

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

R.S.A No.966 of 2016(O&M)

Date of decision : 13.05.2016

Avtar Kaur and others

..... Appellants

Versus

Sukhbir Kaur and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Ms. Sonia G. Singh, Advocate
for the appellants.

1. **Whether Reporters of Local papers may be allowed to see the judgment?Yes.**
2. **To be referred to the Reporters or not?Yes.**
3. **Whether the judgment should be reported in the Digest?Yes.**

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 08.12.2015 passed by learned Additional District Judge, Ludhiana, vide which the appeal filed by the appellants-plaintiffs against the judgment and decree dated 27.05.2015 passed by the learned Civil Judge (Sr. Division), Ludhiana, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. The appellants-plaintiffs have filed the suit for declaration that they are joint owners in possession of the suit land as detailed and described in the head note of the plaint situated in villages Ballowal and Chaminda, Tehsil and District Ludhiana and the Will dated 21.11.2005 alleged to be executed by deceased Amar Singh in favour of defendant

no.1 is illegal, null and void, fabricated is liable to be set aside and is not binding on the rights of the plaintiffs. Plaintiffs have also challenged the order dated 31.03.2009 passed by the Collector, Ludhiana in Revenue Appeal No. 72/2006-07 in mutation no. 2985. In consequential relief, they have sought the relief of permanent injunction restraining the defendants from alienating the suit property in any manner.

4. As per the averments in the plaint, the father of the plaintiffs and defendants namely Amar singh was the owner in possession of the suit land. He died on 22.01.2007 leaving behind the plaintiffs and defendants as his legal heirs. He never executed the Will dated 21.11.2005. Defendant no.1 in connivance with witnesses has forged and fabricated the Will dated 21.11.2005 with malafide intention to deprive the rights of the plaintiffs over the suit property. The same is illegal, null and void, malafide, fabricated one and the result of fraud. After the death of Amar Singh, defendant no.1 got entered the mutation in her favour on the basis of the alleged Will. When the plaintiffs gained the knowledge of entering the mutation, they approached the revenue officials and objected the same. The Assistant Collector Ist Grade sanctioned the mutation on 03.08.2007 in favour of the plaintiffs and defendants on the basis of natural succession and it was held that Will was not genuine document. Defendant no.1 preferred the appeal, the same was decided by the Collector, Ludhiana vide impugned order dated 30.03.2009 in favour of the defendant on the basis of the impugned Will. The said order passed by the Collector is illegal, contrary to law and is liable to be set aside. Hence, the suit.

5. Defendant no.1 contested the suit on the grounds inter alia that Amar Singh, the father of the defendant had no son. The answering defendants after her marriage started residing with him at village Chaminda and use to serve him. He was alone and needed help in the old age. Answering defendant left her in-laws house and started residing with Amar Singh along with her family i.e. her husband Harjit Singh, two children while other daughters of Amar Singh were residing with their in-laws. Answering defendant and her family rendered services to Amar Singh. He was pleased with their services and out of love and affection executed the legal and valid registered Will dated 21.11.2005 in favour of the defendant vide which he bequeathed his property in favour of the defendant. The said Will was executed by him in sound disposing mind and without any influence. It was further pleaded that the mutation no. 2985 has been rightly sanctioned in her favour on the basis of the Will. It was further pleaded that the answering defendant is owner in possession of the suit property on the basis of the Will executed by Amar Singh. The plaintiffs and defendant no.2 had got no right, title or interest in the suit property.

6. Defendant no.1 also filed the counter claim against the plaintiffs and defendant no.2 seeking declaration that she has become the owner in possession of the entire property left by Amar Singh on the basis of the Will dated 21.11.2005 executed by Amar Singh.

7. The appellants-plaintiffs contested the counter claim on the plea that Amar Singh had got no love and affection with the counter claimant. Counter claimant never served him during his lifetime. Amar

Singh never executed the Will dated 21.11.2005 in her favour. The same is illegal, null and void and fabricated one. The last rites of Amar Singh were performed by the plaintiffs. The suit land is also in their possession. Some of the property has been disposed of. They have been legally recorded as owner in the revenue record. Their title is legal and valid and is binding on the parties to the suit.

8. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to relief of declaration as prayed in the head note of the plaint?OPP
2. Whether the plaintiff is entitled to relief of permanent injunction as prayed in the head note of the plaint?OPP
3. Whether the suit of plaintiff is not maintainable?OPD
4. Whether the plaintiffs have concealed the material facts from the Court?OPD(1)
5. Whether the plaintiffs have no cause of action to file the present suit?OPD(1)
6. Whether Amar Singh had executed a valid registered Will dated 21.11.2005 in favour of defendant Sukhbir Kaur and if so its effect as prayed for?OPD(1)
7. Whether the counter claimant is entitled to declaration as prayed for?OP Counter Claimant.
8. Whether the counter claimant/defendant is entitled to permanent injunction as prayed for?OPD(1)
9. Whether the counter claim is not maintainable in the present form?OPP
10. Whether the counter claimant has no locus standi to file the present suit?OPP
11. Whether the counter claim is bad for being improperly valued for the purpose of Court fee and of jurisdiction as prayed for? OPP
12. Whether the counter claim is bad for being filed beyond the prescribed limitation period?OPP
13. Relief.

9. The learned trial Court vide impugned judgment and decree dated 27.05.2015, dismissed the suit filed by the appellant-plaintiffs with costs. However, the counter claim filed by defendant no.1 Sukhbir Kaur was partly decreed declaring her to be the absolute owner in possession of the estate of Amar Singh. The plaintiff-appellants were also restrained from disturbing the possession of defendant no.1/counter claimant over the suit property and further from alienating the same in any manner.

10. Aggrieved with the aforesaid judgment and decree, the appellant-plaintiffs have preferred the appeal and the same has also been dismissed by the learned Additional District Judge, Ludhiana, vide impugned judgment and decree dated 08.12.2015. Hence this Regular Second Appeal.

11. I have heard Ms. Sonia G. Singh, Advocate, learned counsel for the appellant and have carefully gone through the paper book.

12. Initiating the arguments, learned counsel for the appellants contended that deceased Amar Singh has not executed any Will dated 21.11.2005 in favour of defendant no.1. She contended that the Will in question is forged and fabricated document. The Will in question is also surrounded by various suspicious circumstance. She contended that deceased Amar Singh used to sign the documents in Urdu in his lifetime. But, the Will Ex.D-1 bears the thumb impression, which renders the Will doubtful. She further contended that there was no reason to exclude the appellants by Amar Singh from inheritance of his estate. In fact, defendant no.1 has got prepared the forged Will in connivance with the attesting witnesses. Thus, she contended that the appellant-plaintiffs who

are the daughters of Amar Singh are entitled to succeed to her estate being Class-I legal heirs. She further contended that the counter claim filed by defendant no.1 has also been wrongly decreed by the learned Courts below, as the valid execution of the Will in question was not established.

13. I have duly considered the aforesaid contentions.

14. It is not disputed that deceased Amar Singh was father of the appellant-plaintiffs and defendants. He had no son. The plaintiffs are claiming that they have become joint owner in possession of the estate left by Amar Singh by way of natural succession. On the other hand, defendant no.1 had projected the registered Will Ex.D-1 dated 21.11.2005 executed by Amar Singh bequeathing his movable and immovable property in her favour. Admittedly, burden to establish that the Will Ex.D-1 was validly executed by deceased Amar Singh in favour of defendant no.1 was upon her. Defendant Sukhbir Kaur has herself stepped into the witness box as DW-1. She also examined DW-2 Jagga Singh, the marginal witness of the Will Ex.D-1. DW-2 Jagga Singh has deposed that he knew Amar Singh. He had six daughters. His wife has predeceased him. He further deposed that Amar Singh during his life time brought Sukhbir Kaur from her in-laws in village Chaminda. He was having love and affection for Sukhbir Kaur. She used to serve him and remained obedient to Amar Singh. She gave every respect to him. She along with her husband and children used to serve Amar Singh while residing with him in one and the same house and Amar Singh was pleased with their services. He further categorically deposed that on

21.11.2005, the Will was executed by Amar Singh with his free violation and without any pressure or influence in his presence and in presence of the other marginal witness Lambardar Pritam Singh. The said Will was scribed by Sh.J.S.Deol, Advocate, at the instance of Amar Singh. The contents thereof were read over and explained to Amar singh in their presence. Thereafter, Amar Singh thumb marked the Will after admitting the contents thereof to be correct in his presence as well as in the presence of Pritam Singh Lambardar and thereafter, the Will was presented by Amar Singh before Sub-Registrar, Ludhiana (West) for registration. The Sub-Registrar also read over and explained the contents of the Will to him which was admitted to be correct by Amar Singh and he affixed his thumb impression in his presence and that of Pritam Singh. Sh. J.S.Deol, Advocate, the Scribe of the Will also put his seal and signatures being the Scribe. This witness has identified his signatures on the Will Ex.D-1.

15. The Will Ex.D-1 is a registered document. It carries the endorsement of the Sub-Registrar, which lend corroboration to the case of defendant no.1 qua valid execution of the Will.

16. The appellant-plaintiffs have not been able to establish that the Will Ex.D-1 was a forged document. They have not examined any expert to prove that thumb impression on the Will Ex.D-1 is not that of Amar Singh. It is not disputed that the Will Ex.D-1 carries the photograph of testator Amar Singh. Defendant no.1 Sukhbir Kaur has categorically deposed that deceased Amar Singh had suffered a mild paralysis in the right hand. So, he was not in a position to properly sign

and had started affixing his thumb impression on the documents. The deceased used to draw the pension from Indian Overseas Bank, branch Gujarwal. Defendant no.1 has brought on record the certificate dated 28.04.2007 issued by the Indian Overseas Bank that as per the bank record earlier Amar Singh used to sign in Urdu, but due to his inability to sign, he started appending his thumb impression w.e.f 01.03.2005. Thus, defendant no.1 has rendered the reasonable explanation with respect to the presence of thumb impression of deceased Amar Singh on the Will instead of his signatures in Urdu. As already mentioned, the plaintiff-appellants have not examined any expert witness to show that the thumb impression on the Will are forged and do not relate to deceased Amar Singh. So, there is no escape from the conclusion that Amar Singh duly thumb marked the Will Ex.D-1.

17. DW-2 Jagga Singh, the marginal witness of the Will has categorically deposed that at the time of executing the Will, Amar Singh was not in sound disposing state of mind. Defendant no.1 while stepping into the witness box has also categorically deposed that her father Amar Singh had executed the impugned Will in his sound disposing mind on account of the services rendered by her and her family to the testator. Appellants have not led any cogent, convincing and reliable evidence to establish that deceased Amar Singh was not keeping good health and his mental condition was not sound. Mere this fact that deceased Amar Singh had suffered a mild paralysis on his right arm cannot be a ground to conclude that he had lost his mental balance and was not in a position to think his good and bad. The appellants have not placed on record any

record with respect to the treatment of Amar Singh qua any mental disability.

18. It is also established from the oral as well as documentary evidence brought on record that defendant no.1 used to reside with deceased Amar Singh at village Chaminda. Defendant no.1 has brought on record the copy of the ration card Ex.D-4, voters identity card Ex.D-5, voter list for the year 1998, 2007, 2009, 2012 pertaining to village Chaminda Ex.D-6 to Ex.D-9. All these documents shows that defendant no.1 was residing at Village Chaminda with her deceased father Amar Singh. This fact cannot be disputed that appellants were residing in their respective matrimonial houses. It is only defendant no.1 and his family members, who were looking after deceased Amar Singh as he had grown old and needed help. As defendant no.1 along with her husband and children was living with Amar Singh deceased and were serving him, so certainly, he will have special love and affection for defendant no.1 Sukhbir Kaur and her family. The very purpose of execution of the Will is to deviate from natural course of succession. Thus, the deprivation of the plaintiffs by testator Amar Singh cannot be considered to be a suspicious circumstance to render the execution of the Will Ex.D-1 doubtful. To support this view, reference can be made to cases **Rur Singh (D) Th. LRS. & Ors. Vs. Bachan Kaur 2009(2) R.C.R (Civil) 511, Sridevi Vs. Jayaraja Shetty 2005(1) R.C.R (Civil) 795 and Savithri & Ors. Vs. Karthyayani Amma & Ors. 2007(4) R.C.R (Civil) 749.**

19. Thus, from the evidence brought on record, it is established that deceased Amar Singh has executed a legal and valid registered Will

Ex.D-1 in favour of defendant no.1 Sukhbir Kaur bequeathing his entire estate in her favour. Thus, respondent-defendant no.1 Sukhbir Kaur had become the absolute owner of the estate left by deceased Amar Singh on the basis of the registered Will Ex.D-1 dated 21.11.2005 executed by Amar Singh in her favour.

20. Consequently, the appellant-plaintiffs are not entitled for the relief of declaration and injunction claimed by them in the suit. Whereas, defendant no.1 Sukhbir Kaur is legally entitled to the declaration with consequential relief of injunction sought for by her in the counter claim. Thus, there is no ground to interfere with the concurrent findings recorded by the learned Courts below.

21. Resultantly, no question of law, much less, the substantial question of law arises in the present appeal.

22. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

May 13, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**