

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

RSA No.124 of 2011 (O&M)

Date of Decision.22.08.2016

Paul Mohinder Singh

.....Appellant

Vs.

Gurtej Singh and others

.....Respondents

2. RSA No.301 of 2011

Bhajan Bir Singh and another

.....Appellants

Vs.

Gurtej Singh and others

.....Respondents

Present: Mr. A.K. Chopra, Senior Advocate with
Mr. G.S. Bhandal, Advocate
for the appellant in RSA No.124 of 2011.

Mr. Amit Jain, Advocate
for the appellants in RSA No.301 of 2011.

Mr. Sumeet Mahajan, Senior Advocate with
Mr. Amit Kohar, Advocate
for respondent No.1 (in both appeals).

Mr. Vikas Mohan Gupta, Advocate
for respondent Nos.3 and 4 in RSA No.124 of 2011 and
for respondent Nos.7 and 8 in RSA No.301 of 2011.

Mr. Navin Mahajan, Advocate
for respondent No.4 in RSA No.301 of 2011 and
for respondent No.9 in RSA No.124 of 2011.

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.

C.M. No.400-C of 2011 in RSA No.124 of 2011

The application for impleading the legal representatives of

deceased-Amar Kaur as substituted co-plaintiffs is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record.

C.M. No.829-CII in RSA No.301 of 2011

The application for impleading the legal representatives of deceased Surinder Singh and Amar Kaur is allowed subject to all just exceptions and they are permitted to file appeal as legal heirs of Surinder Singh and Amar Kaur.

C.M. No.1265-C of 2012

The application for bringing on record subsequent purchasers as respondents, being the assignees, is allowed subject to all just exceptions.

Main Cases

This order of mine shall dispose of two regular second appeals i.e. RSA No.124 of 2011 filed at the instance of Paul Mohinder Singh, who was arrayed as defendant No.2 but later transposed as plaintiff and another RSA No.301 of 2011 at the instance of Bhajan Bir Singh, defendant No.5 and another (Paul Varinder Singh Walia), as common question of fact and law involved.

It is apt to note pre-face the matter. Surinder Singh, plaintiff, instituted a Civil Suit No.209 of 1993 seeking declaration of joint possession and setting aside of the judgment and decree dated 05.01.1991 passed by the then Additional Senior Sub Judge, Ludhiana and consequently mutations bearing No.2906, 2913 and 2918 as illegal and void ab initio on the ground that the decree had been got by defendant No.1 in most fraudulent and collusive manner as well as against the law and thus, being nullity, as the said decree was required to be registered.

The aforementioned suit was contested by the defendants by taking numerous preliminary objections that the plaintiff had no cause of action as he renounced the world since 1964. The suit was barred by limitation and not maintainable. Santa Singh was owner in possession of the property in dispute and further Sama kaur was the owner of the property as Santa Singh executed a gift deed in favour of Avtar Singh, his son, in respect of land measuring 6 acres. Remaining property, he gifted away to his wife Sama Kaur, who became exclusive owner in possession of the property. Sama Kaur died on 21.12.1992. The defendant No.1, Gurtej Singh son of Avtar Singh son of Santa Singh, being the grand son of Sama Kaur, was serving her during the life time and she had given the property to him on the basis of family settlement and on the basis of same, a decree dated 05.01.1991 had been passed. The locus standi of the plaintiff to challenge the judgment and decree was also assailed. On the basis of preponderance of the evidence, the trial Court decreed the suit, however, in the lower Appellate Court, the application for seeking amendment of the plaint at the behest of defendant No.1 was moved for propounding the registered Will dated 24.02.1990. The said application was allowed and the lower Appellate Court while exercising the power under Order 41 Rule 25 CPC sought the report from the Trial Court. As per report dated 13.03.2007, the Will had been proved and on the basis of examining the report as well as other aspects, the lower Appellate Court set aside the judgment and decree passed by the trial Court.

Mr. A.K. Chopra, Senior Advocate assisted by Mr. G.S. Bhandal, Advocate appearing for the appellant in RSA No.124 of 2011 and Mr. Amit Jain, Advocate appearing for the appellants in RSA No.301 of

2011 have raised following multi-fold arguments in support of their cases.

They submitted that contents of the family settlement and the Will were verbatim. The family settlement is dated 19.06.1990 and the Will is dated 24.02.1990 and therefore, the Will is deemed to have been revoked. The testator had not taken care of all the legal representatives and the line of succession had been deviated. They further submitted that in the written statement of defendant No.1, there is reference of only family settlement but on going through the contents of the family settlement dated 19.06.1990, it mentions that some oral family settlement had taken place. The pleadings have been verbatim, that had not been looked into by the lower Appellate Court. The Will dated 24.02.1990 was registered on 24.05.1990. No explanation has come forth for delayed registration of the same. PW3, Swaran Kaur, daughter of Sama Kaur, had put in appearance as witness and stated that Sama Kaur was not of sound mind. The Will was drafted by an advocate and the attesting witnesses were Balbir and Mohan Singh. Mohan Singh had died and his signatures had been examined by an expert, who had compared the signatures from the Will executed by him and with the disputed Will and found that it was not his signatures. Balbir Singh has also not deposed in terms of Section 63(c) of the Indian Succession Act. No doubt, the appellant had not examined the expert vis-a-viz the signature of Balbir Singh or thumb impression of Sama Kaur on the Will, to come to an irresistible conclusion that there was some hanky panky at the behest of the beneficiary, for, Gurtej Singh had sold some other piece of land to Balbir Singh vide sale deed dated 14.10.1991 that could suggest that Balbir Singh was a beneficiary and interesting witness. Scribe DW9 did not bring his register. He stated that the register was in some other Court in respect of

some criminal case, meaning thereby, the scribe was also having a criminal background, thus, the Will, much less, the family settlement was nothing but a specific exercise to deviate from the line of succession as the appellant/plaintiff have equal share to the estate of Sama Kaur and thus, urges this Court for setting aside the judgment and decree passed by the lower Appellate Court by formulating the substantial questions of law carved out in the memorandum of appeal.

Mr. Sumeet Mahajan, Senior Advocate assisted by Mr. Amit Kohar, Advocate, Mr. Vikas Mohan Gupta, Advocate and Mr. Navin Mahajan, Advocate appearing for the respondents submit that scribe of the Will DW9, Kamlesh Kumar, had been examined and acknowledged to have scribed the same. DW7, Sharanjit Singh s/o Mohan Singh had been examined as the Mohan Singh other attesting witness had died. He had identified the signatures of his father on the disputed Will, thus, there is compliance of provisions of Section 69 of the Indian Evidence Act, therefore, the evidence of the expert would be irrelevant. The Will also mentioned about the other legal representatives who were stated to be living separately and were not within her control, in essence, the testator had stated that they were beyond her control. It is in this aspect of the matter, the property had been bequeathed to the grand son who is not out of the line of succession. It is a settled law that a Will cannot be said to be automatically revoked if a family settlement is arrived at between the parties. Decree is of year 1991 whereas the suit has been filed in the year 1993. They further submitted that the Will has been proved, it being the registered one and therefore, judgment and decree passed by the lower Appellate Court does not warrant any interference and urges this Court for

dismissal of the second appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submission of learned counsel for the appellants and the appeal is liable to be dismissed on the following grounds:-

(i) There is no estoppel against law that once the testator had executed a registered Will and thereafter, suffers a decree, the Will would be deemed to have been revoked. As noticed above, the Will is dated 24.02.1990 and had been registered on 24.05.1990 and the endorsement reveals that contents of the Will were read over to the testator.

(ii) The statement of expert i.e. Arvind Sood *viz-a-viz* the signature of Mohan Lal on the Will would pale in significant as on the contrary, son of Mohan Lal, DW-7 Sharanjit Singh had been examined, who identified the signatures of his father i.e. in terms of Section 69 *ibid*.

(iii) The appellants have failed to prove on record the mental health of Sama Kaur as no medical record in this regard has been placed or proved on record.

(iv) Execution of sale deed in favour of Balbir Singh would be meaningless, as it was an independent contract. Moreover, he was subjected to very lengthy and detailed cross-examination but the appellants have not been able to shatter his testimony. In reply to a categoric question, he stated that the Will was drafted by an advocate and Sama Kaur had been coming to the Court on her own and suggestion was put to her with regard to

her unsound mind but she stuck to her stand.

Thus, testimony of the aforementioned witnesses is in consonance with the provisions of Section 63(c) of the Indian Succession Act. Both the witnesses have deposed in terms of the aforementioned provisions i.e. they have appended their signatures on the asking of the testator, who had put her thumb impression. If the appellants were aggrieved of the order of Appellate Court seeking report, they could have filed an appeal in this regard. However, once they agreed to the calling of the report and participated in the trial by cross-examining the witnesses regarding the Will, they cannot volte face and challenge the report at this stage. There is another aspect of the matter, DW-10 Arvind Sood, Finger Expert had proved the thumb impression of Sama Kaur, which has gone unchallenged on the file, in essence, unrebutted.

For the foregoing reasons, I am of the view that the lower Appellate Court being last court of fact and law has actually discharged the obligation as enshrined under Section 96 CPC. I do not find any illegality and perversity in the judgment and decree passed by the lower Appellate Court, much less, no substantial question of law arises for consideration in the second appeals. The second appeals are dismissed.

(AMIT RAWAL)
JUDGE

August 22, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes