

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

RSA No.1341 of 2013 (O&M)

Date of decision: 30.8.2016

Balbir Kaur and another

... Appellants

Versus

Hardial Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.A.S.Gill, Advocate,
for the appellants.
Mr.S.M.Sharma, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

The appellant-plaintiffs are aggrieved of the judgment and decree rendered by lower appellate court whereby the suit seeking declaration that the suit property left behind by Sucha Singh was liable to be mutated in the name of his wife and daughter and mutation in favour of Gurbachan Kaur who died few months thereafter in the month of December, 1998 and the subsequent will executed by her on 16.7.1998 bequeathing share she got from the estate of Sucha Singh in favour of Hardial Singh be set aside.

Mr.Amandeep Singh Gill learned counsel appearing on behalf of the appellant submits that Sucha Singh, Hardial Singh and Gurdev Singh were owners of the entire holding to the extent of 1/3 share. Sucha Singh was married to Balbir Kaur and out of the wedlock, Amandeep Kaur daughter was born. Sucha Singh died at young age. Before death, he executed a will 19.4.1998. The will was subsequently registered. After the

demise, estate of Sucha Singh was mutated in favour of Gurbachan Kaur

whereas it should have been in favour of appellants and, therefore, Gurbachan Kaur could not have bequeathed her share in favour of other two sons. The illness of Sucha Singh has been proved through the testimony of Harbhajan Singh and Pal Singh and even the contents reveals that he was not keeping well. The trial court on the basis of ponderance of evidence has discarded the will to have suffered from suspicious circumstance and has not examined and appreciated the evidence in correct prospective. Even one of the witnesses of the Will of Gurbachan Kaur namely Pal Singh also admitted that Sucha Singh was not keeping good health and urges for setting aside the judgment and decree of the lower appellate court by restoring of the trial court by formulating the questions of law culled in the memo of appeal.

Mr.Sharma learned counsel appearing for the respondent submits that Sucha Singh at the time of death was survived by mother, wife and daughter. Rightly so, the property was mutated in the name of, aforementioned, three persons and after the death of Gurbachan Kaur, the property has been divided amongst the defendants on the basis of the Will dated 16.7.1998 of Gurbachan Kaur. The will of Sucha Singh was surrounded by suspicions circumstance as the same was got executed at Dasuya. The plaint and evidence is lacking with regard to the ill health of Sucha Singh particularly the fact that will had allegedly been executed two days before the death of Sucha Singh. Mother being class-I heir is also entitled to inherit share of her son, who pre-deceased and urges for affirming the findings of the appellate court.

I have heard the learned counsel for the parties and appraised

the paper-book and of the view that there is force and merit in the

submission of Mr.Gill, for, the will of Sucha Singh has been proved through testimony of Sukhwinderjit Singh and Harbhajan Singh. Both deposed as per provisions of Sections 63 (c) of Indian Succession Act and Section 68 of the Indian Evidence Act. Hardial Singh, Gurdev Singh already had 1/3 share in the entire property whereas Sucha Singh had 1/3rd share. Once the will has been proved, mutation could not have been effected in favour of the other brothers after the demise of Sucha Singh, thus, in my view Gurbachan Kaur could not have executed the will dated 16.7.1998 as she did not have title or interest in pursuance of the will of Sucha Singh. The illness of the Sucha Sing has also been proved through the witnesses, aforementioned, as well as witnesses of the defendant Pal Singh.

In my view, the will dated 19.4.1998 cannot be said to be suffering from suspicion circumstance even if it is got executed at Dasuya which is 30 KM from residence of Sucha Singh. It is unfortunate Sucha Singh died at young age but her class-I daughter and wife cannot be deprived of their share. In my view, there is equal distribution amongst the surviving heirs of Sucha Singh and his brothers Hardial Singh and Gurdev Singh. All these facts have been taken care of by the learned trial court. In my view, appellate court has not discharged the obligation as per section 96 of the CPC and is accordingly set aside. In my view, judgment and decree of trial court is perfectly legal and justified. Same is restored. Resultantly, suit is decreed. The appeal is hereby allowed.

(AMIT RAWAL)
JUDGE

August 30, 2016
Paritosh Kumar

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