

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3367 of 2012

Date of Decision: 23.11.2016

Sukhdev Singh

... Appellant

Vs.

Balbir Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Amit Verma, Advocate,
for the appellant.

Mr. Parvinder Singh, Advocate,
for the respondent.

Amol Rattan Singh, J.

This is the second appeal of the defendant in a suit filed by the respondent-plaintiff (hereinafter to be referred to as the plaintiff), seeking a declaration to the effect that he is the joint owner, in joint possession, of land measuring 11 kanals and 7 marlas, fully described in the suit, falling in Badesron, Tehsil Garhshankar, District Hoshiarpur. He also sought the consequential relief of permanent injunction against the present appellant, restraining him from “illegally denying the ownership” and interfering in the joint possession of the plaintiff on the suit land. Despite seeking a declaration that he is the joint owner in joint possession of the suit land, the relief of joint possession of the land was also sought, as is evident from the head note of the judgment of the learned Additional Civil Judge (Senior Division), Garhshankar.

2. The facts, as taken from the judgment of the learned Courts below, are that the plaintiff had contended that his mother, Bachni daughter of Ralla, was co-owner in joint possession of the suit land, to the extent of her share in it, as per the *jamabandi* for the year 1996-97. She passed away on 20.11.1997 and therefore, the plaintiff claimed that he being her sole legal heir had inherited her estate and had consequently had become the co-owner in joint possession of the suit land, to the extent of the share of Bachni, and that no other person had any right, title or interest, up to extent of that share.

It was further claimed that the present appellant-defendant, in connivance with revenue officials, had managed to get a mutation of inheritance, bearing no.2336, entered in his name, qua the estate of Bachni.

It was further contended that Bachni had never executed any will in favour of the defendant and in fact, it was the plaintiff who had looked after his mother, he being her only son.

Therefore, it was averred that mutation entry no.2336 was illegal and unjustified and was “liable to be set aside”.

Yet further, it was contended that on the strength of the said mutation, the defendant was threatening to alienate the suit land and dispossess the plaintiff from his share.

Consequently, the suit was instituted by the plaintiff on 01.10.2001, also praying therein that in case he was not found to be in possession of the suit land, he be held entitled to such joint possession.

It was noticed by the learned Additional Civil Judge, that the suit had actually been filed through the plaintiffs' attorney, Kulwinder Kaur wife of Darshan Singh, resident of Ward No.3, Balachaur, District

Nawanshahar.

3. Upon notice having been issued to him, the defendant filed a written statement taking the usual preliminary objections of locus standi, no cause of action etc., further contending that the suit was barred by limitation and that the plaintiff was estopped by his own acts, conduct, admission and acquiescence, from filing the suit.

On merits, it was denied that Kulwinder Kaur was the plaintiffs' attorney and as such, even her competence to file the suit on behalf of the plaintiff was denied.

The co-ownership of the late Bachni, and her joint possession over the suit property, was, however, admitted by the defendant, as was her date of death, i.e. 20.11.1997.

It was denied that the plaintiff was the sole legal heir of Bachni and in fact, it was claimed by the defendant that she had resided with him for the past 25 to 30 years and that he had served and looked after her and provided for her daily needs.

It was further contended that Bachni remained in sound disposing mind till her last breath and that the plaintiff had actually severed all relations with her, in her life time itself.

Thus, it was further contended that Bachni had therefore executed "a legal and valid will" on 04.02.1997, in favour of the defendant. He further claimed that in fact he had performed her last rites.

Mutation no.2336 dated 30.03.2001 having been sanctioned in his favour, was admitted by the defendant, who also claimed to be in possession of the suit property, to the extent of the share of Bachni, after her demise.

Lastly, it was contended that the plaintiff had never interfered in the peaceful possession of the defendant and consequently, dismissal of the suit was prayed for.

4. Upon a replication having been filed by the plaintiff, denying the contents of the written statement and reiterating those of the plaint, the following issues were framed by the learned Additional Civil Judge:-

- “1. Whether the suit is filed by duly authorised person? OPP
2. Whether plaintiff is only legal heir of deceased Bachni? OPP
3. Whether plaintiff is entitled to declaration and consequential relief of injunction as prayed for? OPP
4. Whether deceased Bachni executed will dated 4.2.1997 in favour of the defendant? OPD
5. Whether plaintiff is estopped from filing suit by his own acts and conduct? OPD
6. Whether suit is not properly valued for the purpose of court fee and jurisdiction? OPD
7. Whether plaintiff has no locus standi and cause of action? OPD
8. Whether suit is not maintainable? OPD
9. Relief.”

5. In support of the plaint, the attorney of the plaintiff, Kulwinder Kaur, testified as PW1 and also tendered some documents by way of evidence.

The defendant examined one Chanan Singh as DW1, who was a *Mal Moharrir*, S.K. Branch, in the office of the Deputy Commissioner, Hoshiarpur. He also examined one Jai Dev son of Bhagat Ram, resident of village Badesron where the suit land is situate, as a witness to the will dated 04.02.1997.

One Didar Singh son of Harbans Singh, Deed-Writer, was examined as DW3, the defendant examined himself as DW4 and one Jagat Ram son of Polo Ram, resident of village Kot, Tehsil Garhshankar, as DW5.

He too tendered some documents by way of evidence.

6. Upon appraising the aforesaid evidence and considering the pleadings and arguments made before him, the learned Additional Civil Judge, first found that though the defendant had averred in his written statement that the plaintiff was not the only natural legal heir of Bachni, he had not led any evidence to show that Bachni had any other child. Hence, with the plaintiffs' contention in that regard accepted, issue no.2 was decided in favour of the plaintiff.

7. As regards the will dated 04.02.1997, it was found that Didar Singh had appeared as DW3 and testified that he had scribed the will, Ex.D1, on the asking of the testatrix. He also proved an entry in that regard in his register as Ex.D2.

It was noticed by that Court that the certified copy of the will, that had been placed on record, showed that it was attested by two witnesses, i.e. Jai Devi, Sarpanch of village Badesron and Jagat Ram son of Polo Ram, also a resident of the same village.

It was further noticed that though Jai Dev had appeared as DW 2, he did not step into the witness box to allow himself to be cross-examined, after which Jagat Ram was examined as DW5, claiming that he was the second witness to the will.

8. However, despite one of the witnesses to the will having testified in favour of the defendant, it was held by the learned Additional Civil Judge, that the will was surrounded by auspicious circumstances.

Firstly, as contended by the plaintiff, the defendant had not disclosed how he was related to Bachni and why she would bequeath her estate to him, though his contention was that he had served her for 25-30 years. However, it was seen that the will did not disclose anywhere that the testatrix had stated that she had any children. Yet, the defendant had not denied that the plaintiff was Bachni's son.

In the will, it was also seen that Bachni had only stated that she was the daughter of Ralla, resident of village Badesron, without even disclosing that she had been married, whereas even from the cross-examination of the defendant himself, it was evident that Bachni had been married at Balachaur, with the plaintiff having been born to her.

It was further noticed that the plaintiff and defendant were both carpenters by caste, doing labour work. As such, it not having been shown by the defendant that the plaintiff had inherited any land from his father, due to which Bachni would bequeath her own property upon somebody other than her son, even to her brothers' son, i.e. the defendant.

[It is to be noticed at this stage itself that though earlier it was stated by the Civil Judge that the defendant had not disclosed any relationship of Bachni with him, that observation would seem to be in the context of noticing the contentions of the plaintiff, and not as a finding of the Court].

It was further noticed that nothing had come on record to show that Bachni had only one brother and that the defendant was her only nephew, whom she preferred over others. This was held to be so, even though it was noticed that it was contained in the will that the defendant had served the testatrix, who was pleased with his services and had therefore

bequeathed her estate to him.

However, the Court further held that the onus was on the defendant to show that Bachni had been actually residing with him for the last 25 to 30 years and that he had served her. Yet, no witness from the village was examined to prove that fact. The Sarpanch of the village, i.e. DW2 Jai Dev, did not appear for cross-examination and DW5 Jagat Ram, was not a resident of village Badesron but of village Kot and importantly, the father-in-law of the defendant.

He was therefore held to be an interested witness, with his testimony regarding the defendant having served Bachni, held to be doubtful.

It was further noticed by the Court that neither any voters' identity card, nor any voters' list, ration card, proof of any medical treatment etc., or any other document, was produced to show that Bachni was actually residing with the defendant for the past 25 to 30 years and that he had served her till she died.

9. Hence, having recorded aforesaid findings, the learned Additional Civil Judge held that sufficient evidence had not been led by the defendant to support the fact that the will was executed by Bachni in his favour on account of the services rendered by him to her.

On the other hand, even though the defendant had claimed that he had performed the last rites of Bachni, the plaintiff had proved Ex.P2, which was a discharge slip issued by "the Health Clinic", Rajouri Garden, New Delhi, showing that Bachni had been admitted to that hospital from 13.11.1997 to 16.11.1997. The plaintiff had also produced her death certificate showing that she died at Delhi on 21.11.1997. He had also

produced her photographs, taken after her death, which were held to be proved by the Court, even though they were not duly exhibited documents but had been taken on record as Marks A to D.

This was obviously on account of the fact that the photographs were put to the defendant in his cross-examination. Though he admitted that the plaintiff was seen in the photograph, however, he denied that the body was that of Bachni. Yet, DW5, the father-in-law of the defendant, admitted that it was actually Bachni in the photographs.

It was further noticed by the Court that in his cross-examination, the defendant had admitted that Bachni had died at Delhi, where her last rites were performed and that she had died in the house of the plaintiff.

10. Yet further, it was also found by the Additional Civil Judge that though the will was contended to have been scribed by a deed-writer, he had actually admitted to “having left the work of deed writing 7/8 years back”.

A finding was also recorded by that Court that page no.13, on which the entry regarding the will was made in the register of the deed-writer, was actually different in colour from the other pages in the register, the other pages being 'whitish' in colour, with page no.13 being “khaki”. Further noticing that though all the remaining pages were in serial order, one page, no.186-187, was missing and in fact, half of page no.13-14 also existed at the end of the register, where it appeared at Sr. No.187-188.

Thus, a finding was recorded by the Court that the deed-writer had actually replaced the paper of page no.13-14, half of which bore Sr. No.186-187 towards the end of the register.

It was also held that when the page was changed, it was obvious that the deed-writer had forgotten to put the serial number on page no.186-

187.

Hence, it was concluded that the aforesaid, seen with the difference in the colour of the pages, created a very strong suspicion with regard to the entry in the register, especially as the register was held together by a thread, knotted in the center, thereby making a change of pages very easy.

11. Further, it was noticed by the Court that though DW-5, Jagat Ram, father-in-law of the defendant, was shown to be an attesting witness to the will, he was also shown to be a resident of village Badesron, whereas he was actually a resident of village Kot which was obvious from his address given as DW5.

Though the witness had given an explanation that he had actually given the correct name of his village to the deed-writer, who had wrongly recorded it, however, further noticing that actually the defendant had originally intended to examine only DW2, Jai Dev, as the attesting witness but thereafter, upon him having not appeared for cross-examination, Jagat Ram was later on examined as DW5, who intentionally tried to pass off as Jagat Ram son of Polo Ram, resident of village Badesron, because the necessity arose to examine at least one witness. Yet, eventually, the said witness had to admit that he was a resident of village of Kot.

12. Further recording a finding on an argument raised, from the testimony of DW5, where he had contended that the testatrix wished to get the will registered but had not been able to do so as the Sub-Registrar was not present when they went to his office, it was held that Bachni actually having died on 20.11.1997, i.e. more than nine months after the will was allegedly executed by her, there would be no reason for her to have not got it

registered in that much time.

13. On all the aforesaid grounds, the learned Additional Civil Judge eventually came to conclusion that the will set up by the defendant in his favour, allegedly executed by Bachni, could not be held to be without suspicion and therefore was not believable.

14. On the issue of limitation, it was held that there being no period of limitation prescribed for filing a suit for a declaration on the basis of inheritance, the question of the suit having been filed beyond limitation, would not arise.

As regards the maintainability of the suit, on account of it having been filed by a power of attorney of the plaintiff, it was held that the attorney, Kulwinder Kaur, had proved the original power of attorney executed in her favour, as Ex.P1 and from the cross-examination of the defendant, it had also been admitted that the plaintiff was working at Delhi, as a carpenter.

Hence, holding that due to the distance of his place of residence from Garhshankar, the plaintiff necessarily had to file the suit through his power of attorney and there being no special circumstances where the plaintiff was required to testify with regard to any personal knowledge, the suit filed through his attorney, was maintainable.

15. On the issue of estoppel due to any act of the plaintiff himself, despite their being a pleading to that effect, it was found that no such act had been proved or even disclosed by the defendant, to oust the plaintiff from filing the suit.

16. On the basis of these findings, the suit of the plaintiff was decreed with costs in his favour, holding him to be co-owner in joint

possession of the suit land, being the natural legal heir of Bachni. Mutation entry no.2336 in favour of the defendant was also held to be illegal, null and void and was set aside and a decree of permanent injunction in favour of the plaintiff and against the defendant was also passed.

17. In the first appeal filed by the present appellant-defendant, before the learned Additional District Judge, Hoshiarpur, that Court after noticing the facts and appraising the evidence led, as also the pleadings and arguments before it, eventually came to the same finding with regard to the replacement of pages in the register of the deed-writer, as also on no evidence having been led with regard to Bachni having resided with the appellant-defendant for 25 to 30 years, and thus her having executed a will in his favour in lieu of services rendered.

The first appellate Court further recording a finding that, in fact, the defendant in his testimony had deposed that he could not tell for how many years Bachni lived in Delhi. Hence, seen with the fact that there was a discharge slip showing her to be discharged from a hospital in Delhi on 16.11.1997 and her death certificate also showing that she had died in Delhi, it was held that it was very obvious, even from the testimony of the defendant himself, that Bachni had actually resided for a sufficiently long time at Delhi, with even her last rites performed there.

Further agreeing with the finding of the learned Additional Civil Judge, to the effect that it was strange that the will did not even mention the plaintiff, i.e. the son of the testatrix, it was held to be not believable, even though the defendant was her nephew.

Other findings of the lower Court were also upheld by the first appellate Court.

18. Before this Court, Mr. Amit Verma, learned counsel for the appellant, essentially reiterated the stand of the appellant-defendant before the Courts below, to submit that, firstly, the appellant never having been able to prove that he was in possession of the suit property, especially with him being a resident of Delhi, proved that the suit land was in the possession of the appellant, which was actually land given to the late Bachni by her father, in her parental village.

Thus, Bachni having lived in her parental village only with the appellant, it was natural for her to have executed a will in his favour, bequeathing her estate to him.

He further submitted that in the year 2009, a criminal case was lodged by the wife of the appellant against the relatives of the respondent-plaintiff, to the effect that the complainant and her son were attacked by the accused and in fact, the accused were eventually convicted.

19. Learned counsel for the respondent on the other hand, also reiterated the stand of the respondent-plaintiff before the Courts below, as also the reasoning given by those Courts to decree the suit of the plaintiff in his favour.

He further submitted that as regards any criminal complaint lodged against the relatives of the plaintiff, that would have no bearing on the present appeal, which was actually with regard to the rights of the plaintiff in the suit land.

20. Having considered the arguments of learned counsel on both sides, as also the judgments of the Courts below, I find absolutely no ground to interfere with the findings given by those Courts, which are found to be fully detailed and well reasoned, especially with the learned Additional Civil

Judge having gone into details to record a finding of fact, with regard to the interpolated entry made in the register of the deed-writer, with obvious change of pages as fully described in the judgment and noticed hereinabove.

Further, with the appellant not having been able to show by any evidence whatsoever, oral or documentary, other than his own father-in-laws' testimony (and of course, the defendants' own testimony), that Bachni lived with him for about 25 to 30 years and in lieu of services rendered by him, she executed a will in his favour bequeathing her land to him, I do not see how the findings of the Courts below can be disturbed.

As was proved by documentary evidence, Bachni remained admitted in a hospital in Delhi from 13.11.1997 to 16.11.1997, where the plaintiff is residing even as per the admission of the defendant, and her death certificate also having been issued by the Registrar of Birth and Death in Delhi, it is obvious that at least in her last days, she was most definitely residing with her son, i.e. the plaintiff. In fact, as noticed by the learned lower Court, even the defendants' own father-in-law, DW5, admitted that the photographs led by way of evidence by the plaintiff, showed that it was Bachni's body after her death, contrary to what the defendant stated. In fact, the learned first appellate Court also noticed that the defendant had deposed that he did not know for how many years Bachni lived in Delhi.

Yet further, with not even a single resident of the village of the defendant having testified that Bachni actually lived with the defendant in village Badesron, I fully agreed with the finding of the Courts below, that there was no evidence led, whatsoever, to the effect that she was not living with her son but with her nephew as was projected by the defendant. This would be further proved from the fact that even the defendant himself, in his

cross-examination, let it slip that he did not know for how long she had resided with the plaintiff in Delhi. Obviously therefore, even if it is presumed, which it cannot be in the absence of any evidence in that regard, that she lived for some time with the appellant-defendant, that would not prove that he served to her to such an extent that she decided to deny her own son his rights to her land and instead, bestow the land upon her nephew.

The fact that she did not even mention her son in the will, giving any reasoning to deny him such benefit, would further cast a huge suspicion on the authenticity of the will, with one of the persons who had allegedly attested it, deciding not to subject himself to cross-examination, i.e. DW2, Jai Dev, Sarpanch of village Badesron.

A strong inference most definitely has to be taken against the defendant that the said witness was scared of being exposed in cross-examination and as such, did not dare to step into the witness box after his examination-in-chief.

The second alleged witness to the will, being the father-in-law of the appellant-defendant, was very obviously an interested witness, as found by the learned Additional Civil Judge, with in fact, even his identity as the person who was actually purported to have attested the will doubted by that Court, with the name of the village of residence of DW5 having been shown to be different from the name of the village of the person with the same name, who was shown to be an attesting witness to the will.

21. All the above given circumstances, recorded as concurrent findings by both the Courts below, upon examination of the documentary evidence, also holding that there was actually an interpolation in the register of the alleged deed-writer, DW3, as regards the entry of the will in question,

with very detailed reasoning given by the learned Additional Civil Judge, upheld by the first appellate Court, and counsel for the appellant not having been able to show any perversity whatsoever in those findings, I find no ground whatsoever to interfere with the judgment and decrees of those Courts.

22. However, it is necessary to notice that in the photocopies of the testimonies produced in Court by learned counsel, it is seen that the appellant-defendant Sukhdev Singh, while testifying as DW4, had actually stated in his cross-examination that the respondent-plaintiff was the son of Bachni and that even he had an elder sister, Palwinder Kaur, daughter of Bachni and Mangu Ram (father of the plaintiff).

Without a doubt, the said sister was not a party to the *lis* and therefore, even though no argument in that regard has been addressed by either counsel, it needs to be stated while dismissing this appeal, that nothing observed or held hereinabove, would be construed in any manner to be a finding on the rights of any such sister. It is clarified that this observation has been made by this Court only on account of the fact that it has been noticed that there is a reference to such a person in the cross-examination of the appellant-defendant, as DW4.

23. As regards the argument raised by learned counsel for the appellant, with regard to a criminal case have been lodged by the wife of the appellant against the relatives of the respondent-plaintiff, in the year 2009, I agree with learned counsel for the respondent, that in the absence of any evidence led to show any kind of link with the controversy at hand, that would not affect the merits of the present appeal, the entire controversy herein being with regard to whether the will set up by the appellant was a

valid will, and whether the respondent-plaintiff was entitled to inherit the estate of his mother after her death.

Hence, that argument is found to be of no relevance to the merits of the case, even though, possibly, the alleged attack upon the wife of the appellant may have due to the dispute with regard to the suit land. However, that still would have no bearing on the actual rights of the parties over the suit land.

24. In the light of the above discussion, finding no merit in this appeal, it is dismissed with costs of Rs.10,000/- imposed upon the appellant.

November 23, 2016
dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No.