

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

**RSA No.1269 of 1987 (O&M)
Date of decision:26.10.2016**

Joginder Singh

... Appellant

Vs.

Mohinder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rajeshwar Singh, Advocate, for
Mr. G.S.Mann, Advocate
for the appellant.

Mr. Ramesh Sharma, Advocate
for respondents No.1 and 2.

AMIT RAWAL J.

Appellant-defendant is in Regular Second Appeal aggrieved of the judgment and decree dated 23.10.1986 rendered by the Lower Appellate Court, whereby, the relief sought in a suit for decree of declaration that the plaintiffs being owners in possession of land measuring 46 kanals 5 marlas and house no.84 measuring 11 marlas 1 sarsai and taur no.147 measuring 1 kanal 3 marlas 1 sarsai situated in the area and abadi of village Adraman, Tehsil Nakodar, District Jalandhar, has been decreed.

The plaintiffs averred that Kartar Singh son of Wadhawa Singh son of Pal Singh, father of the plaintiffs and defendants was owner in possession of the land, house and plot as mentioned above, who died on 28.09.1979. But before his death, he executed a Will dated 02.07.1978, whereby, the property was bequeathed in favour of the plaintiffs by excluding the defendants, i.e. one son Joginder Singh and daughter and consequential relief of permanent injunction was sought, as there was

perceptible threat of interference and dispossession. The suit aforementioned, was contested on the premise that Kartar Singh did not execute the Will at any point of time and the Will was result of fraud and mis-representation.

Mr. Rajeshwar Singh, learned counsel appearing on behalf of the appellant-defendant submits that the trial Court dismissed the suit on the premise the Will dated 2.7.1978 was found to be under suspicious circumstances as the same was registered on 30.01.1981 after three years of its execution. The trial Court also relied upon the order of the Assistant Collector (Ex.D1), whereby, the Will, aforementioned, was rejected as it was found to be suffering from suspicious circumstances. There was a cutting on the date of the Will. In fact, the land in dispute measuring 8 killas was ancestral, whereas 6 killas was purchased by Kartar Singh. Thus, all these facts have not been taken care of. The Lower Appellate Court being the last Court of facts and law has misconstrued and misread the oral and documentary evidence held the Will to be not suffering from suspicious circumstances and erroneously decreed the suit, thus, findings of the Lower Appellate Court are totally erroneous, illegal and perverse and liable to be set aside.

Per contra, Mr. Ramesh Sharma, learned counsel appearing on behalf of respondents No.1 and 2 submits that the Lower Appellate Court being the last Court of facts and law observed that the Joginder Singh has already been taken care of with regard to his share during the life time of Kartar Singh. The Will aforementioned, had been proved through examination/testimony of attesting witness-Kirpal Singh and Scribe-

Tarsem Lal. Kirpal Singh deposed in terms of provisions of Section 63(c) of Indian Succession Act. There is compliance of Section 68 of the Indian Evidence Act. The Civil Court cannot rely upon the findings of the Revenue Court. The cutting in the Will, is immaterial, as there is another similar date 2.7.1978 under the signatures. One daughter has already been married and her interest had been kept intact at the time of her marriage. Jamabandi, Ex.P4 showed the cultivation of Kartar Singh himself and the possession of the plaintiffs was entered in respect of certain land (Ex.P5) but the defendants have not been shown to be in possession of any khasra number at any point of time and thus, urges this Court for affirming the findings under challenge.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Rajeshwar Singh, for, it is settled law that the findings of the revenue record cannot be believed and treated as sermon in the Civil Court. As per the stand taken in the written statement, the Will was stated to have been not executed by Kartar Singh. Nothing prevented the defendants to examine/take the help of the expert in belying the signatures of the testator. Whereas, on the contrary, both the witnesses, namely, Kirpal Singh one of the attesting witnesses and Tarsem Lal, Scribe of the Will have been consistent and coherent despite their extensive cross-examination. In the cross-examination of Joginder Singh, it has been proved that he was residing at Mehatpur, where he had been cultivating the land on *batai* basis and thus, it is proved that he was staying away from his father since long. He also admitted the possession of the land and other property of

the plaintiffs. The factum of residing at Mehatpur was also reiterated in response to a specific question in the cross-examination, thus, the factum that he had separated from Kartar Singh long time back surfaced from his own cross-examination. It is also borne out that one un-married daughter of Kartar Singh was also residing with the plaintiffs and never came forward, in fact , was proceeded against ex parte. Had there been any grievance, she would come forward and contested the case.

I am of the view that findings rendered by the Lower Appellate Court are perfectly legal and justified being the last Court of fact and law and Will has been proved which though later on has been registered in the year 1991 as per the provisions of Section 23 of the Registration Act, 1908.

For the reasons aforementioned, I do not intend to differ with the findings rendered by the Lower Appellate Court which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

October 26, 2016

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No