mangal Singh executed will dated 18.04.1974 (Ex.PW6/1) in favour of plaintiffs and they have become owner of his estate.
- (iii) Will executed by Mangal Singh dated 23.08.1977 (Ex.D1) in

favour of defendants was illegal, result of pressure and coercion on Mangal Singh.

(iv) Mangal Singh executed another Will dated 23.08.1977 (Ex.PW9) thereby discarding the Will of even date executed in favour of defendants.

2. The suit of the plaintiffs was partly allowed by the then Sub Judge 1st Class, Patiala vide judgment dated 28.01.1985 as follows:-

“In the result and for the reasons stated above, the plaintiffs fail to establish that Niranjana Singh was the adopted son of Mangal Singh. The Wills dated 18.7.74 (Ex.PW6/1 and dated 23.8.1977 Ex.PW9 propounded by the plaintiffs and will dated 23.8.1977 Ex.D1 propounded by the defendants have been held to be not legally valid. Therefore, neither the plaintiffs nor defendants can get the suit land on the basis of the same. The suit land shall be inherited by natural heirs in accordance with the provisions of Hindu Succession Act. So far as natural heirs are concerned, it has been established that Nihali was real sister of Mangal Singh and the plaintiffs are the legal heirs of Mangal Singh deceased. The defendants are distant collaterals and the suit land shall, therefore, be inherited by the plaintiffs. The suit of the plaintiffs is, therefore, decreed for possession since they are the owners of the same on the basis of inheritance under the Hindu Succession Act. Suit is, therefore, decreed accordingly.”

3. The defendants filed appeal against the judgment and decree passed by Sub Judge 1st Class, Patiala, which was accepted and the suit filed by plaintiffs, was dismissed. The Will dated 23.08.1977 (Ex.D1) executed by Mangal Singh in favour of defendants, was upheld.

4. Not satisfied, the plaintiffs have come up with this appeal against the judgment and decree passed by first Appellate Court.

5. The case of the plaintiffs, in brief, is that Niranjana Singh father of Sukhdarshan Singh was adopted by Mangal Singh vide adoption deed dated 07.07.1942. Niranjana Singh died in the year 1971 while Mangal Singh died on 26.08.1977. Being the grand son of Mangal Singh, plaintiff Sukhdarshan Singh is his sole legal heir. He was in joint possession of the suit land during the life time of Mangal Singh and remained in possession after his death but was forcibly dispossessed by the defendants during the pendency of injunction suit. Sukhdarshan Singh withdrew that suit with permission to file a fresh suit on 17.05.1978.

6. Mangal Singh had executed a registered Will dated 18.04.1974 after the death of Niranjana Singh whereby he bequeathed 1/4th share of his property in favour of each plaintiff. Mangal Singh had one sister namely Nihal Kaur. Plaintiffs Chand Singh, Kartar Singh, Hari Singh (since deceased) and Niranjana Singh were born to Nihal Kaur from her husband Kehar Singh, plaintiff Darbara Singh is son of Hari Singh, Nihal Kaur had one daughter namely Kartar Kaur.

7. Under coercion, confinement and threat to kill Mangal Singh, defendants obtained his thumb impressions/signatures on some papers on 23.08.1977. On his release on the same day, Mangal Singh executed a Will in favour of plaintiffs clarifying all the facts of his torture, beatings, threat and illegal confinement by the defendants, wherein he also acknowledged the execution of earlier Will in their favour. Plaintiffs took alternative plea that

firstly, in the event of all the Wills being ignored, plaintiff Sukhdarshan

Singh is entitled to entire property left by Mangal Singh. They further alleged that suit land was joint Hindu family coparcenary property in the hands of Mangal Singh and he was not competent to execute any Will regarding this property. In the event, suit property is not proved to be joint Hindu family coparcenary property, plaintiffs are entitled to inherit the suit land on the basis of two Wills dated 18.04.1974 and 23.08.1977 executed by Mangal Singh in their favour.

8. The defendants in their written statement, denied that Niranjana Singh was ever adopted by Mangal Singh. It was also denied that Mangal Singh executed any Will dated 18.04.1974 in favour of plaintiffs and averred that in the event of any such Will being proved, the same stood superseded by Will in favour of defendants dated 23.08.1977. The averments that Will dated 23.08.1977 executed by Mangal Singh in favour of defendants was obtained by giving him beatings, under threat or confinement were denied and refuted. The Will dated 23.08.1977 propounded by the plaintiffs was dubbed as non-genuine and a document fabricated in collusion with opponents of defendants. The defendants alleged that the suit property was not joint Hindu family coparcenary property and in view of registered Will dated 23.08.1977 executed by Mangal Singh, plaintiffs have no right, title or interest in the suit property.

9. Pleadings of the parties led to the framing of following issues:-

- (1) Whether Mangal Singh deceased was the owner and in exclusive possession of the suit land? OPP
- (2) Whether Mangal Singh deceased has adopted Niranjana Singh father of plaintiff Sukh Darshan Singh vide adoption deed dated 7.7.1942? OPP

- (3) Whether Sukhdarshan Singh plaintiff is the sole legal heir of Mangal Singh being his grand son? OPP
- (4) Whether the defendants have forcibly dispossessed the plaintiff Sukhdarshan Singh from the suit land during the pendency of injunction suit? OPP
- (5) Whether Rs.45/- of costs has been deposited by the plaintiff and the previous suit was alleged to be withdrawn with permission to file a fresh suit on 17.5.1978? OPP
- (6) Whether Mangal Singh deceased executed a valid Will dated 18.4.74 in favour of the plaintiffs, if so its effect?OPP
- (7) Whether the afore-said Will was registered and entered in the registration book on 19.4.1984, if so its effect? OPP
- (8) Whether deceased Mangal Singh again executed a valid Will dated 23.4.1977 in favour of plaintiffs? OPP
- (9) Whether Mangal Singh deceased executed a valid Will in favour of the defendants dated 23.8.1977, if so its effect? OPD
- (10) If issue No.9 is proved, whether the Will in favour of the defendants was the result of pressure, torture, threats and illegal confinement? OPP
- (11) Whether the defendants are entitled to costs if so to what amount? OPD
- (12) Relief.

10. Learned lower Court on the basis of evidence on record, recorded findings on issue No.2 and 3 that adoption of Niranjn Singh by Mangal Singh vide adoption deed dated 07.07.1942 was not proved. The Will dated 18.04.1974 propounded by the plaintiffs in their favour was found as surrounded by suspicious circumstances. Another Will dated 23.08.1977 propounded by plaintiffs in their favour was held as a forged document. In this manner, learned Sub Judge 1st Class, Patiala discarded the pleas raised by plaintiffs regarding the adoption of Niranjn Singh and the Will dated

18.04.1974(Ex.PW6/1) and 23.08.1977(Ex.PW9) propounded by them. Learned Sub Judge also discarded the Will dated 23.08.1977 (Ex.D1) propounded by defendants in their favour. After discarding the plea of Sukhdarshan Singh claiming himself to be sole heir of Mangal Singh and the Wills propounded by plaintiffs and defendants, learned Sub Judge decreed the suit holding that suit land shall be inherited by natural heirs of Mangal Singh in accordance with the provisions of Hindu Succession Act as mentioned in para 2 above.

11. In appeal filed by defendants against the judgment and decree passed by learned Sub Judge, plaintiffs have also filed cross-objections against the rejection of the Wills propounded by them and the adoption deed dated 07.07.1942.

12. The first Appellate Court, while allowing the appeal of defendants, accepted the Will dated 23.08.1977 (Ex.D1) propounded by defendants in their favour as genuine and dismissed the cross-objections.

13. I have heard learned counsel for the parties and have perused the record of the Courts below with their assistance.

14. Learned counsel for the appellants, during the course of arguments, has not pressed upon the plea raised by the appellants-plaintiffs that vide adoption deed dated 07.07.1942, Niranjana Singh was adopted by Mangal Singh; he had executed Will dated 18.04.1974 and 23.08.1977 in favour of plaintiffs. His entire stress and arguments concentrated on the fact that Will dated 23.08.1977 propounded by defendants was not a valid and genuine document. The first Appellate Court has committed grave error of law while setting aside the findings of learned Sub Judge in this regard.

Mangal Singh died on 25.08.1977 which shows that the Will which was executed and got registered by the defendants on 23.08.1977 had come into existence only two days prior to the death of Mangal Singh and this supports the conclusion drawn by learned Sub Judge that Mangal Singh was not in a fit state of mind and health at the time of execution of the Will. It is proved that Harmel Singh, one of the beneficiary, took active participation in the execution of Will (Ex.D1) and had signed the Will before the Sub Registrar. When the beneficiary takes active part in the execution of the Will, it is a suspicious circumstance surrounding the genuineness of the Will. Mangal Singh had not given any reason for depriving the natural heirs. It is proved that he had taken loan of ₹4,000/- from Kaki, mother of defendants and had executed a mortgage deed in her favour. In case, he had cordial relation with defendants, there was no need to execute a document like mortgage deed in favour of mother of defendants. The witnesses of the Will are not from the village of Mangal Singh. All these facts have been ignored by the first Appellate Court while holding the Will dated 23.08.1977 (Ex.D1) a valid and genuine document.

15. Learned counsel for the respondents has argued that all the pleas raised by learned counsel for the appellants were raised before the Courts below and have been duly answered on the basis of the evidence on record. No substantial question of law requiring determination arises in this appeal. The Will dated 23.08.1977 (Ex.PW9) in favour of plaintiffs was not proved and it was held to be a forged document by learned Sub Judge. The first Appellate Court has discarded the plea of appellants that Will dated 23.08.1999(Ex.D1) executed by Mangal Singh in favour of defendants was

the result of coercion, undue influence and his beatings. The defendants have examined deed writer and marginal witness of the Will (Ex.D1), who have duly proved its execution. This Will is a registered document. The executant and witnesses have also appeared before the Sub Registrar. The fact that Mangal Singh died after two days of his Will, in no manner, affect the legality and validity of the Will as the plaintiffs have also alleged the Will (Ex.PW9) of the same date in their favour with the plea that it was executed by Mangal Singh in sound disposing mind. Mangal Singh was unmarried and issueless. Plaintiffs have come up with all type of pleas to acquire the property of Mangal Singh. They alleged adoption of Niranjana Singh by Mangal Singh and then Will dated 18.04.1974 (Ex.PW6/1) in their favour and another forged Will dated 23.08.1977 (Ex.PW9). The conduct of the plaintiffs show that they wanted to get the property left by Mangal Singh by hook or by crook. The participation of Harmel Singh in execution of the Will (Ex.D1), in no manner, affects its validity and legality as Mangal Singh had not deprived any of his natural heir and has not bestowed his entire property to Harmel Singh.

16. The dispute in this case relates to inheritance of estate of Mangal Singh. Appellants-plaintiffs staked their claim over the estate of Mangal Singh raising three pleas; firstly, that Sukhdarshan Singh plaintiff is the natural heir of Mangal Singh being son of Niranjana Singh, who was adopted by Mangal Singh vide adoption deed dated 07.07.1942; secondly, Mangal Singh executed a Will dated 18.04.1974 (Ex.PW6/1) in favour of plaintiffs; and thirdly, Mangal Singh executed another Will dated 23.08.1977

(Ex.PW9) in their favour, but have discarded all these pleas in this appeal

and have pressed their claim based on natural succession.

17. Learned counsel for the appellant has argued that plaintiffs No.2 to 4 being legal heirs of Nihal Kaur, are entitled to inherit the estate of Mangal Singh, who died unmarried and issueless.

18. On the other hand, claim of defendants is based on the registered Will dated 23.08.1977 executed by Mangal Singh in their favour. Plaintiffs No.2 to 4 will succeed to inherit the property of Mangal Singh if the Will dated 23.08.1977 (Ex.D1) propounded by the defendants in their favour is discarded. Learned Sub Judge 1st Class, Patiala had discarded this Will on following grounds:-

- (i) Mangal Singh died two days after the execution of Will (Ex.D1) which shows that he was not in sound health.
- (ii) He was carried in a car to Patran by the defendants and this fact makes the Will highly doubtful.
- (iii) The Will do not contain correct names of the legatee.
- (iv) Harmel Singh legatee had taken active part in the execution of the Will. Thus, Ex.D1 was not result of free mind of Mangal Singh.
- (v) No reason was given in the Will (Ex.D1) as to why the natural heirs were excluded from inheritance.
- (vi) The attesting witnesses were from other villages.

19. In view of the above observations, learned Sub Judge held that Will Ex.D1 had been got executed under highly suspicious circumstances.

20. The first Appellate Court while accepting the Will dated 23.08.1977 (Ex.D1) propounded by defendants in their favour, recorded

following reasons holding the same as genuine and valid Will of Mangal

Singh:-

- (i) It is a registered Will.
- (ii) It was got scribed from DW4 Azad Hind Goyal, a licensed deed-writer of Patran, who has deposed that he had scribed the Will at the instance of Mangal Singh, testator, who was in his sound disposing mind.
- (iii) No suggestion was given to the scribe in his cross-examination that testator was under any threat or pressure at the time of execution of the Will.
- (iv) Both attesting witnesses of the Will have fully supported the averments of the defendants and have stated that the Will was scribed by deed writer at the instance of Mangal Singh, who was under no threat or pressure.
- (v) Marginal witness of the Will Swaran Singh DW2 is resident of village Hamjheri, where the land owned by Mangal Singh is situated and he knew Mangal Singh.
- (vi) The scribe and marginal witnesses have stood the test of cross-examination and their testimony could not be shaken during cross-examination by the plaintiffs.
- (vii) Kartar Singh plaintiff and attorney of plaintiff Sukhdarshan Singh admitted the execution of Will in favour of defendants and allegations of pressure on the testator could not be proved by them.
- (viii) None of the plaintiffs was residing with Mangal Singh during his life time which provide naturality and probability to the deposition in the Will (Ex.D1).

21. The main stress of learned counsel for the appellant is on the point that Will dated 23.08.1977 (Ex.D1) is shrouded by suspicious

circumstances; firstly because Mangal Singh died 2 days after execution of the Will. The fact that Mangal Singh died 2 days after execution of the Will, in no manner, reflect that he was of unsound mind, sick or was not in a position to execute the Will. The plaintiffs themselves have given reasons to reach this conclusion by propounding another Will dated 23.08.1977 (Ex.PW9), which as per them, was executed by Mangal Singh after the execution of registered Will in favour of defendants. Though the said Will has been discarded by the Courts below and has not even been pressed by learned counsel for the appellant, still the fact remains that as per the case of the plaintiffs, Mangal Singh was in such a sound disposing mind on 23.08.1977 that he revoked the earlier Will (Ex.D1) executed on that day, gave solid and sound reasons for discarding that Will and stated about his maltreatment, beatings etc. by the defendants. If he was in such a sound disposing mind, even after the execution of Will (Ex.D1) on 23.08.1977, there can be no merit in the plea of appellants-plaintiffs that Mangal Singh was not in a good state of health at the time of execution of Will (Ex.D1), particularly when the marginal witnesses and scribe have stated that he was in sound disposing mind.

22. The plea of the plaintiffs that Harmel Singh had taken active part in the execution of Will (Ex.D1), has also been rightly rejected by the Courts below. Active participation in the execution of the Will by the beneficiary itself does not create doubt regarding testamentary capacity of the executor or on the genuineness of the Will until and unless the pressure or coercion is proved. It was so observed by Hon'ble Apex Court in ***Smt.***

23. In the Will (Ex.D1), Mangal Singh has not ignored any of his natural heirs as he was unmarried and issueless and it is proved on record that the plaintiffs were not living with Mangal Singh. The fact that Harmel Singh accompanied Mangal Singh at the time of execution of the Will (Ex.D1) and also signed before the Sub Registrar, has no significance in view of the fact he was not a major beneficiary, rather Mangal Singh had executed Will (Ex.D1) in favour of all the defendants. He had also made reference about his earlier Will (Ex.PW6/1) executed in favour of Chand Singh and others and had revoked the same.

24. This argument of learned counsel for the appellant that Mangal Singh had taken loan from Kaki, mother of defendants and had executed a mortgage deed in her favour, is also without any significance so far as the validity of the Will is concerned. If Mangal Singh had taken any loan from Kaki and created mortgage deed in her favour, it does not reflect any doubt on the validity of the Will.

25. The arguments of learned counsel for the appellants that none of the witnesses of the Will (Ex.D1) is from the village of Mangal Singh is also of no consequence as the witnesses of the Will namely Chand Singh, Sarpanch and Swaran Singh were of village Hamjheri, where the suit land is situated and were known to Mangal Singh.

26. Learned counsel for the appellants has argued that there is no reason as to why the Will was got registered at Sub Division, Patran than at Sub Division, Samana as village Hamjheri falls within the jurisdiction of Sub Division, Samana. Swaran Singh, marginal witness of the Will (Ex.D1) has

village Hamjheri to Patran is about 2/2¼ miles. This shows that Hamjheri was nearer than Samana from the residence of Mangal Singh and from the village where the land is situated and if Mangal Singh had chosen to go to Patran instead of going to Samana, this does not affect, in any manner, the genuineness of Will (Ex.D1). Even earlier, while executing mortgage deed dated 06.01.1977 (Ex.RA), Mangal Singh had got the same registered at Patran and not at Samana. It is, otherwise, the tendency of the agriculturists to go to the nearest Tehsil than the Tehsil situated far away.

27. The first Appellate Court has rightly discarded the plea of appellants that Will (Ex.D1) is shrouded by suspicious circumstance. The reasons given by Sub Judge 1st Class, Patiala while discarding Will (Ex.D1) were not based on proper appreciation of evidence and were rightly differed and discarded by the first Appellate Court on the basis of evidence on record.

28. In view of the facts and circumstances as discussed above, no substantial question of law requiring determination arises in this appeal, which has no merits.

29. Dismissed.

March 11, 2016.

Sachin M.

**(SURINDER GUPTA)
JUDGE**

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for the respondents.

SURINDER GUPTA, J.

Reserved on 09.02.2016.

February , 2016.
Sachin M.

**(SURINDER GUPTA)
JUDGE**