

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

RSA No. 2503 of 2014

Date of Decision: 01.04.2016

Pushpa Devi @ Pushpa

.....Appellant

Vs.

Kulwant Singh @ Kala

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Vaibhav Narang, Advocate,
for the appellant.

AMOL RATTAN SINGH, J. (ORAL)

This is the second appeal of the plaintiff, after her suit seeking a declaration that she is the owner in possession of a house (described in detail in the impugned judgments) and further seeking the consequential relief of permanent injunction against the respondents-defendants, was dismissed by the Additional Civil Judge (Senior Division), Gurdaspur, after which the first appeal filed by her was also dismissed by the learned District Judge, Gurdaspur, vide the judgment presently appealed against, dated 26.02.2014.

2. The facts, taken from the judgment of the learned Civil Judge, are that the appellant-plaintiff (hereinafter to be referred to as the plaintiff), had claimed that one Mahant Harbans Nath was the original owner of a plot measuring 13 marlas, which he sold to the father of the plaintiff, Saroop Singh, vide a sale deed dated

07.10.1963. Upon the said plot, Saroop Singh constructed his house in an area of 6 marlas, with a boundary wall, as detailed in the site plan annexed with the plaint.

As per the plaintiff, she is only the child of Saroop Singh, through his wed-lock with her mother, Smt. Bishni, who died intestate before Saroop Singh. The latter died on 15.04.2006, allegedly also intestate.

Thus, claiming to be sole legal heir of Saroop Singh, the plaintiff sought a declaration in her favour, alongwith the relief of permanent injunction, restraining the respondents-defendants (hereinafter referred to as the defendants), whom she claimed were forcibly trying to dispossess her.

3. Upon notice, the two defendants, who are brothers, filed separate written statements, practically on the same lines.

Other than the "customary" preliminary objections of non-maintainability of the suit, non-joinder of necessary parties etc., on merits it was stated that Saroop Singh had constructed only one room on the plot, with the remaining having been constructed by the defendants themselves, as Saroop Singh was actually living with them. Thus, it was claimed that one room and a bath-room, with a hand-pump installed in it, as also the boundary wall, had been constructed by them with their own money.

It was further contended in the written statements that though the plaintiff was the daughter of Saroop Singh, however, she was not born of him.

It was denied by the defendants that Saroop Singh died intestate. According to them, he had executed a registered Will on 23.03.2006, bequeathing the suit property to the defendants, as they were living with him and serving him and in fact, had also performed his last rites, as they were his nephews.

It was further stated by the defendants that the plaintiff had never even attended the last rites and before that, she had never come to see Saroop Singh at Gurdaspur.

Hence, it was claimed that the defendants were the owners in possession of the suit property, by virtue of the Will on the basis of which a mutation to that effect had also been sanctioned in their favour.

4. After the plaintiff had filed a replication controverting the contents of the written statements, the following issues were framed by the learned Additional Civil Judge:-

- "1. Whether plaintiff is owner in possession of suit property? OPP
2. Whether plaintiff is entitled to declaration and permanent injunction prayed for? OPP
3. Whether deceased Saroop Singh executed legal and valid Will dated 23.03.2006 in favour of defendant No.1 and his brother Jatinder Singh? OPD
4. Whether the Will dated 23.03.2006 is a forged and fabricated document? OPP
5. Relief."

5. The plaintiff examined herself and three other witnesses, whereas the defendants examined defendant No.1 and

two other witnesses.

They also tendered a photocopy of the mutation sanctioned in their favour, to the trial Court, which was simply shown as Mark-1. However, the Will relied upon by them, was duly exhibited as Ex.D1.

In rebuttal, the plaintiff is stated to have examined one Vir Singh as PW5.

6. Upon hearing learned counsel for the parties and considering the evidence before it, the learned Additional Civil Judge found that, factually, the contention that the plaintiff was not the real daughter of Saroop Singh, was incorrect because even in the Will that the defendants themselves relied upon, Saroop Singh had referred to the plaintiff as his own daughter.

7. However, as regards the authenticity of the Will, the learned civil Court found no reason to disbelieve the testimony of the attesting witness thereof and deed writer thereto, i.e. Jagdish Singh and Manohar Lal respectively, who deposed that Saroop Singh had executed the Will in a sound disposing mind, with the Will read over to him, after which he signed it in Urdu, in their presence.

The deed writer also proved an entry bearing No.156, dated 23.03.2006, in his register, pertaining to the Will.

8. Though the plaintiff claimed that the defendants were not 'real; brothers, however, they were admitted to be Saroop Singhs' nephews and, in her cross-examination, she admitted that she had never lived or resided at Gurdaspur. She further admitted

that Saroop Singh was a permanent resident of Gurdaspur and that she used to reside at Dhakki, with her mother.

The plaintiff also did not deny that her mother never lived with Saroop Singh at Gurdaspur and had died in the year 1989, at village Dhakki. It was further recorded by the learned Civil Judge, that the plaintiff could not give the measurement and dimensions of the house and finally, that even the last rites, i.e. the funeral and thereafter, the 'Bhog' ceremony of Saroop Singh, were performed by defendant No.1 Kulwant Singh, who had also immersed the last remains of the plaintiffs' father.

Lastly, the plaintiff also admitted that Darshan Kumar and Ram Lal had attested the Will executed by Saroop Singh in favour of the defendants.

9. The learned Civil Judge further considered the fact that even the first cousin of the plaintiff, i.e. PW2 Narinder Kaur, had admitted that Saroop Singh died while he was residing with the defendants and that his last rites were also performed by them. Narinder Kaur also admitted that she had not attended the cremation or 'Bhog ceremony' of Saroop Singh.

This witness also admitted the possession of the defendants over the suit property.

Another witness for the plaintiff, Amrit Sagar, deposed that Saroop Singh treated the plaintiff as his daughter and in cross-examination, stated that she was born and brought up in village Dhakki and further, that he himself had never visit Saroop Singh at Gurdaspur.

PW4, Jallo Ram, the maternal uncle of the mother of the plaintiff, deposed that the plaintiffs' marriage was performed by him and he further admitted that Saroop Singh was looked after by the defendants who are his (Saroop Singhs') nephews.

The last witness for the plaintiff, Vir Singh, who is also shown to be her first cousin, in his examination-in-chief denied the Will and even stated that the plaintiff used to serve Saroop Singh and performed his last rites. However, in his cross-examination, he too admitted that the Will was executed in favour of the defendants, with the free will of the deceased and that the plaintiff had never objected to said Will till she filed the suit. He also admitted that the plaintiff, Pushpa Devi never resided at Gurdaspur.

10. Having considered the aforesaid evidence, the learned Civil Judge held that in the circumstances it was not unnatural that Saroop Singh would execute a Will in favour of his nephews who had looked after him, to the exclusion of his daughter, who had never looked after him.

The Will itself was also found to be bearing the signatures of Saroop Singh, in Urdu (Persian), with the plaintiff herself admitting that her father signed in that language.

11. In appeal, the learned District Judge also, after considering the evidence, dismissed the appeal on the same grounds, further noticing that even Saroop Singhs' photograph was affixed on the back of the Will, alongwith the witnesses to the will.

12. Before this Court, learned counsel for the appellant

submits that the learned Courts below have not appreciated the fact that the Will in favour of the respondents-defendants was surrounded by suspicious circumstances, inasmuch as, firstly, there was no reason for the appellant, who was the daughter of the deceased, to be disinherited and secondly, as admitted by the respondents in their cross-examinations, deceased Sarup Singh was suffering from cancer and was unwell for the past six months and further, that the Will having been executed on 23.03.2006, which is only about 20 days before his death, that factor should have been considered by the Courts below, before dismissing the suit filed by the appellant.

On query, however, learned counsel could not deny that one of the witness to the Will, Jagdish Singh (DW2), described as a marginal witness by the Courts below, had testified to its veracity and further, it was noticed by the Courts below that the appellant-plaintiff, in her cross-examination, had admitted that she and her mother always resided at village Dhakki, whereas her father Sarup Singh resided at Gurdaspur and was looked after by the respondents, who are his nephews. He also could not deny the finding of fact recorded by the Courts below, that in her cross-examination, the appellant-plaintiff had also admitted that the respondents were serving her father in his last days and even the last rites had been performed by them, with her not even in the knowledge of his cremation and '*Bhog*' ceremony.

13. Having considered the arguments made, as also the judgments of the learned Civil Judge and the learned Ist Appellate

Court, in my opinion, though otherwise learned counsel would be right in contending that a daughter left out from the fathers' will, with no other sibling living, would be a suspicious circumstance enough to doubt the Will, however, with the evidence led before the learned Civil Judge, as discussed in detail hereinabove, there would be no reason for this Court also to doubt the authenticity of the Will, or even the reason for the executant thereof, to exclude his daughter as a beneficiary, bequeathing his plot and house to his nephews, with whom he lived till the end and who looked after him and even performed his last rites.

In view of the above, merely because the other two witnesses of the Will did not stand in the witness box, either in favour or against the appellant-plaintiff, that would not, in my opinion, detract from the fact that the registered Will, on which the photograph of the deceased is also stated to have been affixed, was proved to be a genuine document.

Therefore, though otherwise with a daughter being excluded completely from inheritance, would in itself be a suspicious circumstance, as already discussed, however, in the afore-depicted circumstances, with the will duly proved in terms of Section 68 of the Indian Evidence Act, 1872, I find no merit in the appeal, which is consequently dismissed *in limine*, with no order as to costs.

(AMOL RATTAN SINGH)
JUDGE

April 01, 2016
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