

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

**Cross Objection No.8-C of 2011 &
RSA No.1707 of 2009 (O&M)
Date of Decision.22.08.2016**

Shabeg Singh and others

.....Appellants

Vs.

Swaran Kaur and others

.....Respondents

Present: Mr. Baldev Raj Mahajan, Senior Advocate with
Mr. Akhilesh Vyas, Advocate
for appellant No.1.

Mr. Naresh Chander, Advocate for
Mr. R.S. Chauhan, Advocate
for appellant No.2.

Mr. A.K. Chopra, Senior Advocate with
Mr. G.S. Bhandal, Advocate
for respondent No.1.

Mr. Sarabjit Singh, Advocate and
Mr. IPS Kohli, Advocate
for respondent No.2.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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AMIT RAWAL J.

The appellants-defendants are aggrieved of the judgment and decree passed by both the Courts below whereby the suit of the respondent-plaintiff has been decreed by the trial Court in toto and the Will dated 19.01.1967 of Harnam Singh propounded by Shabeg Singh-defendant No.1 has not been believed but the lower Appellate Court, partly allowed the appeal of defendants, declaring the plaintiff-Swaran Kaur as co-owner to the

extent of 1/3 share being natural successor of her father Bhagwan Singh while declaring the defendant Shabeg Singh as owner of the property of Harnam Singh by upholding the Will dated 19.01.1967 and dismissing the suit of plaintiff Swaran Kaur claiming her right to the estate of Harnam Singh. In these circumstances, the appellants-defendants are in second appeal whereas the plaintiff-Swaran Kaur filed the cross objection bearing No.8-C of 2011.

Mr. Baldev Raj Mahajan, learned Senior Advocate assisted by Akhilesh Vyas appearing for appellant No.1 and Mr. Naresh Chander, Advocate for Mr. R.S. Chauhan, Advocate for appellant No.2 submit that respondent No.1-plaintiff, Swaran Kaur, alleging herself to be daughter of Bhagwan Singh son of Jwala Singh, filed suit for declaration to the effect that land measuring 93 kanals 15 marlas i.e. half share of 187 kanals 11 marlas as prescribed in the plaint being owned and possessed by the plaintiff as natural heir of Bhagwan Singh and Harnam Singh, her real uncle i.e. brother of Bhagwan Singh and the mutation of inheritance of Bhagwan Singh in favour of Ram Singh and Harnam Singh and mutation of inheritance of Harnam Singh in favour of Shabeg, appellant-defendant No.1, being illegal and void. The suit of the plaintiff was decreed by the trial Court in toto but the lower Appellate Court partly allowed the appeal filed by the defendants as narrated above.

The counsel for the appellants-defendants submits that the respondent-plaintiff No.1 failed to prove that she is daughter of Bhagwan Singh, as Bhagwan Singh died issueless and therefore, his estate was inherited in favour of Ram Singh and Harnam Singh. Harnam Singh also died unmarried, thus, issueless. Ram Singh had three sons namely Darshan

Singh, Nand Singh and Chand Singh, in essence, the share of Bhagwan Singh measuring 62 kanals 10 marals had been rightly mutated in favour of the defendants and the plaintiff could not have claimed the share of Bhagwan Singh i.e. measuring 62 kanals 10 marlas and half share i.e. 31 kanals 5 marlas out of the estate of Harnam Singh, in total 93 kanals 15 marlas. The suit was barred by limitation as Harnam Singh died way back on 07.04.1977 and the mutation had been effected long time back whereas the suit had been filed on 27.03.1999 and therefore, barred by law of limitation. It is in these circumstances, Harnam Singh out of love and affection towards Shabeg Singh and he being in a sound and disposing mind, executed a registered Will dated 19.01.1967 in favour of Shabeg Singh and accordingly, Shabeg Singh, appellant No.1 became owner of half share in the suit property. He also inherited the share of Nand Singh in equal share, being his natural successor. The land in dispute is ancestral in the hands of the appellants-defendants. The trial Court decreed the suit by granting declaration in favour of the respondent-plaintiff, Swaran Kaur, with regard to share of Bhagwan Singh i.e. 62 kanals 10 marlas and also granted half share i.e. 31 kanals 5 marlas out of 62 kanals 10 marlas of Harnam Singh whereas the lower Appellate Court had believed the Will dated 19.01.1967, being 30 years old, by invoking the provisions of Section 90 of the Indian Evidence Act and thus, held that Swaran Kaur, respondent-plaintiff, to be co-owner to the extent of 1/3 share whereas she is not entitled to 1/2 share, owing to the fact that a Will executed by Harnam Singh in favour of Shabeg Singh has been proved, thus, urges this Court for setting aside the judgments and decrees passed by the Courts below by

appeal. The following substantial questions of law arise for consideration in the second appeal:-

“(i) Whether the suit filed by the plaintiff-respondent on 27.03.1999 claiming inheritance to estate of Bhagwan Singh, who died on 08.03.1951 before coming into force of Hindu Succession Act in preference to his brothers, who inherited the property vide mutation dated 31.5.1955 (Ex.PW5-A) is barred by time, having been filed after 48 years and also the three sons of Ram Singh when property has gone to third generation of Ram Singh and Harnam Singh?

(ii) Whether the plaintiff is estopped by act and conduct from filing the suit claiming inheritance of Bhagwan Singh after 48 years of his death when the property has been inherited by the third generation after death of Ram Singh and Harnam Singh, who inherited the property from his brother before coming into force of Hindu Succession Act?

(iii) Whether findings of the Courts below that Swaran Kaur-plaintiff is daughter of Bhagwan Singh suffer from perversity being contrary to evidence and based on inadmissible evidence?

Mr. A.K. Chopra, Senior Counsel assisted by Mr. G.S. Bhandal, Advocate for respondent No.1 and Mr. Sarabjit Singh, Advocate and Mr. IPS Kohli, Advocate for respondent No.1, who adopts the arguments addressed by Mr. Chopra, learned Senior Counsel appearing for respondent No.1, submit that there is no illegality and perversity in the judgments and decrees passed by the trial court. The suit was not time barred, as there is no limitation to seek inheritance in view of law laid down by the judgment rendered by Full Bench of this Court in **Mohinder Singh vs. Kashmira Singh 1985 PLJ 82.**

However, the lower Appellate Court has wrongly drawn the

presumption of genuineness of the Will by applying provisions of Section 90 of the Indian Evidence Act, as the registered Will has not seen the light of the day, for, all the original leaves of the Will have not been brought on record. Some of them were torn out, in essence, the appellants-defendants have failed to prove the Will Ex.D1 in favour of Shabeg Singh, much less, there is no compliance of provisions of Section 63(c) of the Indian Succession Act. It is on this account, cross objection bearing No.8-C of 2011 has been filed challenging the finding of the lower Appellate Court *viz-a-viz* upholding of the Will.

He further submits that the respondent-plaintiff has proved herself to be daughter of Bhagwan Singh, born out of the loins of Bhagwan Singh and Guro @ Labh Kaur and in this regard, school leaving certificate has been proved on record as Ex.P1 wherein birth of Swaran Kaur has been mentioned as 12.03.1942 and she was admitted in the school on 07.05.1948. Mangal Singh aged 80 years, maternal uncle of the plaintiff, appeared as PW2 and stated that Guro @ Labh Kaur was his sister's daughter and Bhagwan Singh and Guro @ Labh Kaur were married about 62 years back. PW-3, Swaran Kaur, also stated that she is daughter of Bhagwan Singh. They came from Pakistan to village Narli, Tehsil Patti and she studied upto 4th class in the primary school of village Narli and her marriage was arranged by his uncles Ram Singh and Harnam Singh with Mohinder Singh. PW-4, Mohinder Singh, also stated that Swaran Kaur was married with him about 42 years ago and Ram Singh and Harnam Singh solemnized their marriage. In the cross-examination, it has come out that she is only daughter of his parents. Even the passport issued in the name of Labh Kaur

Kaur is the daughter of Bhagwan Singh and Labh Kaur, thus, urges this Court for confirming the judgment and decree passed by the trial Court by setting aside the finding of the lower Appellate court *viz-a-viz* upholding of the Will by wrongly applying the provisions of Section 90 of the Indian Evidence Act.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. A.K. Chopra, learned senior counsel appearing for the respondent No.1-plaintiff and no merit and substance in the submission of Mr. B.R. Mahajan, learned senior counsel appearing for the appellant No.1. There is no dispute to the fact that limitation does not apply to a person seeking inheritance of title in view of the ratio decidendi culled out in the judgment of Full Bench of this Court in **Mohinder Singh vs. Kashmira Singh 1985 PLJ 82**. The aforementioned witnesses i.e. PW2 to PW4 have proved the factum of marriage of Bhagwan Singh with Labh Kaur and Swaran Kaur having been born out of their loins. Ex.P1, school leaving certificate, had been produced by PW1. Mr. Mahajan, senior counsel appearing for appellant No.1, during the course of his arguments, submitted that the admission register has not been proved in accordance with law being a marked document whereas on going through the statement, Mr. Bachittar Singh, PW1, stated in his statement as under:-

"I have brought the summoned record, which is school leaving certificate of Swarn Kaur d/o Bhagwan Singh. Certificate Ex.P1 was issued by me. It is correct according to the record brought by me i.e. discharge register."

The aforementioned document if not exhibited but the record

brought by him included the admission certificate wherein the date of admission had been written. He further submitted that the passport of Labh Kaur showed Bhagwan Singh as her husband but not proved the fact that Swaran Kaur was born out of their loins. But on going through the statement of PW2, Mangal Singh, he stated that Swaran Kaur-plaintiff was his sister's daughter Labh Singh, whose name was Guro from the parental side and Labh Kaur from the in-laws side. He further stated that about 60 years back, Bhagwan Singh and Labh Kaur were married. He also admitted that he treated Swaran Kaur as his sister's daughter and Swaran Kaur treated him as her maternal uncle. He was very coherent and categorical in his testimony regarding birth of Swaran Kaur from the wedlock of Bhagwan Singh and Guro @ Labh Kaur. He has been subjected to extensive cross-examination but the defendants have not been able to shatter his testimony. Even no suggestion was put with regard to birth of Swaran Kaur from out of wedlock of Bhagwan Singh and Labh Kaur. The entire examination-in-chief and cross examination reads thus:-

"Swarn Kaur plaintiff is my sister's daughter. Mother's name of Swarn Kaur was Guro from parental side and Labh Kaur from in-laws side. Father's name of Swarn Kaur was Bhagwan Singh. About 62 years back, Bhagwan Singh and Labh Kaur were married. I am treating Swarn Kaur as my sister's daughter and Swarn Kaur is also treating me as her maternal uncle. I was treating Bhagwan Singh as my sister's husband and I was treating Guro as my sister. The people in general used to treat Guro and Bhagwan Singh as husband and wife. Swarn Kaur was born from the wedlock of Guro and

Bhagwan Singh. The people in general used to treat Swarn Kaur as daughter of Bhagwan Singh and Guro. Our old village in Pakistan was village Jhalian. Bhagwan Singh had brought Barat to our village Jhalian now in Pakistan.

xxxxxxxxxxxxx by Shri B.S. Boparai, Advocate.

Bhagwan Singh had two brothers namely Ram Singh and Harnam Singh. Ram Singh had three children namely i.e. three sons named Nand Singh, Darshan Singh and I do not remember the name of third son of Ram Singh. The names of daughters of Ram Singh are Banso and Kesso. It is wrong to suggest that Bhagwan Singh died issueless. It is also wrong to suggest that Bhagwan Singh was not married with Guro. I have been brought to give evidence by Mohinder Singh and Swarno as I am not a summoned witness. I have been residing in Nawan Shahar i.e. in village Labian since the creation of Pakistan. It is wrong to suggest that Bhagwan Singh was having no land in Pakistan. Volunteered, Bhagwan Singh was having ancestral land in village Pathan-ke District Lahore (Pakistan). It is wrong to suggest that I have deposed falsely.

PW-4 Mohinder Singh, husband of Swaran Kaur, has also deposed on same lines. He was also subjected to cross-examination and to a question in cross-examination, disclosed that the name of mother of Swaran Kaur was Guro @ Labh Kaur and Labh Kaur had a daughter from her marriage with Bhagwan Singh. He further answered, to a question put in cross-examination that Swaran Kaur was only daughter of Bhagwan Singh

examination. He was also put a suggestion with regard to the relationship of Swaran Kaur with Bhagwan Singh.

On the contrary, Will dated 19.01.1967 produced on record by the defendant. Only one witness, Jeon Singh, who did not make statement in terms of provisions of Section 63(c) of the Indian Succession Act, had been examined. Even otherwise, Section 90 of the Indian Evidence Act does not apply to the Wills. In cross-examination, he feigned ignorance about as to who had signed or thumb marked the Will first or later, which is essential requirement of Section 63(c) *ibid*. All these aspects have not been noticed by the lower Appellate Court while granting 1/3rd share to the plaintiff instead of granting share to the extent of 93 kanals 11 marlas as done by the trial Court.

The aforementioned reasons, in my view, are sufficient to set aside the judgment and decree of the lower Appellate Court viz-a-viz upholding of the Will. The substantial questions of law are decided against the appellants-defendants and in favour of the respondents-plaintiffs. Accordingly, the appeal filed at the instance of the appellants-defendants is hereby dismissed and the judgment and decree passed by the trial Court is restored and accordingly, the cross objection is allowed.

**(AMIT RAWAL)
JUDGE**

August 22, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes