

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

RSA No. 2157 of 2016 (O&M)

Date of decision: 02.05.2016.

Sarabjit Kaur through LRs

.....Appellants

Versus

Sukhdeep Singh & others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Dr. Naresh Kaushik, Advocate
for the appellants.

JITENDRA CHAUHAN, J.

This Regular Second Appeal has been filed by the defendants against the judgment and decree dated 10.03.2015, passed by Civil Judge (Junior Division), Malerkotla (for short 'the trial Court') and the judgment and decree dated 14.03.2016, passed by Additional District Judge, Sangrur (for short 'the Lower Appellate Court').

In brief, the plaintiffs filed suit for declaration, joint possession and permanent injunction. It was pleaded by the plaintiffs that originally Kartar Singh was owner in possession of suit land. Kartar Singh married to Nasib Kaur and out of their wedlock, Sarabjit Kaur, Paramjit Kaur and one son Buta were born. Buta died unmarried and issueless. Paramjit Kaur was married to Balwinder Singh and from their wedlock, the plaintiffs were born. Paramjit Kaur pre-deceased Kartar Singh. Kartar Singh died on 24.06.2006. After his death, the plaintiffs being the legal heirs of Paramjit Kaur inherited the estate left

by Kartar Singh to the extent of half share and the remaining half share was inherited by the defendant, Sarabjit Kaur. The plaintiffs are owners in joint possession in equal shares being the class I heirs of their maternal grand father, Kartar Singh. In order to deprive the plaintiffs from the suit land, defendant Sarabjit Kaur forged and fabricated a Will dated 03.05.2006 in her favour. The Will is a result of fraud and the same is liable to be ignored. On the basis of Will, mutation has also been sanctioned in favour of Sarabjit Kaur. The plaintiffs also sought prohibitory decree of injunction restraining the defendants from alienating the suit land.

Upon notice, the defendant appeared and filed written statement and contested suit of the plaintiffs by pleading that deceased, Kartar Singh executed a valid Will in favour of Sarabjit Kaur on 03.05.2006. The deceased was looked after by Sarabjit Kaur and his last rites were also performed by her. The original Will has been lost from Gurdial Singh and in this respect, DDR was recorded on 24.12.2007.

After appraisal of the evidence, the learned trial Court found the Will to be shrouded with suspicious circumstances. It was observed by the trial Court that there was unnecessary spacing between the lines. It was also proved on record that deceased Kartar Singh was looked after by his brother Gurdial Singh. Consequently, the suit was decreed vide judgment and decree dated 10.3.2015 passed by the trial Court.

Feeling aggrieved, the legal representatives of defendant

filed appeal before the Additional District Judge assailing the judgment and decree dated 10.3.2015 passed by the trial Court. The appeal was dismissed on 14.03.2016. Hence, the present Regular Second Appeal at the instance of the defendants.

On behalf of the appellants, it is contended that both the Courts below have ignored material evidence produced on the record. It is further contended that mention of names of the plaintiffs in the Will was not required as mother of the plaintiffs i.e. the other daughter of Kartar Singh had predeceased him. The execution of the Will has been duly proved by Sawarn Singh, Member Panchayat, DW-4, one of the attesting witnesses. The factum of execution of Will has been duly proved in accordance with law.

I have heard learned the counsel for the appellants and have gone through the case file.

The plaintiffs in the instant case are claiming the ownership to the extent of half share being the legal heirs of Paramjit Kaur who was pre-deceased daughter of Kartar Singh. On the other hand, Sarabjit Kaur, another daughter of Kartar Singh claims to be the owner of the whole of the suit land on the basis of Will dated 03.05.2006 executed by Kartar Singh in her favour. The Courts below have returned a finding that the Will was not found to be genuine. In the statement of Amarjeet Singh, DW 3, it has come on record that there is a difference of size of lines of the writing of Will. The Courts below have returned a finding that the lines of lower and upper portion are bigger in sizes and the space is also more in the middle of the writing. No explanation for

the same has come on record. A perusal of the Will reflects the difference in sizes of lines and line spacing in the different portion of the Will. Further, DW 3 has admitted that the village of Sarabjit Kaur is 30-35 Kms away from the village of deceased Kartar Singh as Sarabjit Kaur was married in village Darheri. Further, it has come in the evidence that the deceased, Kartar Singh was being looked after by his brother Gurdial Singh. It has not been proved on the record by the defendants as to how Sarabjit Kaur would go to the village of the deceased i.e. village Hakimpur and serve him when the distance of village Hakimpur was 30-35 Kms from the village Darheri. Even the thumb impressions of the deceased were not proved on the Will by examining any expert witness. Onus to prove the will and to dispel suspicious circumstances was upon the defendant-appellants. Both the Courts below rightly pointed out that Will Ex. D1 is shrouded by suspicious circumstances and the defendants have failed to dispel the same. This Court finds that there has been no misreading or misinterpretation of evidence by both the Courts below. Such being the findings of the fact, this Court does not find any reason to interfere in the well reasoned judgments passed by both the Courts below. There is no substantial question of law in the present Regular Second Appeal. Consequently, the present appeal is dismissed.

May 2, 2016
SN

(JITENDRA CHAUHAN)
JUDGE