

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

**RSA No.3246 of 2013 (O&M)
Date of decision: November 04, 2016**

Mohinder Singh

...Appellant

Versus

Sukhdev Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Akshay Bhan, Sr. Advocate with
Mr. Santosh Kumar, Advocate
for the appellant.

Mr. A.K. Khunger, Advocate
for respondent No.1.

AMIT RAWAL, J.(ORAL)

Appellant-plaintiff is aggrieved of the concurrent finding of fact, whereby the suit seeking declaration that he is owner in possession of land measuring 71 Kanal 14 Marlas bearing Khasra Nos.26//11(6-9), 50//18/2(3-12), 19/2(2-18), 22(8-0), 71//6(8-0), 7/1 (4-4), 14/2 (0-2), 15/2 (5-15), 72//9(8-0), 10(80-), 11(8-0), 197//1423(0-13), 149/2(0-11) and 1/3rd share of land measuring 36 kanals 2 marlas bearing Khasra Nos.16//14/2(7-12), 17/1/1(1-18), 17/2/1(5-14), 24(8-0), 26//9/3(3-8) 10(8-0), 11/3 (1-10), situated at village Bagha, Tehsil Talwandi Sabo, District Bathinda vide jamabandi for the year 2001-02 and 1/3rd share of land measuring 253 kanals 6 marlas bearing khasra Nos.93//20(8-0), 21/2(7-7), 110//2/2(7-12), 9/2(7-12), 231//174(1-16), 92//16(8-0), 25/2(7-7), 110//1(8-0), 3(8-0), 8(8-0), 10(8-0), 11(8-0), 111//12(8-0), 13(8-0), 18(8-0), 19(8-0), 22(8-0), 23(8-0), 119//2(8-0), 3(8-0), 8/2(5-12), 110//2(8-0), 111//4(8-0), 5(8-0), 6(8-0), 7(8-0), 14(8-0), 15(8-0), 16(8-0), 17(8-0), 24(8-0), 119//4(8-0), 7(8-0) and

land measuring 4 kanals 18 marlas bearing khasra No.139//18/2/2 (0-9), 29//2 (3-7), 23/1 (1-2) situated within the revenue limits of V. Bangi Nihal Singh Wala, Tehsil and District Bathinda, as per jamabandi for the year 2003-04 on the basis of legal and valid Will dated 25.11.2004 executed by Mal Singh deceased and the defendants have no right, title, claim or interest therein and mutation No.5353 of V. Bagha and mutation No.8729 of V. Bangi Nihal Singh Wala regarding inheritance of Mal Singh deceased sanctioned by Assistant Collector Ist Grade, Talwandi Sabo vide order dated 22.5.2006 in favour of defendants No.1 to 3 on the basis of natural succession by ignoring the above said legal and valid Will and confirmed in appeal by Additional Deputy Commissioner-cum-Collector, Bathinda vide order dated 26.9.2007 are illegal, null and void, against law and facts, ineffective and inoperative as against the rights of the plaintiff and the above said mutations are liable to be sanctioned in favour of the plaintiff on the basis of above said legal and valid Will and the plaintiff is entitled to get the entries in the revenue record corrected in his name, and suit for permanent injunction restraining defendants No.1 to 3 from alienating the above said land or any part thereof to any person in any way i.e. by way of sale, mortgage, gift, exchange etc. and also restraining defendants No.1 to 3 from interfering in the peaceful possession of the plaintiff and from dispossessing him from the above said land or any part thereof illegally, forcibly, against law and facts, has been dismissed by both the Courts below.

Mr. Akshay Bhan, learned senior counsel assisted by Mr. Santosh Sharma, learned counsel appearing on behalf of the appellant submits that suit was filed on the basis of Will dated 25.11.2004 executed

by Mal Singh. Mal Singh has two sons, namely, Sukhdev Singh and Gurtej Singh and one daughter Surjit Kaur. Plaintiff is none else but the son of Gurtej Singh. No doubt, the aforesaid Will dated 25.11.2004 (Ex. P-1) is unregistered, but the fact remains that it has been proved by the attesting witnesses, namely, Balraj Singh and Gurtej Singh. Both the Courts below have discarded the Will on the premise that it suffers from suspicious circumstance, whereas on the contrary the ingredients of Section 68 of Indian Evidence Act have been proved. It was a self-acquired property of Mal Singh and he could deal with his property in nay manner, thus, Will is a document of his sweet will and it has to be respected/regarded. The orders passed by the Revenue Courts were also not sustainable. But the aforesaid facts have not be taken into consideration by the Courts below.

On the other hand, Mr. Ashok Kumar Khunger, learned counsel appearing on behalf of respondent No.1 submits that Will has rightly been held to be suffering from suspicious circumstance as one of the attesting witnesses is none else but father of the plaintiff. The element of playing active role cannot ruled out.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force in the contention of learned counsel for the appellant.

As noticed above, Gurtej Singh son of Mal Singh, who is attesting witness of the Will, is none else, but father of appellant-plaintiff. Participation of one of the family members would simply show the Will to be suffering from suspicious circumstance. Even otherwise, the appellant-plaintiff is not affected as he got lesser share on the basis of the natural succession. I am of the view that appellant has failed to prove the

authenticity and validity of the Will.

No ground is made out for interference, much less, no substantial question of law arises.

Accordingly, appeal stands dismissed.

November 04, 2016
sk

(AMIT RAWAL)
JUDGE

Whether seaking/reasoned

Yes/No

Whether Reportable

Yes/No