

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No.1706 of 2016 (O&M)
Date of Decision: 26.07.2017**

Sarup Singh

... Appellant

Versus

Mangat Singh and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Manjit Singh, Advocate,
for the appellant.

RAJIV NARAIN RAINA, J.

1. The case of the plaintiff in the trial court rested on a testamentary Will dated July 10, 1997 executed by Jangir Singh in favour of one of his sons, the plaintiff. The son was not the only sibling. Late Jangir Singh left behind five sons and two daughters. The daughters were defendants No.4 and 5 and were married prior to the suit. The Will is unregistered. It excludes all others except the plaintiff-Sarup Singh who claimed special love and affection of his father to exclude natural succession.

2. It is not a disputed fact that the suit property was mutated on the basis of natural succession after the death of late Jangir Singh. The trial Court by its judgment and decree dated April 07, 2015 held it to be genuine and set aside the orders passed by the revenue authorities dated December 09, 2004, May 03, 2005 and May 23, 2007 and directed the revenue officials

to sanction the mutation in favour of the plaintiff, on the basis of the Will.

3. The learned District Judge, Barnala has allowed the Civil Appeal presented by the defendants and set aside the judgment and decree of the trial Court after re-appreciating the entire evidence on record. The testimonies of each of the witnesses for and against have been noticed and dealt with and assigned their proper weight.

4. The trial Court held that the Will was duly proved as per Section 69 of the Indian Evidence Act by PW-2 Darshan Singh, the son of one of the deceased attesting witnesses. The trial Court erroneously assumed that merely because defendant son admitted that he was living separate from his father and brother since 1972, then it will be presumed that he did not serve the father during his life time and, therefore, the claim of the plaintiff that he used to serve his father and minister to his needs must be believed to the extent of changing the course of natural succession have remained un rebutted and as a result there are no suspicious circumstances surrounding the Will which has been pointed out by the defendants is enough to uphold the Will. This reasoning is fallacious. Merely by reason of living separately and raising a family elsewhere is against the defendant.

5. The learned District Judge has not agreed with the reasoning adopted by the trial court and the findings in favour of the plaintiff to exclude the siblings/defendant. The Judge has reasoned that proof of Will is as per standards of law and stands on a higher degree in comparison to other documents. There must be clear evidence of the attesting witnesses or other witnesses that the contents of the Will were read over to the executant and he after admitting the same to be correct put his signatures in the presence of

the witnesses. It is only after the executant puts his signatures, the attesting witnesses shall put their signatures in the presence of the executant. The mode and manner in which the Will is to be executed and proved is as per standards in Section 68 of the Indian Evidence Act. Proof of attestation of the Will is a mandatory requirement. The Will is required to be attested by at least two witnesses and at least one attesting witness is to be examined to prove the Will. Even in cases where the attesting witnesses are either dead or out of jurisdiction of the Court or kept out of the way by the adverse party or cannot be traced despite diligent search, only then can a Will be proved by examining witnesses who are able to prove the handwriting of the testator or executant. Then only can burden of proof be shifted to the defendants. Even then, signature and handwriting as contemplated in Section 69 must be proved to the satisfaction of the Court. In the instant case, the trial Court mistakenly accepted the deposition of PW-2 Darshan Singh son of Amarjit Singh, one of the attesting witnesses of the Will Ex.P-1 who stated that his father had died. This was mere oral testimony which was not supported by death certificate to prove the factum of death and the date when alleged testator died.

6. PW-2 witness Darshan Singh is neither an attesting witness of the Will in question nor he had scribed the Will. Neither the Will was scribed in his presence nor attested and the marginal witness had not thumb marked the Will in his presence. He had identified thumb impression of Amarjit Singh on the Will. It is well settled that thumb impression cannot be identified by any person not having knowledge of science of finger prints and handwriting. The District Judge is correct in holding that Darshan Singh

was not in a position to identify the thumb impression to be that of his father Amarjit Singh. He was a rank outsider who could not have deposed to facts he had not witnessed in their creation. He could not even tell in cross-examination the name of the daughter of late Jangir Singh or their residential address and whether Parkash Singh of Jangir Singh were alive or not. He could not even tell the date, month and year of death of Jangir Singh. The learned District Judge correctly concluded that the second essential requirement of Section 69 of the Act has not been satisfied by the plaintiff. There is no proof or legal evidence that Will has been signed or thumb marked by the testator. The trial Court had fallen in serious error in thinking that the other attesting witness who was not produced by the plaintiff was required to be examined by the defendants. It was not for the defendant to prove whether the said witness was dead or alive. Surjit Singh was the other attesting witness and has remained in darkness. Therefore, the eventuality prescribed in Section 69 of the Act could not have come into play. Darshan Singh alone could not be seen as witness in proof of Will and therefore the Will propounded by the plaintiff has no legs to stand on.

7. The learned District Judge took a look at the partition deed Ex.D-1 on record produced by the plaintiff which is signed by late Jangir Singh. Jangir Singh usually signed and did not thumb mark the same while the Will bore the thumb impression of the alleged testator. This circumstance also makes the Will a suspicious document especially when the thumb impression of Jangir Singh was not proved by the plaintiff by calling an expert. The Will is dated July 10, 1997 and the suit was filed in 2008. Jangir Singh died on August 12, 1997, while the alleged Will is dated

July 10, 1997. The plaintiff produced a certified copy of the Will Ex.P-1 from the mutation record of file No.69, mutation No.4540 and certified copy of the Will was not enough in the absence of original without following the procedure in the Indian Evidence Act to make it worthy of credibility and legal acceptance. Moreover, the Will speaks of the ill health of Jangir Singh while the death occurred in a very short span thereafter which was also a highly suspicious circumstance that the testator was in sound disposing mind when he was a nonagenarian at the time of death.

8. I find no infirmity of any kind in the orders passed by the learned District Judge, Barnala in a well considered judgment overruling the judgment and decree of the trial Court for good and sufficient reasons.

9. No question of law, much less substantial arises in this appeal worth consideration of the second appeal side of this Court. When no credence can be placed on the alleged testamentary Will propounded by the plaintiff it has no legal value to alter the natural course of succession on the death of late Jangir Singh.

10. Accordingly, the impugned mutations in the suit are restored in the revenue record. The property will devolve on all the natural heirs in their respective shares as per rule of Hindu succession.

11. Devoid of substance, the appeal stands dismissed.

(RAJIV NARAIN RAINA)
JUDGE

26.07.2017
manju

Whether speaking/reasoned Yes

Whether reportable No