

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 2490 of 2013(O&M)
Date of decision : April 28, 2016

Harbans Kaur

..... Appellant

Versus

Avtar Kaur

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ajay Pal Singh , Advocate
for the appellant.

Mr. Amrik Singh, Advocate
for the respondent.

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).

CM No.10962-C of 2014

This is an application under Order 1 Rule 10 CPC to implead additional parties as respondents.

The application is allowed.

The additional parties are ordered to be impleaded as mentioned in the application.

RSA No. 2490 of 2013(O&M)

The appellant-plaintiff is aggrieved of the dismissal of the suit claiming declaration qua the estate of Amar Nath and Joginder Kaur on the basis of registered Will dated 3.7.1996 executed by Amar Nath, father of the parties to the lis and un-registered Will dated 11.6.2000 executed by Joginder Kaur-mother by both the courts below.

Mr. Ajay Pal Singh, learned counsel appearing on behalf of the appellant has assiduously and with lot of vehemence submitted that execution of the Will dated 3.7.1996 as well as 11.6.2000 has been admitted by Avtar Kaur in her cross-examination. One of the attesting witness to the Will dated 11.6.2000 Hardeep Singh has been examined. Non-examination of the plaintiff would not affect the adjudication of the lis, for, claiming declaration on the basis of Will having been framed only, ingredients of Section 68 of the Indian Evidence Act, 1872 and Section 63 of the Indian Succession Act, 1956 has to be looked into.

On the contrary the defendant has not lead any evidence to belie the thumb impression of Joginder Kaur on the Will, therefore the evidence lead by the plaintiff has remained un-rebutted.

He further submits that once the other party admitted the execution of the Will, the compliance of ingredients of Section 68 of the Indian Evidence Act, 1872 would pale into insignificance. All these factors have not been noticed by both the courts below, thus urges this court to frame substantial questions of law for determination by this Court as carved out in the Memorandum of Appeal.

He further submits that it is not necessary that in case the attesting witness of the beneficiary of the Will is not examined, would render the Will suffering from suspicious circumstances.

Mr. Amrik Singh, learned counsel appearing on behalf of the respondent submits that no reasons have been

assigned in the Will for dis-inheriting Avtar Kaur on the basis of natural succession mutation had been entered into whereby both the daughters of deceased Amar Nath and Joginder Kaur have got ½ share each. The trial court has given very valid and cogent reasons for declining the relief as the suit for declaration was propounded by none else but the appellant-plaintiff. The appellant-plaintiff has not stepped into the witness box. The respondent-defendant has been prevented from cross-examination. In support of his contentions he has relied upon the ratio decidendi culled out in **Man Kaur Vs. Hartar Singh Sangha 2010 (10) SCC 512**, thus urges this Court for affirming the finding rendered by both the courts below.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no substance and force in the contention of learned counsel for the appellant. The lower appellate court after examining the evidence thread bare discarded the Will by giving following reasons:-

16. *The onus to prove the will is on Harbans Kaur. The jamabandi of 1998-99 is placed upon the file, according to which Joginder Kaur wife of Amar Nath was owner in possession of 48 Kanal 2 Marlas of land. It was further mentioned in the said jamabandi that mutation 689 regarding the inheritance of Joginder Kaur was entered in the name of Harbans Kaur and Avatar Kaur and the same is under protest. The will is exhibit PA on the file. The will is written on the back side of the stamp paper of Rs.10. The said stamp paper was purchased on 23/11 and the year when the said stamp paper was purchased is not legible. However, the stamp paper was purchased for execution of an affidavit by Joginder Kaur. Five stamp*

papers of Rs.1/- were also purchased with this affidavit of Rs.10/-. The will was written at the back side of stamp paper. The thumb impression of Joginder Kaur was appended at the end of right side of the will. However, the signatures of the witnesses were mentioned in the middle of the will at the right side and left side. Further perusal of will shows the fact that inter spacing between the lines is very narrow. It decreases with every line. Joginder Kaur has mentioned in the will that she bequeathed her property situated in India in favour of Harbans Kaur. No particulars of the suit property was mentioned in the will. There is another strange element in the way that she wanted to keep this will hidden. The execution of the will was to be disclosed only after her death. The will was witnessed by Tirath Ram and Hardip Singh. Hardeep Singh appeared in the witness box as PW 2 and he is none else but the son of Harbans Kaur but his father's name is not mentioned in the will. It is a general practice prevalent in Punjab that thumb impression/signature of the executant of the will is taken in the middle of the will and witnesses sign on the left and right side of the thumb impression/signature of the executants of the will. But in the present case thumb impression of executant was at the end of the will. Photograph of Joginder Kaur was pasted underneath the will. Generally the photograph is pasted on the upper part of the will. These facts remained unexplained on the file why the photograph of Joginder Kaur was pasted underneath her signatures. The will was witnessed by the same who is the son of beneficiary. No reason was assigned in the will why Avatar Kaur was disinherited. No particular of the land in dispute were given in the will. Gurvinder Singh was not examined. It was admitted by Hardip Singh that he is residing in village Dhak Mazara.

It remained unexplained on the file why a will was got exhibited at the back side of stamp paper which was purchased for executing an affidavit. The will was not written by regular deed writer. Perusal of the will shows the fact that inter spacing between the lines of the will goes on decreases as will progresses. Harbans Kaur has not stepped in to witness box as herself. She has examined her son Surjit Singh @ Ranjit Singh as her attorney. No reason was given why Harbans Kaur was not appearing in the witness box. Her attorney has stated that she got a weak eyesight. If Harbans Kaur has got a weak eyesight then she can examine herself. It remained unexplained on the file by Joginder Kaur made averment in the will that the execution of the will will be kept secret and it will be disclosed only after her death. Plaintiff averred in the plaint that mutation was got sanctioned at her back but her attorney Ranjit Singh and Hardip Singh attesting witness of the will stated in their cross examinations that mutation proceedings were contested. Ranjit Singh has stated in his cross examination that they have not examined any attesting witness of the will in the mutation proceedings but Hardip Singh PW 2 has stated another fact. He stated that he appeared in the mutation proceedings. The statement of Hardip Singh which was made in mutation proceeding was not placed on the file. Further the plaintiff averred in the plaint that her parents took a loan from different bank and she is paying the loan. No evidence was led in this regard by the plaintiff. Therefore, adverse inference must be drawn against the plaintiff. The plaintiff took the plea that he is looking after her mother. If the plaintiff is looking after her mother then what was the need for Joginder Kaur to took loan as pleaded by plaintiff in the plaint. There is another circumstance in the present

case. PW 2 has stated in his cross examination that the will was scribed at the residence of Joginder Kaur but in the earlier part of this statement he stated that he along with Tirath Ram, Gurvinder Singh and Joginder Kaur went to scribe's seat on the day when the will was executed. Therefore, it remained unexplained where the will was executed by deceased Joginder Kaur. The will dated 11/06/2000 is surrounded by suspicious circumstances discussed above."

Hardeep Singh is none else but son of Harbans Kaur. On examination of the Will, from the record of the court below, Ex. PA it is seen that thumb impression of Joginder Kaur is at the end of right side of the Will. Photograph of the testator is on extreme right and at the end of the page whereas signatures of the witnesses are in the middle of the Will at the right side and left side. It appears that the Will has been typed on the blank thumb marked paper. No expert has been examined to prove the thumb impression from admitted signatures. In essence, the appellant-plaintiff has failed to discharge the onus, therefore onus could not shift on the defendant to rebut the same. The ratio decidendi culled out by Hon'ble Supreme Court in **Man Kaur's case (supra)** is squarely applicable to the facts and circumstances of the present case as respondent-defendant has been prevented to put questions in the cross-examination to the appellant-plaintiff who has not appeared in the witness box. Mere admission in the cross-examination would not prove the Will in accordance with law. No admission has been made to dispel the suspicious circumstances revolved around the Will dated 11.6.2000. It is a matter of record that

no attesting witness, much less from the office of sub Registrar has been examined to prove the Will dated 3.7.1996, allegedly executed by Joginder Kaur.

I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. There is no illegality or perversity in the aforementioned judgments and decrees of the courts below.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

April 28 , 2016
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