

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. RSA No. 286 of 1988
Date of Decision : 23.02.2016

Dalip Singh and othersAppellants

Versus

Dalip Kaur and othersRespondents

2. RSA No. 2074 of 1990

Dial Singh and othersAppellants

Versus

Dalip Kaur and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rajeshwar Singh, Advocate
for the appellants in both the appeals.

Surinder Gupta, J. (Oral)

By this common judgment, above captioned appeals are being disposed of as these relate to the same property and issues involved in these appeals are also similar.

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2. This is appeal by defendants in civil suit no. 158 of 29.09.1981, against the concurrent judgments of Courts below whereby suit filed by Dalip Kaur was decreed for joint possession to the extent of 1/5th share in the property in dispute.

3. Case of plaintiff, in brief, is that her father Arjan Singh had three daughters, namely; Dalip Kaur plaintiff, defendant no. 8- Jeeto and Asso since deceased now represented by Guro-defendant no. 9, and two sons, namely; Dial Singh (defendant no. 1) and Karnail Singh (since deceased) represented by his legal heirs defendants no. 2 to 7. On death of Arjan Singh, Dial Singh and

Karnail Singh got the mutation of suit property sanctioned in their favour on the basis of forged Will of Arjan Singh, who was not in sound state of mind before his death and was not in a position to execute any Will.

4. The defendants contested claim of plaintiff alleging that Arjan Singh died in the year 1968 leaving behind a Will dated 15.11.1968 in favour of his sons Dial Singh and Karnail Singh. Both the Courts below discarded the Will propounded by defendants on the ground that scribe of Will (Ex. D-1) and Gurcharan Singh and Tara Singh, attesting witnesses of the Will were not examined without assigning any reason. It was also observed that the Will was executed in the house of Dial Singh and Karnail Singh, who were present in the house when the Will was scribed by Hardip Singh. Arjan Singh was 100 years of age at the time of execution of the Will. As per respondent no. 1, he was mentally unstable, deaf and possessed feeble eye sight. Arjan Singh died on 23.11.1968 i.e. within eight days of execution of the Will. Ist Appellate Court also observed that signatures of DW-3 Gurcharan Singh on the Will were obtained at a much later date. The ink used by Gurcharan Singh and Tara Singh to sign the Will looked comparatively fresher than the ink used to write the Will. Names of Gurcharan Singh and Tara Singh were also written with ink, print of which was quite fresh. On perusal of the Will, Ist Appellate Court concluded that signatures of Gurcharan Singh and Tara Singh were not obtained on the Will at the time when Nazir Singh and Harjit Singh had put their signatures over it. In view of above circumstances, the Will was found shrouded by suspicious

circumstances and discarded.

5. Learned counsel for the appellant has not been able to point out that while reaching the above conclusion the Courts below have either misread or misinterpreted the evidence on record. The Will is a solemn document which prescribes deals with inheritance of property of a testator after his death. Onus is heavily on the propounder to prove the Will by leading cogent and convincing evidence and at the same time to dispel the suspicious circumstances concerning execution of the Will. The suspicious circumstances as pointed out in the judgment by learned Sub Judge Ist Class, Patti and learned Additional District Judge, Amritsar in no uncertain term point finger towards genuineness of the Will propounded by the appellant. The concurrent finding of Courts below is based on appraisal of evidence on record.

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6. Plaintiffs Dial Singh and others filed suit seeking declaration that they are owners in possession of 379 *kanals* 2 *marlas* of land as fully described in headnote of the plaint with a consequential relief of permanent injunction restraining the defendants from interfering in their peaceful possession over the suit land except in due course of law and not to alienate specific *khasra* numbers out of joint *khata* in any manner.

7. As per case of plaintiffs, suit land was owned by Arjan Singh, who died on 23.11.1968. As per Will dated 15.11.1968, executed by Arjan Singh, plaintiffs have become owners in possession of suit land. Defendant no. 1 claimed 1/5th share out of joint *khata* and had obtained an *ex parte* decree in this regard,

without service of plaintiffs, which is not binding on them. Now she is bent upon to take forcible possession of suit land from plaintiffs. She is not entitled to sell any specific *khasra* number out of suit land. The defendants contested and controverted the claim of plaintiffs *inter alia* pleading that vide judgment in the case of *Dalip Kaur vs. Dial Singh (Civil Suit No. 158 of 29.09.1981)*, Dalip Kaur has been declared owner of suit land to the extent of 1/5th share. The Will of Arjan Singh was dubbed as forged and fabricated. The mutation of her 1/5th share in the land was sanctioned in her favour. She had alienated the property vide two sale deeds dated 09.06.1983 and 16.06.1983 in favour of Shabegh Singh son of Lehna Singh resident of village Valtoha.

8. Plaintiffs did not produce any evidence to prove Will dated 15.11.1968, perhaps because of the reason that Will was discarded in the suit filed by Dalip Kaur. It was also observed by learned Sub Judge Ist Class, Patti that plaintiffs had not been able to show their possession over suit property, as such, they are also not entitled to injunction as claimed by them and dismissed the suit. The aforesaid findings were affirmed by Ist Appellate Court.

9. On perusal of judgments of Courts below and paper-books, I find no legal or factual infirmity therein calling for any interference. No substantial question of law requiring determination arises in these appeals, which have no merits.

Dismissed.

A copy of this order be placed on the files of connected matters.

February 23, 2016

jk

**(SURINDER GUPTA)
JUDGE**