

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

**RSA No.3680 of 2016 (O&M)
Date of decision:29.07.2016**

Paramjot Kaur

... Appellant

Vs.

Sukhwinder Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sarabjit Singh Khaira, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

Appellant-plaintiff is aggrieved of the concurrent findings of facts and law, whereby, claim in the suit seeking declaration that she is joint owner and in joint possession of the property left by Ranjit Singh to the extent of 1/4th share of land measuring 62 kanlas and ½ marla in a land situated in the revenue estate of village Wariyana, Tehsil and District Jalandhar, in respect of suit land and also challenge to the Will dated 25.01.2006 allegedly registered on 27.12.2006, has been dismissed by the trial Court and appeal filed thereto, has also been dismissed by the Lower Appellate Court by upholding the judgment and decree of the trial Court.

Mr. Sarabjit Singh Khaira, learned counsel appearing on behalf of the appellant-plaintiff submits that respondent/defendant No.1, after the death of Ranjit Singh, who died on 30.08.2006, propounded a Will dated 25.01.2006 registered on 27.12.2006. Thereafter, transferred the property in favour of respondent No.2, vide sale deed dated 07.07.2008. The attesting witnesses of the Will were none-else but son-in-law of defendant No.1 and

another relative. The Will was surrounded by suspicious circumstances and appellant-plaintiff moved an application for examination of the Will through handwriting expert but the same has been declined. Thereafter, signature of Ranjit Singh was examined through Sh. Kranti K. Sharma, handwriting expert, Hoshiarpur, who submitted report that signatures were not of Ranjit Singh. Though the plaintiff had not put in appearance but attorney deposed in terms of the averments made in the plaint. The assistance of the trial Court was taken to examine the handwriting expert but declined in the absence of the existence of rebuttal issue. Varinder Singh Chatha attesting witness is none-else but the son-in-law of the Executant of the Will. Sukhwinder Kaur, in cross examination admitted that both the witnesses were under influence and therefore, suspicious circumstances of the Will could not be ruled out. The other witness, namely, Rajneesh Kapoor was also interested witness. At the time of sanctioning of mutation No.7859, the appellant-plaintiff was not served. There were Lamberdar and Sarpanch of the village, who could have been introduced as witnesses of the Will. Though respondent/defendant No.1 was afraid of the surfacing of the truth, yet did not get the alleged Will attested/witnessed from the independent witnesses. On the contrary, the appellant-plaintiff succeeded in proving that he is co-sharer to the extent of 1/4th in the property. All these facts have been totally ignored by the Courts below resulting into dismissal of the suit. He further submits that appellant is none-else, but widow of Hirdayal Singh son of Late Sh. Ranjit Singh. She has not been given any share in the property of Hirdayal Singh. Even the Will does not disclose that Hirdayal Singh was married and the appellant being his widow and thus, urges this

Court for setting aside of the judgments and decrees rendered by both the Courts below by formulating the substantial questions of law as culled out in the memorandum of appeal.

I have heard learned counsel for the appellant-plaintiff and appraised the judgments and decrees of the Courts below.

Mr. Rajneesh Kapoor, DW-witness appeared in the witness box and submitted an affidavit in examination-in-chief which reveals in terms of provisions of Section 63(c) of Indian Succession Act. For the sake of brevity, relevant portion of examination-in-chief of Rajneesh Kapoor, reads thus:-

“2. That I am practicing as Advocate at New Courts, Jalandhar. Sh. Ranjit Singh Sandhu was known to me. On 25.01.2006 Sh. Ranjit Singh Sandhu and Varinder Singh Chatha came to me along with a Will which was already typed. Sh. Ranjit Singh deceased had given me the Will for reading. After reading, I explained the contents of the Will to Sh. Ranjit Singh Sandhu. After admitting the contents of the same, Sh. Ranjit Singh Sandhu put his signatures on the Will in my presence and in the absence of other witness Sh. Varinder Singh Chatha, then I and the other witness Sh. Varinder Singh Chatha put our signatures on the same and the Will was given back to Sh. Ranjit Singh.”

Ranjit Singh, testator of the Will categorically mentioned about the death of his son Hirdayal Singh, husband of the appellant. From the memo of parties, it is evident that appellant had left matrimonial home and

hence started living in Gurdaspur, whereas, address of Ranjit Singh and other persons are of Jalandhar.

The Will has been proved through the testimony of attesting witnesses, thus, there is compliance of the provisions of Section 68 of Indian Evidence Act. The plaintiff has not been able to discharge the onus of fraud or suspicious circumstances inasmuch that no expert with the assistance of the Court has been examined for comparison/in examining the signatures of Ranjit Singh.

During the course of hearing, Mr. Khaira has also raised an argument that Ranjit Singh had entered into agreement to sell with the defendant No.11 - Dalbir Singh selling his land in order to set up a hospital for his daughter in law. I am of the view that contents of aforementioned agreement to sell do not decipher any such intention of the testator.

The execution of the agreement to sell cannot be connected with the case of the appellant-plaintiff. Even argument of the appellant is fallacious on perusal of the order of the Assistant Collector Grade I (Ex.D1).

Keeping in view the aforementioned observations, I am of the view that appellant-plaintiff miserably failed to discharge the onus in disbelieving the Will and therefore, rightly so, both the Courts below after appreciating the oral and documentary evidence found that Will had been duly proved.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

July 29, 2016

savita

Wheather speaking/reasoned

Yes/No

Whether Reportable

Yes/No