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

Date of decision : 12.01.2016

1.

RSA-1272-2012 (O&M)

Jasbir Singh

...Appellant

Versus

Jaspal Singh and others

...Respondents

2.

RSA-1273-2012 (O&M)

Jasbir Singh

...Appellants

Versus

Jaswinder Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. D.V. Sharma, Senior Advocate with
Ms. Shivani Sharma, Advocate
for the appellant.

Mr. H.S. Dhindsa, Advocate
for respondent No.2 (in RSA-1272-2012) and
for respondent No.1 (in RSA-1273-2012).

Mr. Mukand Gupta, Advocate, Advocate
for respondent Nos.4 and 5 (in RSA-1272-2012) and
for respondent Nos.3 and 4 (in RSA-1273-2012).

Mr. Mandeep Singh, Advocate for
Mr. Amit Dhawan, Advocate
for respondent No.1 (RSA-1272-2012) and
for respondent No.5 (RSA-1273-2012).

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?

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two regular second appeals bearing RSA No.1272 of 2012 and RSA No.1273 of 2012 as the common questions of law and facts involved in both the appeals are the same.

The appellant-plaintiff is aggrieved of the judgment and decree of both the Courts below, whereby the suit bearing No.261 of 2007 seeking declaration and suit No.385 seeking identical relief, have been dismissed by both the Courts below.

It would be apt to give brief preface to the facts leading to filing of the aforementioned suits, before adverting to the contentions and rival contentions of the parties to the lis.

The suit at the instance of the plaintiff is based upon the registered Will dated 01.12.1998 executed by Jaswant Kaur widow of Kartar Singh (mother of the appellant-plaintiff) and the contesting respondent No.1 Jaswinder Kaur wife of Karamjit Singh (daughter of respondents-defendants).

The defendants in the written statement came out with a Will dated 23.09.1996 by which, Jaswant Kaur had bequeathed the property in favour of the Jaspal Singh and Jaswinder Kaur. It is also a pleaded case of the parties that prior to the execution of the aforementioned Will, Jaswant Kaur executed another registered Will

dated 08.03.1983 in favour of the sons namely Jasbir Singh and Jaspal Singh. Both the Courts below, on the basis of the oral and documentary evidence, dismissed the suit and found that the Will dated 01.12.1998 was surrounded by the suspicious circumstances.

Mr. D.V. Sharma, learned Senior Counsel, assisted by Ms. Shivani, learned counsel appearing on behalf of the appellant submits that both the Courts below have committed illegality and perversity in holding that the Will dated 01.12.1998, surrounded by the suspicious circumstances and as much as the ingredients of Section 68 of the Indian Succession Act and as well as Section 63 (C) of the Indian Succession Act, have been proved, much less, complied with. The deed-writer Mr. Aggarwal and one of the attesting witnesses, Mr. Sukhwinder Singh have been examined and both of them have been deposed in terms of the provisions of Sub-section (c) of Section 63 of the Indian Succession Act. Though the Courts below have referred to the cross-examination of Jaswinder Kaur-defendant, viz-a-viz, the photographs and the thumb impressions of Jaswant Kaur on the registered Will dated 01.12.1998, yet the said piece of cross-examination has been discarded on the premise that in the last lines of her cross-examination, matter has been clarified by her. He submits that as per the settled law, there is no requirement of specific mention that it being a last, viz-a-viz the cancellation of the previous Will. In support of his contentions, he relied upon the judgment of Division

Bench of Kerala High Court in "**Joseph V/s K.V. Ippunny and**

others” 2007 (4) RCR (Civil) 831, and submits that the following substantial questions of law arises for determination of this Court:-

1. Whether the learned courts below erred in misreading the evidence on record, which has resulted into a perverse finding?
2. Whether the Will (Ex.P3) dated 01.12.1998, which has been registered in accordance with the provisions of the Registration Act, 1908 and has been duly proved by one of the attesting witnesses and the scribe, can the Will be said to be suspicious only on the ground that it did not make a reference to the earlier Will dated 23.09.1996?
3. Whether once the execution of the Will (Ex.P3) had been admitted by the DWs can the Will be held to be suspicious?
4. Whether the cancellation of the earlier Will dated 08.03.1983, can debar the testator to execute the Will in favour of the same beneficiaries of the Will dated 08.03.1983?

Mr. H.S. Dhindsa, learned counsel appearing on behalf Jaswinder Kaur-defendant submits that the Will dated 01.12.1998 has proved to be surrounded by the suspicious circumstances as there was a spacing of the above thumb impressions of the attesting witness and as well as of the testator. No explanation has come in executing the Will as to why the testator has bequeathed the

property in favour of the sons, as vide Will dated 23.09.1996, only daughter and one son namely Jaspal Singh, had been benefited. In the Will dated 23.09.1996, it has been specifically mentioned that the previous Will dated 08.03.1983 has been cancelled. In the absence of any such clause, the Will dated 01.12.1998, relied upon by the plaintiffs, has rightly been discarded. There is no need of executing the Will in favour of the sons as testator had bequeathed her entire estate vide Will dated 23.09.1996 in the equal share to Jaspal Singh and Jaswinder Kaur. Reason of dis-inheritance of Jasbir Singh has been specifically mentioned in the Will dated 23.09.1996, that he had not been taking care of the testator. He further submits that the concurrent findings of fact cannot be disturbed until and unless the substantial questions of law arises for determination which does not arise and prays for dismissal of the same.

Mr. Mukund Gupta, learned counsel appearing on behalf of respondent Nos.4 and 5-subsequent vendees, submits that the suit had been instituted in the year 2001, whereas, after the death of Jaswant Kaur as per the mutation bearing No.556, her entire property was mutated on the basis of natural succession, in favour of all three siblings namely, Jasbir Singh, Jaspal Singh and Jaswinder Kaur. Jaswinder Kaur-defendant sold the property to Nirmal Singh-defendant No.2 vide sale deed dated 12.10.2000 and further sold to defendants No.3 and 4 vide sale deed dated 19.04.2001. Thus, assuming for an argument sake that there is no

Will, Jaswinder Kaur had already parted her share, whereas, share of the brothers remains intact.

I have heard the learned counsel for the parties and appraised the paper book as well as case law cited by learned counsel for the appellant.

The attesting witness PW-5 and the deed-writer have deposed in terms of provisions of Section 68 of the Indian Evidence Act and as well as Section 63 (C) of the Indian Succession Act. The Courts below have not assigned cogent reasons in discarding the admission of Jaswinder Kaur to a specific question in cross-examination who deposed as under:

"I recognize the photograph of my mother on the Will dated 01.12.1998 executed by my mother in favour of Jasbir Singh and Jaspal Singh which is Ex.P3 and photograph on the same is mark 'X'. I know the Namberdar Lachman Singh who belongs to Salanagar whose photograph is also affixed along with my mother Jaswant Kaur on the Will Ex.P3. Namberdar Lachman Singh is related to person belonging to village Balhukmi as such, I know Namberdar Lachman Singh, I also know Sukhwinder Singh witness to the Will dated 01.12.1998 who is brother in law of Jasbir Singh. I came to know about the execution of a Will executed by my late mother Jaswant Kaur in favour of my brothers namely Jasbir Singh and Jaspal Singh when Jaspal Singh filed a case for challenging the mutation.

It is correct that my brothers were cultivating physical possession over the land in dispute and in the absence of my brothers my nephew namely Gurpreet Singh is

cultivating the land in dispute as my brother Jasbir Singh and Jaspal Singh were away to foreign country. I was not aware of the setting aside of the mutation and mutation was sanctioned and entered in the name of my brothers."

There is another aspect of the matter that the Register (Ex.P3/4) where the Will has also been recorded and the signatures of all witness and testator are existing, has been proved through examination of DW-3 Seema Singh, Tehsildar-cum-Land Acquisition Officer, Jalandhar. She submitted that Jaswant Kaur had appended her signatures and thumb impressions on the endorsement Ex.D2/A. Ex.D2 is a certified copy of the Will dated 23.09.1996. In the cross-examination, she also admitted about the Will dated 01.12.1998, Ex.P3 executed by Jaswant Kaur in favour of the sons namely Jaspal Singh and Jasbir Singh, relied upon by the plaintiffs, has been registered in their office. At that time, Inder Dev Singh Minhas was Sub-Registrar, whose signatures she identified. As per the ratio decidendi culled out in the para No.7 of the judgment of Hon'ble Supreme Court relied upon by learned counsel for the appellant, it has been mentioned that only the last Will prevail, de hors the fact whether in the last Will, there is a mention of the cancellation of the previous Will or not it is impliedly revoked. Para 7 of the aforesaid judgment reads thus:-

"7. The questions to be considered is whether the Will was executed by her? If so, was it properly attested? Whether the attesor has got testamentary capacity at

*the time of execution and whether the Will was executed by playing fraud? Ext.B4 Will is only a certified copy of a registered Will and that was dated 1.3.1987. Ext.A4 registered Will is dated 10.2.1989 executed about two years after the above Will. Even if it is not stated that the earlier Will was not cancelled, it is settled law that only the last Will will prevail. Even though Ext.B4 is said to be registered, Ext.A4 is also a registered document. Since only the last Will will prevail, if Ext.A4 Will is valid, automatically, Ext.B4 Will will stand cancelled even without a specific recitation to that effect being the last Will. It was not proved that Ext.B4 Will, the alleged earlier Will, was duly executed. Hence, if Ext.A4 is correct, it is the only Will. Section 70 of the Indian Succession Act specifically states that the Will can be cancelled by another Will. It is true that if two Wills are executed and they are not inconsistent with each other, both may be valid. Here, in Ext.A4 it is stated that all properties she is having and may be acquired subsequently will go to the plaintiff. That is inconsistent with Ext.B4 Will. Exts. A4 and B4 cannot co-exist due to inconsistency. Swinburne's statement that "no man can die with two testaments" is not always true. If the two testaments are not inconsistent, they cannot be considered as two separate Wills, but, together can be considered to indicate the testamentary intention of the deceased (See: **Ahronee Shemail v. Sheikh Ahmed Omar - 33 Bom.L.R. 1056**). If there are two testaments which are not inconsistent with each other, both together can be considered as last Will of the deceased. But, the last testamentary disposition by a testator operates to the exclusion of any previous inconsistent Wills. In such cases, earlier Will is impliedly*

*revoked. The legal position with regard to registration of a Will has been laid down by the **Hon'ble Apex Court in Durga Parshad v. Debi Charan and others (AIR 1979 SC 145 - paragraph 30)**. Here, if Ext.A4 Will is really executed properly, Ext.B4 Will even if proved is impliedly revoked as text of Ext.A4 is totally inconsistent with Ext.B4 Will. Before considering the question whether Ext.A4 Will was validly executed, we may consider the judicial pronouncements in this matter. "*

On demise of Jaswant Kaur, the property was mutated in the name of all the siblings by way of natural successor but they have been denied the declaration qua the entire property on the basis of Will. Thus, subsequent events have been taken place. Once the sale deed has been executed prior to the filing of the suit and other sale deed as noticed above, during the pendency of the suit, I am of the view that the sale deed dated 12.10.2000, executed by Jaswinder Kaur in favour of Nirmal Singh-defendant No.2 and sale deed dated 19.04.2001 executed by defendant No.2 in favour of defendants No.3 and 4, are required to remain intact as third party rights have been created and such right is viz-a-viz a share of Jaswinder Kaur. Since the grievance of the appellant-plaintiff is that on the basis of the finding rendered by the Courts below, the mutation by way of natural successor would be meaningless as the Will dated 23.09.1996 has been upheld.

I am of the view that the last Will dated 01.12.1998 would prevail and the previous Will automatically deemed to have

been cancelled, even in the absence of any specific clause. By virtue of the aforementioned Will, both Jasbir Singh and Jaspal Singh are the beneficiaries to the entire estate of Jaswant Kaur. Since I have already observed that by assigning reasons, the sale deeds, aforementioned, shall remain intact. Accordingly the Will dated 01.12.1998 shall be construed to be executed viz-a-viz the shares of Jaspal Singh and Jasbir Singh in their favour and the same is upheld.

Resultantly, the substantial questions of law noticed above are answered in favour of the appellant-plaintiff and against the respondents-defendants. Accordingly, the judgment and decree of the Courts below are set aside.

It is made clear that the sale deed aforementioned shall remain intact and shall not deem to be null and void and the appellant-plaintiff shall not stake any claim qua them.

The appeals stands allowed.

12.01.2016
yogesh

**(AMIT RAWAL)
JUDGE**