

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

**Regular Second Appeal No.1331 of 2014 (O&M)
Date of Decision: February 29, 2016.**

Surinder Mohan

.....APPELLANT(s).

VERSUS

Smt. Premwati and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sushil Jain, Advocate
for the appellant (s).

Mr. G.S. Nagra, Advocate
for respondent No.1.

Mr. Sudhir Hooda, Advocate
for respondents No.2 to 5.

SURINDER GUPTA, J.

This is appeal by plaintiff Surinder Mohan against the judgment and decree passed by the District Judge, Jhajjar, dismissing his suit challenging the Will dated 08.06.1991, alleged to have been executed by his father, as illegal, null and void and not binding on his rights and consequent declaration that he along with defendants No.2 to 5 is owner in possession of residential house-cum-plot bearing No.670/212 measuring 0.15 marlas situated in the revenue estate of Municipal Committee, Jhajjar. The following pedigree table will help in understanding the relationship between the parties:-

Mahender Singh Mann (died on 12.09.1999)			Smt. Premwati (wife) (defendant No.1)	
Surinder Mohan son (plaintiff)	Jitender Singh son(deft. No.2)	Narinder Singh son(deft. No.3)	Indu daughter (deft no.4)	Mohini daughter (deft. No.5)

2. The case of the plaintiff, in brief, is that defendant No.1 in collusion with the remaining defendants prepared a false and bogus Will of Mahender Singh Mann to deprive him of his share in the suit property. He requested the defendants not to raise any construction over the suit property or to change its nature without getting its partition but of no avail. Hence, this suit.

3. Defendants No.1 and 3 in their written statement alleged that Mahender Singh Mann during his life time, had executed Will dated 08.06.1991 in respect of the suit property. As per the Will, defendant No.1 has become absolute owner of the disputed property and is running a school there. The plaintiff and others defendants have no right, title or interest therein. During his life time, Mahender Singh had partitioned his other properties and by way of civil court decree passed in civil suit No.721 of 1983 transferred title of a plot measuring 550 square yards to plaintiff and of another plot measuring 450 square yards to defendant No.3. Defendant No.2 Jitender Singh was given some other property. The Will in question was validly executed by Mahender Singh bequeathing disputed plot in favour of defendant No.1.

4. Learned Additional Civil Judge (Senior Division) discarded the Will on the ground that there is cutting on the signature of marginal witness Lieutenant Colonel Dharamvir Singh. The Will always remained in possession of defendant No.1 and cutting on the signature of Lieutenant Colonel Dharamvir Singh show that the Will was not validly executed as per the requirement of Section 63 of Indian Succession Act.

5. On appeal by defendant No.1, judgment and decree passed by the lower Court was set aside and it was observed that the Will was duly executed and duly proved. Lieutenant Colonel Dharamvir Singh while appearing as DW2 and other marginal witness Karanveer as DW1, have fully supported and proved execution of Will dated 08.06.1991 by Mahender Singh Mann. Both have stated that testator got the Will typed and signed it in their presence. They have also attested the Will in the presence of testator. DW1 Karanveer has deposed that testator was his close friend and he (testator) is father-in-law of Lieutenant Colonel Dharamvir Singh. DW2 Lieutenant Colonel Dharamvir Singh has specifically stated that he has attested the Will. In view of his testimony, the first Appellate Court took the lines put on his signatures as innocuous and held that this fact has been blown out of proportion by learned Additional Civil Judge (Senior Division). The Will was held to be a genuinely executed document.

6. I have heard learned counsel for the parties and have gone through the paper book and record of the Courts below with their assistance.

7. Before proceeding further, it will be relevant to have a look on the following facts which are not disputed.

(i) During his life time, Mahender Singh Mann had suffered a decree dated 25.08.1983 in civil suit No.721 of 18.08.1983 whereby he gave a house situated in city Jhajjar to the plaintiff and one plot to his other son Narinder Singh Mann in that city.

(ii) The Will (Ex.D1) is not exclusively in favour of defendant No.1 i.e. wife of deceased. He had given his wife (defendant No.1) a plot in Jhajjar purchased by him vide sale deed dated 16.10.1973 on which testator had also constructed a house.

(iii) In the Will, it is mentioned that he had given other houses in Jhajjar to

his sons Surinder Singh and Narinder Singh.

(iv) The testator ousted his wife from inheritance of his agricultural land, houses and plot i.e. Nohra situated in village Mundsha, Tehsil Jhajjar and bequeathed the same in favour of plaintiff, his other sons and daughters.

8. The only question which arise for consideration is about cutting over the name of Lieutenant Colonel Dharamvir Singh and his signatures on the Will. Both the marginal witnesses of the Will have appeared and stated that this Will was executed by Mahender Singh and they have signed the Will in his presence. All the requirements of Section 68 of Evidence Act to prove the Will were fulfilled.

9. Now, the question is whether this Will is fabricated by defendants? Had it been so, wife of testator would not have divested herself of the property of deceased situated in village Mundsha, tehsil Jhajjar. During the course of arguments, it was stated by learned counsel for the parties that at village Mundsha, deceased owned about 8 acres of land besides houses and a plot(Nohra). Secondly, defendant No.1 would not have joined plaintiff as inheritor of entire property of deceased situated in village Mundsha. Even by ignoring the Will, the plaintiff would get a major chunk of land as per her 1/6th share in the entire property left by Mahender Singh Mann than by accepting the Will, because mother of plaintiff and other defendants i.e. wife of testator (defendant No.1) will also get 1/6th share in the entire property, which is more than about 70 square yards which the plaintiff will get in the suit property.

10. Learned first Appellate Court had an opportunity to look into the report of hand-writing expert examined by both the parties and than to compare the signatures of Mahender Singh Mann on the Will and on comparison, had recorded the finding that admitted signatures of Mahender Singh tally with his signatures on Will (Ex.D1).

11. While appearing as DW2 Lieutenant Colonel Dharamvir Singh has stated that Mahender Singh had himself scribed his Will which he brought to the typist and then got the same typed. The execution of the Will is complete when the testator has got the same executed in the presence of marginal witnesses, signed the same in their presence and the marginal witness had signed the Will in presence of testator. Both the marginal witnesses have stated in one voice that the Will bear their signatures. The fact that few lines were put on the name of Lieutenant Colonel Dharamvir Singh mentioned on the Will or his signature, do not amount to erasing his signatures from the Will. Both the witnesses are, in no manner, inimical towards the appellant-plaintiff. DW1 Karanveer is close friend of father of appellant while Lieutenant Colonel Dharamvir Singh DW2 is none-else than the brother-in-law of appellant-plaintiff. All the above facts and circumstances show that the Will in dispute is not a forged and fabricated document as alleged by the appellant-plaintiff and first Appellate Court has committed no error of law or fact while recording finding that the execution of the Will is duly proved.

12. I agree with the observation of first Appellate Court that learned Additional Civil Judge (Senior Division) has given undue importance to the lines on the signatures of marginal witness to reach the conclusion that the Will was not executed as per requirement of Section 63 of Indian Succession Act.

13. On perusal of the record and judgments of first Appellate Court, I find no legal or factual infirmity therein calling for any interference.

14. No substantial question of law requiring determination arises in this appeal, which has no merits.

15. Dismissed.

February 29, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE