

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

**Regular Second Appeal No.3640 of 2014 (O&M)
Date of Decision: August 10, 2016.**

Mandip Singh and another

.....APPELLANT(s).

VERSUS

Pritam Kaur (Deceased) through her LRs

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rajiv Joshi, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is second appeal filed by plaintiffs Mandip Singh and Sandeep Singh, minors through their next friend and mother Smt. Kulbir Kaur against the concurrent judgments of the Courts below dismissing the suit of the plaintiffs seeking the relief of declaration that they are owners in possession (in equal shares) of the land in dispute measuring 27 kanals 12 marlas as fully described in the head note of the plaint, on the basis of Will executed by Paramjit Singh, father of plaintiffs and husband of Kulbir Kaur. They also challenged mutation No.794 relating to inheritance of property of Paramjit Singh sanctioned on the basis of natural inheritance in favour of plaintiffs, their mother Kulbir Kaur and grand mother Pritam Kaur (defendant).

2. The dispute relates to inheritance of the estate of Paramjit Singh, who died on 16.02.2004. While plaintiffs are claiming the suit

property, which was owned by Paramjit Singh on the basis of his Will dated 28.12.2003, defendant-Pritam Kaur, mother of Paramjit Singh is claiming share in his property on the basis of natural inheritance.

3. The Courts below have discarded the Will propounded by appellants-plaintiffs on the grounds as follows:-

(i) Signatures of Paramjit Singh on the Will are different from his admitted signatures. The Courts below reached this conclusion on the basis of report of the Hand-writing Expert Sukhjinder Singh DW3 and on comparison of admitted and disputed signatures with naked eye.

(ii) No reason was given in the Will for ignoring the defendant who is mother of the deceased from inheritance.

(iii) The Will is unregistered document.

(iv) The Will was not scribed by a regular deed writer.

(v) Deceased was a young man aged 37 years, who had been visiting the Tehsil Complex and used regular scribe for execution of various documents including sale deeds and there was no reason for his not availing services of regular scribe for execution of Will.

(vi) There is recital in the Will that Paramjit Singh was suffering from heart disease but his wife while appearing as PW stated that deceased was suffering from Cancer and this fact came to her knowledge after his death. This testimony of Kulbir Kaur was not supported by any evidence on record.

(vii) Dilbag Singh (PW2) has stated that Paramjit Singh was suffering from tuberculosis (TB) and Cancer. This witness is son of real sister of Paramjit Singh and Courts below doubted his presence at the time

of execution of alleged Will.

(viii) There was cuttings and over-writings in the Will that find reference in para 16 of the judgment of the first Appellate Court, which read as follows:-

“16. The counsel for the respondent has also drawn my attention to the cutting on the Will. I also agree with the contention of counsel for the respondent and this cutting is even admitted by PW1 Darshan Singh, who is scribe of the Will, because he has stated in his cross-examination that there is minor/slight cutting in one word in 13th line of Will Ex.P1. There is no overwriting in the 7th line of Ex.P1. But, perusal of the Will shows that there is one cutting in front of executant word. PW2 Dilbagh Singh has also admitted that at the bottom of the Will there is cutting in the circle mark A. He also stated that there is minor over writing in one word in 13th line. He also admitted that similarly there is one overwriting in one word in 7th line. There is cutting in the end of 10th line. These cuttings are not authenticated by the deceased, scribe or attesting witnesses. It also raises doubt regarding execution of the Will.”

(ix) The plaintiffs did not examine any handwriting expert to rebut the report of handwriting expert examined by the defendant.

4. Learned counsel for the appellants-plaintiffs has argued that deceased Paramjit Singh was suffering from some disease may be heart problem, cancer or tuberculosis and died in a very young age i.e. 37 years. He was having litigation with his mother and that is why he executed the Will in favour of his sons and wife. Handwriting expert examined by the defendant has compared the signatures of deceased with signatures on the

photocopy of the sale deed and the Courts below have also given opinion by comparing the signatures on the photocopy with the signatures on the Will. No comparison of signatures could be made from the sale deed which has not been proved by examining any attesting witness. The fact that Will is not scribed by regular deed writer or is unregistered are not material facts which cause any aspersion on the genuineness of the Will.

5. On perusal of the judgements of the Courts below, I find that both the Courts have looked into the evidence on record while giving the reasons for discarding the Will propounded by the appellants. Nothing was alleged or proved that the deceased had any reason for ignoring his mother from inheritance. There is no evidence except oral statement of witnesses that he was suffering from any disease. Kulbir Kaur was not aware as to from where the deceased was getting treatment. This is surprising that wife is not aware of disease of husband and about his medical treatment.

6. Perusal of the Will shows that this pertains not only to the agricultural land but also to the bank, post office accounts, tractor, a vehicle No.HR-10C-6027, other machinery and a house of deceased measuring 16 marlas situated in the village which was allegedly bestowed on Kulbir Kaur. Strangely enough, Kulbir Kaur despite filing this suit as mother and next friend of plaintiffs, did not lay any claim over the property alleged to have been bestowed on her. This gives an inference that she is not claiming any right under the Will over the property given to her. Perusal of the plaint shows that she did not file the suit in her individual capacity rather she filed the suit only as next friend and guardian of the minors.

7. There is no substance in the argument that Courts below could

not take any note of signatures of Paramjit on photocopy of sale deed executed by him as the same was not duly proved. Execution of sale deeds dated 23.05.2000, 07.06.2000 and 27.06.2000 by Paramjit is neither denied nor in issue in this case, as such, defendant was not required to examine its marginal witness to prove its execution. The signatures of Paramjit on photocopy of sale deed are legible and fit for comparison as such have been rightly looked into by the Courts below while drawing conclusion that the signature of Paramjit do not tally with his standard signatures. I find no reason to differ with conclusion drawn by Courts below, which are not based on misreading of evidence. It was not pointed out that any document or evidence on record has either been ignored or misinterpreted, calling for interference in the findings of fact recorded by the Courts below.

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

Dismissed.

August 10, 2016
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

√
Yes/No

Whether Reportable:

√
Yes/No