

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

**RSA No.1335 of 2013 (O&M)
Date of decision: 30.8.2016**

Major Singh

... Petitioner

Versus

Gurnam Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Sanjeev Pandit, Advocate,
for the appellant.

Mr.G.L.Bajaj, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

The appellants are aggrieved of the concurrent findings whereby the suit of the plaintiff seeking declaration in respect of the property qua her share as per will dated 28.11.2002 allegedly executed by Karnail Singh has been decreed by both the courts below.

Mr.Sanjiv Pandit learned counsel appearing for the appellant submits that Karnail Singh had executed a will dated 30.9.1997 by which he bequeathed his entire share in the property in equal shares among all his three sons. Earlier will was also registered one. He says that under the influence of the respondent, Karnail Singh managed the previous will and allegedly executed another will in favour of mother giving half share in property whereas sons who are quite old have been given other half share

which was divided amongst three sons and in view of the socio economic

condition as well as increase in price index. It is very difficult for them to survive. The second Will was suffering from suspicious circumstance. Karnail Singh died few days thereafter on 5.12.2002. He submits that the matter was referred to the Mediation Centre but unfortunately the parties could not settle. His client was willing to settle the claim vis-a-vis earlier will dated 30.9.1997 i.e. willing to succeed to the estate of Karnail Singh as per natural succession amongst the only three sons, as the sisters have already been taken care of at the time of marriage. The brothers have also family to feed as the share of Karnail Singh was approximately 60K and out of that 30K has been given to the mother and the remaining 30 has been divided amongst three sons i.e. each 10 K which is very less holding to sustain. He submits that vital/striking suspicious circumstance has been ignored by the courts below as Gurnam Kaur in his cross-examination admitted that she had taken Karnail Singh to the office of Registrar for execution of the will and even borne expenses. Participation of Gurnam Kaur is sufficient for discarding the will and urges this Court for setting aside the judgments and decrees under challenge.

Per contra, Mr.G.L.Bajaj learned counsel for the respondent submits that the plaintiff has been able to prove the execution of the will dated 28.11.2002 registered document. It carries a presumption of truth. One witness of the scribe has been examined. Both are consistent and have struck to the stand despite extensive cross-examination. The respondent is 75 years old and after her death, the property would devolved upon the sons and urges this Court to affirm the findings.

I have heard the learned counsel for the parties and perused the

paper-book.

No doubt, this Court on earlier occasions had been framing substantial questions of law while deciding the appeal, but in view of the *ratio decidendi* culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others v. Chandrika and others**; AIR 2016 SC 1213 wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, whether the provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure. The Constitution Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others v. Gurdial Singh Mann (dead) by LRs and others**; 2001 (4) SCC 262 applicability of Section 97(1) of CPC was not correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back and therefore, I do not intent to frame the substantial questions of law while deciding the appeal aforementioned.

It is a classic case where mother had gone to the Court seeking relief against sons. The fact remains that mutation has been effected on the basis of the previous will all the sons got property mutated on 14.6.2004. Thereafter, the plaintiff filed suit on 17.8.2004. There is no doubt that Gurnam Kaur admitted that Karnail Singh was taken to the office of Registrar for execution of the will much less have borne the expenses, therefore, there is sufficient suspicious circumstance as Karnail Singh died few days thereafter. In my view Karnail Singh is annoyed of whim of the testator as shown in the previous will dated 30.9.1997 whereby the entire property was mutated in the name of his sons. Be that as it may, it is apparent that in the families of northern side of this country, there has been

keeping in view the peculiar facts, both will should be discarded and the property should be divided amongst the brothers and the mother in equal shares as the interest of the sisters have already been taken care of at the time of performance of marriage. Sons are also quite of old age and they have family to feed.

For the reasons abovementioned, I modify the judgment and decree and held that the estate of Karnail Singh would devolve upon the plaintiff and defendants No.1 to 3 in equal shares. Accordingly, appeal stands partly allowed. Impugned judgment and decree is modified. Decree sheet be prepared accordingly.

(AMIT RAWAL)
JUDGE

August 30, 2016
Paritosh Kumar

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No