

RSA No. 2752 of 2012 (O&M)

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

**RSA No. 2752 of 2012 (O&M)
Date of Decision: 31.8.2017**

Surjit Kaur and others

.....Appellants

Vs.

Jagmohan Singh and others

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Sham Lal Bhalla, Advocate
for the appellants.

RAMESHWAR SINGH MALIK J. (ORAL)

Defendants are in regular second appeal, against the concurrent findings of facts recorded by both the learned courts below, whereby suit for declaration, filed by the plaintiffs-respondents was decreed by the learned trial court, vide its judgment and decree dated 30.4.2010 and first appeal filed by the defendants-appellants, was also dismissed by the learned first appellate court vide its impugned judgment and decree dated 1.12.2011, declaring the Will in question to be a genuine one, and upholding the impugned judgment and decree of the learned trial court.

Brief facts of the case, as noticed by the learned first appellate court in para 2 to 4 of its impugned judgment, are that Prem Singh, Bachan Singh and Gurcharan Singh were real brothers. Plaintiffs-Jagmohan Singh and Amritpal Singh, who were respondents No.1 and 2 in the appeal, were

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sons of Prem Singh. Bhupinder Singh-defendant No.9./respondent No.3 was their real brother. Defendants No.1 to 8 were legal heirs of Bachan Singh. Gurcharan Singh was unmarried and issueless. The dispute in this case was with regard to the inheritance of the property left behind by Gurcharan Singh. Prem Singh, predecessor-in-interest of plaintiff and proforma defendant No.9, had died in the year 1997. Bachan Singh, predecessor-in-interest of defendants No.1 to 8, had died on 7.6.2005. Gurcharan Singh had died on 30.1.2005. At the time of death of Gurcharan Singh, his real brother Bachan Singh was alive.

Plaintiffs alleged that Gurcharan Singh had executed a legal and valid registered Will, thereby bequeathing 3/5th share of his property in favour of the plaintiffs and defendant No. 9 and 2/5th share in favour of Kuldeep Singh and Narinder Singh. They pleaded that revenue authorities had wrongly discarded the said will and sanctioned the mutation regarding inheritance of Gurcharan Singh in favour of Bachan Singh. Defendants No.1 to 8 legal heirs of Bachan Singh were claiming title over the entire property left behind by Bachan Singh. Plaintiffs sought declaration that the plaintiffs and defendant No.9 were owners of 3/5th share of the property left behind by Gurcharan Singh and they also claimed decree of injunction restraining the defendants from alienating the property in dispute.

Having been put to notice, defendants No.1 to 3 appeared, however, only defendants No. 1 and 2 filed their contesting written statement, raising more than one preliminary objections. Remaining defendants did not appear and they were proceeded against ex parte. Contesting defendants alleged that Will dated 25.6.2003 executed by late Sh. Gurcharan Singh was a forged and fabricated document. Replication was

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filed by the plaintiffs controverting the averments taken by the defendants in their written statement.

On completion of pleadings of the parties, learned trial court framed the following issues:-

1. Whether the plaintiffs are entitled for declaration as prayed for?OPP
2. Whether plaintiffs are entitled for permanent injunction as prayed?OPP
- 2A) Whether the Will dated 25.6.2003 has been legally and validly executed by Gurcharan Singh @ Charan Singh in favour of Jagmohan Singh-plaintiff No.1, Kuldeep Singh-defendant No.2, Narinder Singh-defendant No.3 and Bhupinder Singh-proforma defendant No.9, if so its effect?OPP
3. Whether suit is not maintainable in the present form? OPD
4. Whether the plaintiffs have not come to the court with clean hands?OPD
5. Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. Voluminous documentary evidence was brought on record by the plaintiffs, so as to prove their pleaded case. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that the Will in question was not surrounded by any suspicious circumstances. It was found to be a genuine document. Suspicious circumstance, if any, alleged by the defendants, was dispelled by the plaintiffs, while leading their evidence in affirmative.

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Accordingly, suit of the plaintiffs for declaration qua the abovesaid Will was decreed by the learned trial court, vide its impugned judgment and decree dated 30.4.2010.

Feeling aggrieved, defendants filed their first appeal, which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 1.12.2011. Hence this regular second appeal at the hands of unsuccessful defendants.

Heard learned counsel for the appellants-defendants.

A bare combined reading of both the impugned judgments would make it crystal clear that the Will dated 25.6.2003 executed by late Sh. Gurcharan Singh was a very natural and genuine document. The Will (Ex.P-1) was not surrounded by any suspicious circumstances. Even the sons of contesting defendants were beneficiaries of the same Will. In fact, late Sh. Gurcharan Singh had five nephews. His three nephews were sons of his brother-Prem Singh and remaining two nephews were sons of his other brother-Bachan Singh.

Late Sh. Gurcharan Singh bequeathed his entire suit property in favour of all his five nephews. Defendants No.2 and 3, who are sons of Bachan Singh, were also beneficiaries of the same Will in question. Under these undisputed facts and circumstances of the case, it can be safely concluded that late Sh. Gurcharan Singh was well justified, while executing the Will in question in favour of all his five nephews in equal shares. That is what has been held by both the learned courts below, while recording their concurrent findings of findings of the facts and the same deserve to be upheld.

Who could be more ungrateful than the appellants, who

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themselves are beneficiaries of the same Will but still not satisfied. Obvious reason was that defendants-appellants were having unending lust for the property, with a view to grab the entire share of late Sh. Gurcharan Singh. This seems to be the reason which weighed with late Sh. Gurcharan Singh as well, and after realising the nature and conduct of the appellants, he executed the Will in favour of all of his five nephews in equal shares.

Late Sh. Gurcharan Singh could have easily deprived the present appellants from their $2/5^{\text{th}}$ share in the Will because he was the absolute owner in possession of the suit property but he did not do so, while executing the Will in question. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld, for this reason also.

With a view to prove the Will in question (Ex.P1) to be a natural and genuine document, plaintiffs-respondents brought on record voluminous, cogent and convincing evidence, a bare perusal of which would leave no room for doubt that late Sh. Gurcharan Singh executed the Will in question in most natural manner which was based on his free Will. The Will was not surrounded by any suspicious circumstances. Further, it is equally important to note here that it is very easy to raise the plea of fraud but the same is equally difficult to be proved. It is so said because the defendants-appellants miserably failed to prove the plea of fraud regarding the Will in question. There was not an iota of evidence available on record at the instance of the defendants-appellants, which may even remotely suggest any suspicious circumstance surrounding the Will in question. In this view of the matter, no fault can be found with the impugned judgments and decrees and

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the same deserve to be upheld, for this reason as well.

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 12 of its impugned judgment, which deserve to be noticed here, read as under:-

“ The main question which requires determination in this case is as to if deceased-Gurcharan Singh had executed the valid and legal will dated 25.6.2003 in favour of the plaintiffs and defendants No.23 and 9. It would be proper to mention here that the plaintiffs, defendant No.2, 3 and 9 were the nephews of the deceased-Gurcharan Singh. Remaining defendants were widow and daughters of his brother Bachan Singh. Therefore, as per Will, deceased Gurcharan Singh bequeathed his property in favour of all of his nephews in equal shares. The Will in question is Ex.P-1. In order to prove due execution of the said Will, the plaintiffs examined PW-1 Ujjagar Singh the attesting witness of the Will. PW-1 Ujjagar Singh is Namabardar of village Kubaheri. Even deceased Gurcharan Singh, the executant of the Will was also resident of Kubaheri PW-1 Ujjagar Singh has deposed regarding due execution of the Will by deceased. He has stated that Gurcharan Singh has put his signatures on the Will after admitting the same to be correct in his presence and that of other witness Gurmail Singh. Both of them have attested the said Will. Therefore, the Will was presented before the Sub-Registrar Majri who read over and explained the contents of the Will to the executant. The executant had put his signatures on the Will even before the Sub-Registrar. Plaintiffs have also examined PW-2 Kuldeep Singh i.e. defendant No2. He has also supported their case and stated that deceased Gurcharan Singh had executed the Will

Ex.P1. He has stated that his uncle Gurcharan Singh told him that he had executed the Will in favour of all of his nephews. PW-3 Mandeep Sofat is son of Prem Chand, Document Writer. The Will in question was transcribed by Prem Chand Document Writer. PW3 stated that his father has already expired. He produced the register of his father and the copy of the entry regarding the will in question made in the said register at Sr. No. 80 is Ex.PW3/A. The said entry also bears the signatures of the executant and both the attesting witness. The plaintiff-Jagmohan Singh made statement as PW4 reiterating the case of the plaintiff regarding due execution of the Will by deceased-Gurcharan Singh. The plaintiff-Jagmohan Singh had stated that Gurcharan Singh had equal love and affection with progeny of both the his brothers. Gurcharan Singh was employed in Delhi Police. Till his retirement, he remained in Delhi with defendant no.9-Bhupinder Singh and plaintiff-Jagmohan Singh. He further stated that later on, he (Jagmohan Singh) got job in Punjab University in 1991. Gurcharan Singh had also shifted to Chandigarh. He has been residing with him. Gurcharan Singh had been occasionally visiting village Kubaheri. He further stated that Gurcharan Singh has expired at his house in Sector 38 West, Chandigarh and was cremated at cremation ground Section 25, Chandigarh. He has further stated that Gurcharan Singh has also handed over the prestigious President's police medal Ex.P4 to him. During his cross-examination the fact that Gurcharan Singh has been living with him.. He expired at his house and his Bhog Ceremonies were performed by him have not been disputed. The evidence produced by the plaintiff is sufficient to discharge the initial onus lying on them to prove the execution of Will by deceased Gurcharan Singh. The burden of proof got shifted to the defendants to prove that Gurcharan Singh was not having sound and disposing mind at the relevant time. Defendant-Surjit Kaur made her statement Ex.DW-1 stating therein that

Gurcharan Singh had been suffering from mental ailment and depression etc. since January 2003 and he was not treated by Bachan Singh. However, DW-1 Surjit Kaur admitted in her cross-examination that Gurcharan Singh had been living at Delhi when he was in service in Delhi Police. She admitted that defendant No.9-Bhupinder Singh had also been living with him at Delhi. She also admitted that after his retirement Gurcharan Singh had shifted to Chandigarh and had been residing with plaintiff Jagmohan Singh. She has also admitted that Gurcharan Singh was more close to Jagmohan Singh and Bhupinder Singh. She admitted that she did not attend the Bhog Ceremony of Gurcharan Singh. The defendants have also examined DW2 Darshan Singh who has tried to corroborate the version of DW1 Surjit Kaur that Gurcharan Singh was suffering from some mental ailment but defendants have not been able to prove any medical record showing that Gurcharan Singh was suffering from any such ailment which could have deprived him from capacity to take any rational decision. Moreover, the execution of the Will by Gurcharan Singh in favour of his nephews cannot be said to be unnatural circumstances. It has been admitted by defendant Surjit Kaur that Gurcharan Singh was more close to Jagmohan Singh and Bhupinder Singh. Their father Prem Singh had expired in 1997. In such like circumstances, in case Gurcharan Singh would have died intestate his entire property would have gone to his brother Bachan Singh. When Gurcharan Singh was living with Jagmohan Singh, execution of the Will by him in favour of Jagmohan Singh etc. cannot be said to be unnatural. Moreover, in this case, Gurcharan Singh has not ignored the children of his brother. His brother Bachan Singh was having two sons Kuldeep Singh and Narinder Singh. Thus, Gurcharan Singh was having 5 nephews i.e. three sons of his brother Prem Singh and two sons of his brother Bachan Singh. He bequeathed his entire property in favour of all of his nephews. The said will is quite natural.....”

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During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in either of the judgments passed by both the learned courts below. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179**.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

31.8.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No