

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

RSA-466-2005

Date of decision : 26.10.2016

Narinder Singh

... Appellant

Versus

Tarlok Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.K. Singla, Advocate
for the appellant.

Mr. M.S. Bedi, Advocate
for respondent No.1.

Mr. Arun Abrol, Advocate
for respondent Nos.3 to 5.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby the suit seeking following relief:-

“Declaration to the effect that the plaintiff is owner of the land as detailed below:-

A) ½ share out of land measuring 114 kanals 17 marals comprised in Khewat No.5, Khatauni 8-14, Khasra No.77(0-18), 80(3-15), Rect. 13 Killa 8/1(4-0), 19 min East (3-0), 22(7-16) 23 (8-0) Rect. 18 Killa 2(7-16), 23(8-0) Rect. 18 Killa 2(7-16), 9(7-12), Rect. 13 Kila 7(7-7), 14 min East (2-9), 12/2 (1-9) 13/1(0-9), 8/2 (4-0), 9(8-0), Rect. 17 Killa 20/3(3-8), 21/1(1-11), Rect. 18 Killa 15(8-0), 16/1(6-4), 25/2(1-4), Rect. 13 Killa 12/1(3-2), 13/2(4-7), 14 min West (3-0) 17/1(4-18), 18(7-16), 19 min West (4-16) as entered in the jamabandi for the year 1985-86 situated in village Sangatpur, Hadbast No.139 Tehsil Gurdaspur.

B) ½ share out of land measuring 206 kanals 6 marlas comprised in khewat No.6 Khatauni Nos.15-21, Rect. 12 Killa 13 (0-8), 14/1(0-16), 24(8-0) 25(8-0), Rect. 13 Killa 21(8-0), Rect. 14 Killa 12(1-11), Rect. 13 Killa 24/1(7-7), Rect. 18 Killa 1(8-0), Rect. 13 Killa 15(6-11), 16(7-16), Rect. 14 Killa 18/2 (1-7), 19(7-12), 20(7-4), Rect. 12 Killa 6(7-4), 7/1(6-0), 15/1(3-0) Rect. 13 Killa 10(8-0), 11/1(2-13), Rect. 18 Killa 10(7-16), 11(8-0), 12(8-0), Rect. 19 Killa 6(7-16), 7(7-16), 1598-0, 4(8-0), 5(8-0), Rect. 12 Killa 15/2(1-1), 16(7-10), 17(8-0), 18/1(1-14), 18/2(4-11), 19(0-10), Rect. 13 Killa 11/2(1-18), 17/2(2-18), 20(8-0), 25/1(7-7) as entered in the jamabandi for the year 1985-86 situated in village Sangatpur H.B. No.139 Tehsil Gurdaspur.

And

For permanent injunction restraining the defendants from forcibly and illegally dispossessing the plaintiff from land measuring 116 kanals 16 marlas compromised in Khewat No.5 Khatauni No.13 Rect. 17 Killa 20/3(3-8), 21/1 (1-11), Rect. 18 Killa 15(8-0) 16/1(6-4). 25/2(1-4), Khatauni 14, Rect. 13 Killa 17/1(4-18), 18 min South (6-0), Khewat No.6 Khatauni No.20, Rect. 18 Killa 10(7-16), 11(8-0), 12(8-0), Rect. 19 Killa 6(7-16), 7(7-16), 15(8-0), 4(8-0), 5(8-0), Khatauni No.21, Rect. 12, Killa 16 min West (4-10), 17(8-0), 18/1(1-14), 18/2(4-11), 19(0-10) Rect. 13 Killa 17/2 (2-18), out of the suit land detailed above and as entered in the jambandi for the year 1985-86 situated in village Sangatpur H.B. No.139 Tehsil Gurdaspur.”
has been dismissed by both the Courts below.

Mr. S.K. Singla, learned counsel appearing on behalf of the appellant-plaintiff submits that the appellant-plaintiff is the son of Sadhu Singh and Kirpal Kaur. The suit, aforementioned, devolved around the estate of Kirpal Kaur, as Kirpal Kaur and Sadhu Singh had four sons and one daughter. Kirpal Kaur by virtue of the Will dated 18.04.1990 (Ex.P1)

bequeathed her entire share in favour of plaintiff as she was living with the appellant-plaintiff. The aforementioned Will has been proved through the testimony of the attesting witnesses, namely, PW-1 Avtar Singh and PW-2 Gurbachan Singh and Scribe PW-3 Mr. Gurdarsahan Pal Singh. The Courts below abdicated in their jurisdiction in relying upon the certificates dated 18.07.1961 (Ex.DW-4/A & Ex.DW4/B), whereby Kirpal Kaur was found to be lunatic. The defendants though denied the execution of the Will and stated it to be forged, but did not take the aid of the Expert for comparison of the signatures, rather opposed the application moved in this regard. In view of the statement of attesting witnesses and the scribe, the Will has been proved to the hilt and therefore, the Courts below ought to have granted declaration. The occasion to file a suit arose when the revenue authorities sanctioned the mutation, on basis of the natural succession. The ration card and the other documents have been proved on record to show the jointness of mess. All these factor have been ignored, even the certificate, indicated, that it could not be read for legal purpose, but only for the purpose of information and knowledge, yet the Courts below have heavily relied upon the same, thus, the judgment and decree are not sustainable and urges this Court for setting aside the same.

Per contra, Mr. M.S. Bedi and Mr. Arun Abrol, learned counsel appearing on behalf of respondent No.1 and respondent Nos.3 to 5, respectively, submits that the appellant-plaintiff has failed to disclose the factum of ailment of Kirpal Kaur. He should have been fair and honest to the Court regarding the ailment with the categoric pleading in plaint, that at the time of the execution of the Will, she was a sound-disposing mind and therefore, could execute the Will. The Courts below have rightly drawn the

presumption against the plaintiff. The scribe of the Will i.e. PW3 Gurdarshan Pal Singh was none-else, but the uncle of the appellant-plaintiff. It was he, who coined the story for execution of the Will. The mutation proceedings were challenged and the matter reached upto the level of Financial Commissioner, Revenue, but till that date the Will was not disclosed. Though Kirpal Kaur died in the month of June, 1990, whereas the suit, aforementioned, had been filed in the month of November 1991. By that time, the mutation proceedings were already on. All these factors have been noticed by both the Courts below while declining the relief, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. S.K. Singla, for, as the appellant-plaintiff had not come to the Court with clean hands, rather withheld the information of the ailment of Kirpal Kaur, though it was of the period of 1961. The Courts below have rightly drawn presumption under Section 114 of the Indian Evidence Act. The appellant-plaintiff has placed on record the some civil proceedings initiated by the defendants against Kirpal Kaur i.e. the power of attorney/vakalatnama (Ex.P-W9/A) which shows that she had been inhabit of putting thumb-impression.

This Court, while hearing the appeal, examined the original record and found that the thumb-impression on the power of attorney and the Will, are poles apart. The Court with the naked eye has not been able to form an opinion to be that of a same person. This exercise has been done by invoking the provisions of Section 45 of the Indian Evidence Act. There is a deep cut in the edge of the thumb-impression on power of attorney, which

is conspicuously wanting in the Will. The Will is of the year 1990. A person having depression does not change thumb impression during the entire life-time. If at all, the appellant-plaintiff was very sure to be the thumb-impression of Kirpal Kaur, nothing prevented him to compare the same with the specimen thumb-impression. In my view, the appellant-plaintiff has also not been able to rebut the aforementioned medical record by leading any evidence that at the time of the execution of the Will, she was totally hale and hearty and thereafter, had been uncured. No medical record, in this regard, had been placed on record as she is stated to have been living with him.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and accordingly, the appeal is dismissed.

26.10.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No