

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

Date of decision: 05.09.2017

RSA No.2631 of 2016 (O&M)

Sucha Singh & others

...Appellants

Vs.

Gurdev Kaur & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sanjay Majithia, Senior Advocate, with
 Mr. Inderjeet Singh, Advocate, for the appellants.

Mr. Harsh Bunker, Advocate, for the caveator.

RAJIV NARAIN RAINA, J.

1. The instant regular second appeal by plaintiff is directed against the judgment of reversal. The learned trial Court had upheld the testamentary Will of Jagtar Singh son of Puran Singh in favour of his elder brother and sister-in-law, who were the successful plaintiffs. However, the learned Additional District Judge, Hoshiarpur vide his well considered judgment and decree dated 30.01.2016 has done otherwise and disbelieved the Will enumerating in his judgment the next following circumstances- (i) to (xvi), which cumulatively discredited the Will dated 01.12.2005 (Ex.P1) purporting to bequeath 133 Kanals 1 Marla of suit land as well a residential house belonging to Jagtar Singh in favour of Sucha Singh and Gurmeet Kaur to the exclusion of his wife Gurdev Kaur and natural daughter Sukhwinder Kaur, defendants as a testament surrounded by suspicious circumstances:

(i) The will was scribed on ordinary paper.

- (ii) There is no reason mentioned in the Will regarding exclusion of natural heir i.e. daughter – defendant No.2.
- (iii) The Will is unregistered.
- (iv) There are material contradictions in the statements of PW-1 Sukhwinderjit Singh, deed writer; PW-2 Avtar Singh, a marginal witness and PW-4 Bhupinder Singh, another witness of the will. During the course of cross-examination, PW-2 Avtar Singh stated that after the Will was executed, the deed writer Sukhwinder Singh had asked Jagtar Singh to get it registered, but Jagtar Singh stated that there was no need to get the Will registered, whereas PW-4 Bhupinder Singh stated that deed writer PW-1 Sukhwinderjit Singh did not ask Jagtar Singh to get the Will registered. Witness volunteered in the next breath that Jagtar Singh himself stated that Will should be got registered, but the deed writer stated that there was no need of getting the Will registered. These discrepancies create doubt about the genuineness of the Will.
- (v) Jagtar Singh, testator, died on 27.12.2005 i.e. about 25 days of execution of the propounded Will. Though Will does not suffer compulsory registration, but there was talk of registration among the witnesses, then the plaintiffs ought to have proved what prevented the Will from being registered.
- (vi) The Will speaks of exclusion of defendant No.1, but has no reference of defendant No.2 – daughter, who is the natural heir of the deceased. This is also a suspicious circumstance make the execution of the Will doubtful.
- (vii) In the presence of daughter, the question of execution of Will in favour of brother and his wife

was itself a suspicious circumstance. No hostility was shown between the testator and his immediate family and especially his daughter as to why he would exclude her from natural succession.

- (viii) There was a recital in the Will that “after death of the testator, his wife Gurdev Kaur or issue, if any, will have no right over his property”. This means that Jagtar Singh knew that he had a child i.e. defendant No.2. Moreover, she was not expressly excluded from the Will itself.
- (ix) There was sufficient evidence to rebut the plea of the plaintiffs that Gurdev Kaur (wife) had left Jagtar Singh (husband) after 3-4 months of the marriage. There was evidence by way of voter list of the years 1975, 1980 & 1988 (Exs.D12 to D14), which prima facie show that Gurdev Kaur was residing along with her husband Jagtar Singh (deceased) in village Bodal and this fact falsified the version of the plaintiffs that wife of the deceased had left the company of her husband.
- (x) If plaintiffs pleaded that deceased was not in good health and was unable to move, then the plaintiffs failed to prove that who had brought the deed writer (PW-1 Sukhwinderjit Singh) or whom the testator called to bring the deed writer from far away.
- (xi) The mutation entries of the estate left by deceased Jagtar Singh were sanctioned in favour of the defendants by way of natural succession. This was strong indicator and cause for serious suspicion. The plaintiffs had filed appeal against the orders sanctioning of mutations, but the same was dismissed being time barred.
- (xii) PW-6 Gurmit Kaur, sister-in-law of deceased Jagtar Singh while facing cross-examination

categorically stated that Jagtar Singh had died on 27.12.2015 and 10-12 days prior thereto, he handed over the Will to her daughter-in-law Mandeep Kaur. This meant that the plaintiffs had knowledge of execution of the Will. Then why did they not approach the revenue authorities for sanctioning mutations in their favour. They remained silent for long time. This was also a suspicious circumstance raising doubt as to the genuineness of the Will.

- (xiii) The specific plea of the defendants was that the Will propounded is a forged and fabricated document. Then, it was for the plaintiffs to prove that signatures appearing on the Will are that of Jagtar Singh, but no steps were taken by the appellants to prove the signatures of Jagtar Singh on the disputed Will.
- (xiv) The defendants examined DW-6 Arvind Sood, handwriting and fingerprint expert, who proved his report Ex.DW6/A appearing as witness and he clearly expressed his opinion that questioned signatures marked as Q1 and Q2 are not in the handwriting of person who has written standard signatures of Jagtar Singh S1 to S6 and the questioned signatures Q1 and Q2 are product of copied forgery. The Plaintiffs' contention that handwriting expert had compared the questioned signatures of Jagtar Singh on the Will with the standard signatures of said Jagtar Singh on the mortgage deed dated 17.03.2004, which has not been proved on the case file as per provisions of law, can have no evidentiary value attached to the report was not accepted by the Court of first appeal. This argument has been rejected by the lower Appellate Court while dealing with the

testimony of DW-4 Parminder Singh, Registry Clerk called from the office of Sub Registrar, Dasuya, who brought the summoned record regarding mortgage deed dated 17.03.2004 and proved the certified copy of the same as Ex.DW4/X.

- (xv) As fate would have it, alleged testator Jagtar Singh and his brother Sucha Singh – plaintiff No.1 had together mortgaged part of the land with the Bank. Narinder Singh, Assistant Manager, PADP, Dasuya summoned by the defendants suffered statement to the effect that original mortgage deed is lying in the head office of the bank at Chandigarh. Later while appearing as DW-5 Narinder Singh categorically deposed that the old original mortgage deed has been lost from the office of the Bank and the same could not be made available. This is how the signatures were got compared after permission was granted by the trial Court vide order dated 21.05.2014 enabling defendant No.1 to arrange the handwriting expert at her own responsibility.
- (xvi) The first Appellate Court rightly held that as per the provisions of Section 62 of the Evidence Act, the copy retained at the Registrar Office is also the primary evidence and this copy of the document bears the signatures of the parties, which are open to comparison.

3. Keeping in view the above circumstances, the first appeal Court rightly arrived at the conclusion that the Will was not genuine.

4. The first Appellate Court did very well in reversing the judgment and decree of the trial Court which had allowed the suit for the

wrong reasons. I agree with the findings recorded by the first Appellate Court that the Will was fake and certainly not a genuine document on which suit property could be transferred to the plaintiffs, which judgment and decree does not give rise to any substantial question of law for consideration of this Court on the second appeal side, either under Section 100 of the Code or Section 41 of the Punjab Courts' Act, 1918.

5. After hearing the parties at length and after perusing the papers with the assistance of the senior counsel and Mr. Bunker for the respondents, I conclude that there is no legal error or factual infirmity found in the findings recorded in the judgment in appeal after appreciating the entire evidence adduced on record.

6. Accordingly, the instant appeal is found devoid of merit and is ordered to stand dismissed with costs of the three Courts in favour of the defendants from the plaintiffs. The revenue papers and the record of rights over the suit property will henceforth be read in favour of the defendants, the respondents in this appeal. Necessary corrections, if any required, will be carried out by the authorities to bring the dispute to an end.

05.09.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>