

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM No.6749-C of 2016 and
RSA No.5181 of 2014 (O&M)
Date of Decision: 30.05.2016

Mohinder Kaur

.... Appellant

Vs.

Harbhajan Kaur

.... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr. Amit Jain, Advocate
for the appellant.

Amol Rattan Singh, J.

CM No.6749-C-2016

Learned counsel for the applicant-appellant submits that after the death of the sole appellant-Mohinder Kaur, only her son, Khazan Singh, would be her legal heir, in view of the fact that she had executed a Will in his favour, a copy of which has been annexed with the application for impleadment of the said Khazan Singh in place of Mohinder Kaur, appellant, as her legal representative.

2. In the order dated 23.05.2016, this Court had noticed the aforesaid fact and had further observed that the defendant, being the widow of a predeceased son, would be a class-1 legal heir, even as the daughter-in-law of the appellant-plaintiffs' husband, and may otherwise also be entitled to

a part of the share claimed by the plaintiff-appellant, from the suit property.

However, that issue becomes redundant, in view of the fact that, as would be seen, from the decision in the main appeal itself, that this Court is upholding the judgments of the Court below, by which the suit of the plaintiff was dismissed and the defendant (hereinafter to be referred to as the respondent), was held to be owner of the suit property, by virtue of the will executed in her favour by her late husband, Satnam Singh. Hence, no notice is felt necessary to be issued to the sole respondent-defendant, Harbhajan Kaur, in this application for impleadment of the applicant as the sole legal heir of appellant-plaintiff Mohinder Kaur.

3. The application is, therefore, allowed, subject to all just exceptions. The applicant, Khazan Singh, be shown as the legal representative of Mohinder Kaur in the memo of parties.

The amended memo of parties is taken on record.

RSA No.5181 of 2014

4. This is the second appeal of the plaintiff (now represented by her son/legal representative), after her suit seeking a declaration and permanent injunction was dismissed by the learned Additional Civil Judge (Senior Division), Baba Bakala, and the first appeal against that judgment and decree was also dismissed by the learned Additional District Judge, Amritsar.

5. The facts, as taken from the judgments of the Courts below, are that the late plaintiff, Mohinder Kaur, had filed a suit seeking a declaration to the effect that she is the co-sharer/co-owner in joint possession to the extent

of 1/2 a share out of the share of her late son, Satnam Singh, in land measuring 101 Kanals 2 Marlas, situated in village Buttar Sivia, described in detail in the plaint. She made the aforesaid claim on the ground that she was one of the natural inheritors to the suit land. She further sought a declaration that the mutation of inheritance, bearing No.5965, entered in the name of the defendant, i.e. the widow of Satnam Singh, was illegal, null and void and not binding on the rights of the plaintiff. Permanent injunction was also sought by her, restraining the defendant from alienating any part of the suit land.

It was stated in the plaint that the late Satnam Singh was a co-sharer to the extent of a 1/6th share in the total suit land (measuring 101 Kanals 2 Marlas) and had died on 20.11.2001, leaving behind his mother and his widow as his legal heirs. Thus, it was contended that both the legal heirs became entitled to 1/2 a share each, out of the aforesaid 1/6th share of Satnam Singh.

It was further contended that the unregistered will purported to have been executed by Satnam Singh on 16.01.2001, in favour of the defendant, was also an illegal, forged and fabricated document, made by the defendant in connivance with the marginal witnesses. In fact, she contended that Satnam Singh did not have good relations with his wife, who used to reside in her parents' house and hence, there was no reason for Satnam Singh to have executed a will in her favour.

6. Upon notice issued to her, the respondent-defendant (hereinafter to be referred to as the defendant) filed a written statement taking the usual preliminary objections, in addition to one stating that the will was

"sanctioned" in the presence of the plaintiff, who had also of affixed her thumb impression on the mutation sheet, at the time when the mutation was sanctioned.

On merits, it was stated that, as a matter of fact, Satnam Singh was not a co-sharer only to the extent of a 1/6th share in the suit property but was entitled to far more at the time of his death, as the property was ancestral in nature, it having been inherited from his fore-fathers. It was further stated that even the jamabandies in the name of Satnam Singh, to the extent of only 1/6th share of the property, were wrong and were required to be corrected.

Still further, it was stated that Satnam Singh had executed the will in favour of his wife, due to services rendered by her and that the mutation of inheritance was sanctioned in favour of the defendant not just in the presence of the plaintiff, but also in the presence of her other son, Khazan Singh, i.e. the brother of the late Satnam Singh, and both, the plaintiff and Khazan Singh, had earlier admitted the will dated 16.11.2001. The defendant also denied that she did not have the good relations with her husband and that she resided at her parents' house.

The possession of the plaintiff over the suit land was also denied.

8. No replication having been filed, the following issues were framed by the learned Additional Civil Judge:-

- “1. Whether the plaintiff is entitled to declaration as prayed for? OPP
2. Whether the plaintiff is co-owner and joint possession to the extent of 1/2 share OPP

3. Whether the order dated 10.09.2003 passed by revenue authority in Mutation No.5965 is illegal, null and void and not binding upon the rights of the plaintiff? OPP
 4. Whether the plaintiff is entitled to injunction as prayed for? OPP
 5. Whether property in the hand of deceased Satnam Singh was ancestral property which he had inherited by way of survivorship. If so to what effect? OPD
 6. Whether deceased Satnam Singh was entitled to much more share than that of 1/6th share in total land measuring 101 kanal 2 marlas? OPD
 7. Whether the entries coming in the jamabandis are wrong? OPD
 8. Whether the plaintiff has got no locus standi to file the present suit? OPD
 9. Whether the suit for declaration for possession is not maintainable? OPD
 10. Whether the suit is time barred? OPD
 11. Whether the Satnam Singh deceased executed a will dated 16.11.2001 in favour of defendant? OPD
 12. Relief."
9. Other than documentary evidence in the form of a jamabandi, Ex.P3, the plaintiff examined herself and one Avdesh Kumar, a Clerk in the office of the Sub-Registrar, Baba Bakala.

The defendant examined herself as DW2 and also examined Gurdev Singh, Registry Clerk in the office of Sub-Registrar, Baba Bakala, as DW1, Ashok Kumar, AOK, Tehsil Office, Baba Bakala as DW3, Dilbagh Singh son of Arjan Singh as DW4 (doubled numbered as DW2).

Thereafter, after amendment to her written statement, the defendant also examined Dalbir Singh as DW5, Sukhdev Singh, Kanungo, as DW6, Sukhpreet Kaur, Handwriting and Document Expert as DW7 and Daya Singh, attorney of the defendant, as DW8.

The defendant also again stepped into the witness box after the amendment of the written statement, to prove additional evidence.

10. After appraising the evidence, the learned Additional Civil Judge found that the defendant having relied upon the will of Satnam Singh in her favour, it showed Nirmal Singh, Lamberdar and Khazan Singh to be the two attesting witnesses thereto. Nirmal Singh had however, died, in proof of which his death certificate was exhibited by the defendant. Khazan Singh, i.e. the son of the plaintiff, did not turn up to depose and as per the learned Additional Civil Judge, it seemed to be so because they had "kept him out of the way". Therefore, to prove the will, the defendant had examined DW3 Dilbagh Singh, who deposed that Satnam Singh, defendant Harbhajan Kaur, Khazan Singh and Nirmal Singh, were all known to him. He also identified the signatures of Satnam Singh, Nirmal Singh and Khazan Singh on the will, stating that he "used to see them signing the documents".

On the basis of the aforesaid deposition, the learned Additional Civil Judge held issues No.1 and 11, i.e. with regard to the plaintiffs' claim for half of Satnam Singhs' 1/6th share and the validity of the will, in favour of the defendant and against the plaintiff. On appraising the evidence with regard to the property being ancestral, though it was held to have devolved upon Satnam Singh from his fore-fathers, however, he was held not entitled

to "much more 1/6th share in the total land measuring 101 kanals 2 marlas".

It needs mention here that no appeal filed against that finding, by the respondent-defendant, has been brought to the notice of this Court.

11. Though the suit otherwise was held to be maintainable in terms of locus of the plaintiff and further, that there was no non-joinder of necessary parties, however, it was held to be time barred, in view of the fact that Satnam Singh had died on 20.11.2001, with the mutations on the basis of the will sanctioned on 10.09.2003 in the presence of the plaintiff, but the suit having been filed on 20.09.2006, i.e. almost five years from the date of death of Satnam Singh.

12. Consequently, in view of all the aforesaid findings, the suit of the appellant-plaintiff was dismissed by the Civil Judge.

13. In the first appeal filed by the plaintiff, the learned Additional District Judge, Amritsar, referred to the testimony of DW2 Ashok Kumar, i.e. the official from the office of the Tehsildar, Baba Bakala, who had testified that the original will executed by Satnam Singh on 16.11.2001, was in the mutation file of the office, in which even the affidavit of plaintiff Mohinder Kaur was found to be present, wherein Nirmal Singh, Lamberdar, had identified her, with the affidavit being attested by the Executive Magistrate, Baba Bakala.

It was further noticed by the learned first Appellate Court that the mutation sheet, Ex.DZ/3, contained a pedigree table on its back, also bearing the thumb impression of Mohinder Kaur, which was got examined by the defendant, from a handwriting and finger print expert, i.e. DW7

Sukhpreet Kaur, who testified that the thumb impressions on the said document tallied with the specimen thumb impressions of the plaintiff. Her report, Ex.DW7/1, was also proved by her.

It was further noticed that the aforesaid Nirmal Singh, an independent witness to the will, had died on 05.07.2007 as per his death certificate and the second attesting witness, i.e. Khazan Singh, brother of the deceased Satnam Singh, did not come forward to testify, despite having been summoned time and again by the defendant, he not being an independent person, as held by that Court, but in fact, siding with his mother.

14. Further, what is of great significance is that the first Appellate Court came to a finding that the said Khazan Singh (presently LR of the plaintiff), had in fact taken Satnam Singhs' share of the land, i.e. the suit land, on mortgage from the defendant herself on 25.08.2006, vide a mortgage deed, Ex.D3. Thus, it was held that Khazan Singh having accepted the defendant to be the owner of the land, had also accepted the will dated 16.11.2001, as also the mutation based on that will, dated 10.09.2003.

An argument on behalf of the defendant was also accepted, that the suit was filed on 20.09.2006, i.e. about one month after the mortgage deed, which showed that the suit was actually got filed at the instance of Khazan Singh, through his mother, he having come into possession of the suit land by way of the mortgage deed.

15. The learned lower Appellate Court also found that DW3, Dilbagh Singh, was close to the family (of the parties to the *lis*) and used to attest their documents as a witness and he, alongwith the late Nirmal Singh, was an

attesting witness to the mortgage deed. He had also testified, identifying the signatures of Satnam Singh and Nirmal Singh, as also of Khazan Singh, on the will. It was found from his cross-examination also, that nothing "fruitful could be extracted".

16. Yet further, the learned lower Appellate Court found it 'unbelievable' that the plaintiff would not have filed a suit for a period of five years after the death of her son, unless she knew that he had left behind a will in favour of her daughter-in-law and had accepted it, also 'participating' in the mutation sanctioned thereafter. Thus, it was opined by that Court, that the suit seemed to have been filed at the instance of Khazan Singh.

17. The will therefore having found to be validly executed in favour of the defendant, the finding of the lower Court was accepted on the other issues also, including the fact that Satnam Singh did not have more than a 1/6th share in the suit land and in any case, the defendant could not agitate with regard to that, after the death of Satnam Singh, he himself never having agitated any such matter, during his lifetime.

Consequently, the first appeal filed by the plaintiff was dismissed.

18. Before this Court, though learned counsel for the appellant has made an earnest effort and has submitted that the signatures of the attesting witness, who had died, i.e. Nirmal Singh, Lambardar, were never proved, inasmuch as Dilbagh Singh, DW3, admitted in his cross-examination that he had only seen Nirmal Singh signing once earlier on the Will executed by Satnam Singh, and thereafter on the mortgage-deed executed by the

respondent-defendant Harbhajan Kaur in favour of Khazan Singh, i.e. the son of the plaintiff (now the appellant as her LR), in my opinion, the argument is unsustainable, inasmuch as, once Dilbagh Singh admitted to have seen Nirmal Singh, Lambardar, signing the mortgage-deed itself in favour of Khazan Singh, and earlier he had also seen him signing on another document, the requirement of Section 71 of the Indian Evidence Act, 1872, would be met with, seen with the fact that the other attesting witness to the will of the late Satnam Singh, was Khazan Singh himself, i.e. the mortgagee, son of the plaintiff and brother of deceased Satnam Singh. Khazan Singh, by accepting the suit land as a mortgagee from the defendant, obviously accepted her to be the true owner of the land, she being his sister-in-law, i.e. the wife of the late Satnam Singh. The reason for his not stepping into the witness box as an attesting witness, is only too obvious, for the reason that he would be a beneficiary after the death of his mother (and in fact today has been impleaded in this appeal as her sole legal representative, after Mohinder Kaur has died). Hence, with DW3 having identified the signatures of the executant of the will, i.e. Satnam Singh, and of one of the attesting witnesses (Nirmal Singh), as also of the second attesting witness, i.e. Khazan Singh, in a situation where the second attesting witness did not appear obviously because he was an interested party alongwith plaintiff, I see no error in the judgments of the Courts below. This is all the more for the reason that the signatures of Khazan Singh, on the mortgage deed dated 25.08.2006 (Ex.D3 before the Court below) were never disproved, thereby showing his acceptance of the respondent-defendant as the true owner of the land, which

he took on mortgage from her as her mortgagee.

On the other hand, the respondent-defendant even proved the thumb impression of the plaintiff, Mohinder Kaur, on the mutation sheet, Ex.DZ/3, through a fingerprint expert, which finding could also not be refuted or rebutted by the appellant-plaintiff.

19. Therefore, the Courts below having duly appreciated the evidence as discussed hereinabove, I find no error in such appraisal, on the basis of which the suit and first appeal of the plaintiff were dismissed.

Consequently, finding no merit in this appeal, it is dismissed *in limine*, but with no order as to costs.

30.05.2016
dinesh

(AMOL RATTAN SINGH)
JUDGE