

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

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RSA-60-2013(O&M)

Date of Decision:11.09.2017

Sohan Singh and others

.....Appellants

Versus

Chhinder Kaur and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

**Present: Mr.G.S.Virk, Advocate,
for Mr.G.S.Nagra, Advocate,
for the appellants.**

**Mr.Jasmer Singh Verka, Advocate,
for the caveator-respondent Nos.1 and 2.**

RAMESHWAR SINGH MALIK, J.(Oral)

Unsuccessful 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 was decreed by the learned trial court, vide its impugned judgment and decree dated 23.01.2009 and the first appeal of the defendants was also dismissed by the learned Additional District Judge, vide impugned judgment and decree dated 08.09.2012, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that the plaintiffs filed the suit for declaration to the effect that they were owners in possession of the land left by deceased Smt. Resham Kaur to the extent of 1/8th share out of

village Kotil Korotana, Tehsil Ajnala, District Amritsar, on the averments that the suit land was earlier owned by Smt. Resham Kaur to the extent of 1/18 the share and 1/9 the share, who had expired and after her death, the plaintiffs and defendants became owners in possession of the property left by Smt. Resham Kaur to the extent of 1/8th share each. Defendant's no.6 and 7 were also legal heirs of Smt. Resham Kaur and since they had not joined plaintiffs, as such, they had been arraigned as defendants. Defendant's no.1 to 5, had illegally and unlawful propounded one Will dated 28.11.2000 alleged to have been executed by Smt. Resham Kaur in their favour, which, in fact, was never executed. Defendants no.1 to 5 had no legal right to become owner of the whole of the property belonging to Smt. Resham Kaur and on the basis of the said Will, the defendants no.1 to 5 were threatening to alienate the suit land and to oust the plaintiffs from the suit land. Defendants had been requested not to alienate the suit property but they refused to do so.

Defendants were put to notice. Suit was contested only by defendant Nos.1, 2, 3 and 5. They appeared and filed their contesting written statement, raising more than one preliminary objections. Plaintiffs filed their replication. On completion of pleadings of the parties, the learned trial Court framed the following issues:-

- “1. Whether plaintiff no.1 is widow and plaintiff no.2 is daughter of deceased Satnam Singh, predeceased son of Resham Kaur?OPP*
- 2. Whether plaintiffs are owners in possession of the suit land to the extent as mentioned in the head note of the plaint?OPP*
- 3. Whether plaintiffs are entitled to declaration as prayed for?OPP*

4. *Whether plaintiffs are entitled to injunction as prayed for?OPP*
5. *Whether Smt. Resham Kaur executed a legal and valid Will dated 28.11.2000 in favour of defendants no.1, 2, 3 and 5?OPD*
6. *Whether suit is not maintainable?OPD*
7. *Whether suit has been properly valued for the purpose of court fee and jurisdiction?OPD*
8. *Relief.”*

Both the parties brought on record their documentary as well as oral evidence, in support of their respective stands taken in their pleadings. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that the plaintiffs have duly proved their pleaded case by bringing on record cogent and convincing evidence. Accordingly, suit for declaration was decreed to the effect that the plaintiffs were owners in possession of the land to the extent of 1/8th share left by deceased Smt.Resham Kaur, widow of Late S.Dara Singh.

Defendants were also restrained from interfering in the admitted and peaceful possession of the plaintiffs to the extent of their shares by granting them consequential relief of permanent injunction suit was decreed by the learned trial court vide its impugned judgment and decree dated 23.01.2009. Defendants felt aggrieved and filed their first appeal, which also came to be dismissed by the learned first appellate court, vide impugned judgment and decree dated 08.09.2012. Hence, this regular second appeal, at the hands of unsuccessful defendants.

Notice of motion was issued.

Heard learned counsel for the parties.

The real bone contention between the parties was the Will Ex.D1 dated 28.11.2000 allegedly executed by late Smt.Resham Kaur, mother of the appellants. Admittedly, Smt.Resham Kaur was the owner of the suit land. From her marriage with late S.Dara Singh, Smt.Resham Kaur was having eight children in all. Out of them, one was daughter Smt.Gurnam Kaur. Defendant Nos.1 to 6 were the sons of late Smt.Resham Kaur and her seventh son who pre-deceased his mother was Satnam Singh, husband of plaintiff No.1 and father of plaintiff No.2, who are respondent Nos.1 and 2-herein.

A bare perusal of the Will Ex.D1 will make it crystal clear that although she tried to explain as to why she was disinheriting her daughter Smt.Gurnam Kaur from right of her inheritance yet Smt.Resham Kaur, in her Will Ex.D1, was completely silent about her seventh son, namely, Satnam Singh, husband of plaintiff No.1 and father of plaintiff No.2. There is not even a passing reference in the Will about Satnam Singh. No reason is forthcoming as to why Smt.Resham Kaur would completely forget her seventh son at the time of executing her Will in favour of her six sons i.e. defendant Nos.1 to 6. This itself was a strong and suspicious circumstance surrounding 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 record their concurrent findings of facts and the impugned judgments and decrees deserve to be upheld.

Defendants-appellants were propounders of the Will. Thus, being the beneficiaries of the Will, onus was on the defendants to dispel all the suspicious circumstances surrounding the Will in question. However, the defendants miserably failed to prove due execution of the Will and its

genuineness. In such a situation, defendants-appellants were bound to fail. That is what has been held by both the learned courts below. Under these circumstances of the case, it can be safely concluded that the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at his judicious conclusion, the learned Additional District Judge has rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 10 to 12 of its impugned judgment, which deserve to be noticed here, read as under:-

“The heart of the controversy between the parties of this appeal/suit lies in the formulation of issue no.1, which is in regard to the relationship of the respondents/plaintiffs with Resham Kaur. The respondent/plaintiff no.1 in their suit have claimed themselves to be the widow of Satnam Singh son of Dara Singh. She has stated the plaintiff no.2 Sukhraj Kaur to be her minor daughter born from the loins of Satnam Singh husband of Chhinder Kaur, as has been shown in the pedigree table prepared in para no.3 of the plaint. The appellants/defendants while filing the written statement have denied the above said relationship between their brothers Satnam Singh and the respondents/plaintiffs with the stand that Satnam Singh during his life time remained involved in terrorist activities and as such, he had not contacted any marriage during his life time. In order to prove their relationship, the respondent/plaintiff Chhinder Kaur has entered into the witness box as PW1 and has deposed regarding her relationship with Satnam Singh and Smt. Resham Kaur. Her very stand has been

corroborated by PW2 Joginder Singh, Sarpanch. Although, the appellant/defendant Sohan Singh while appearing as DW1 has denied the relationship of the respondent/plaintiff with Resham Kaur, but the appellants/defendants have not denied the relationship of the plaintiff with their brother Satnam Singh, as they have admitted Satnam Singh to be his brother. He has admitted in his cross-examination that his brother Satnam Singh had died prior to the death of his mother Resham Kaur. He has also admitted during the course of his cross-examination that the mutation of inheritance in regard to the property of Satnam Singh has been sanctioned in favour of the respondents/plaintiffs. He has also admitted that the respondents/plaintiffs are cultivating the land left by Satnam Singh. DW2 Tehal Singh who is marginal witness of the will Ex.D1 has admitted during the course of his cross-examination that Chhinder Kaur is widow of Satnam Singh son of Resham Kaur and Sukhraj Kaur is minor daughter of Satnam Singh. Meaning thereby, the relationship between the plaintiff and Resham Kaur, though was denied by the defendants/appellants in their written statement but the same has been admitted by the defendant Sohan Singh and DW2 Tehal Singh during the course of their cross-examination.

A perusal of the jamabandi for the year 1994-95 on record has also shown Chhinder Kaur as widow and Sukhraj Kaur as daughter of Satnam Singh son of Dara Singh. The Will set up by the appellants/defendants has clearly shown that Resham Kaur in the said Will had stated herself to be the widow of Dara Singh. In his way, plaintiff no.1 Chhinder Kaur is directly related to the deceased Resham Kaur as her daughter-in-law and Sukhraj Kaur is directly related to Resham Kaur as her paternal grand daughter. Meaning thereby, they are Class-I legal heirs of the deceased Resham Kaur. In this view of the matter, I have not found any infirmity or illegality in the findings

recorded by the learned lower Court in regard to issue no.1.

As per the findings qua issue no.1, when the respondents/plaintiffs are Class-I heirs of the deceased Resham Singh, then the executant of the Will Resham Kaur should have mentioned the reason for ignoring them while executing the Will Ex.D1. But no mention has been made in regard to them. The other suspicious circumstances in regard to the Will are that the Will in question does not mention as to where (in which village her property is situated). There is no explanation forthcoming as to why Resham Kaur had put two thumb impressions on the Will especially when the deed writer Balraj Kumar had stated that Resham Kaur had put her thumb impressions only at one place. Although, the Will in question is registered one, but still, there is doubt regarding its genuineness and authenticity because of the reason that there is sufficient space left in between the line of the Will and the thumb impressions put up by Resham Kaur. This creates a doubt to the effect that some blank paper, where in two thumbs impression of Resham Kaur had already been put, seems to have been misused by the appellants/defendants. Then, the Will has certainly made mention of the widowed daughter-in-law. All the above said factors and a total denial of the relationship between the plaintiffs and Satnam Singh have shown that the appellants/defendants have set up the present Will Ex.D1 only for the purposes of defeating the rights of the plaintiffs, who are none else but legal heirs of their brother Satnam Singh and as such legal heirs of Resham Kaur. In this view of the matter, the learned lower Court has rightly decided the issue no.5.”

Learned counsel for the appellants sought to justify the action of Smt.Resham Kaur in completely ignoring her seventh son Satnam Singh

during his lifetime and he pre-deceased his mother Smt.Resham Kaur, she was not happy with her son Satnam Singh and for this reason, she was justified to disinherit him. However, this contention raised by learned counsel for the appellants did not cut any ice with this Court for the reason that undesirable activities, if any, by her son late Sh.Satnam Singh would never be a ground for Smt.Resham Kaur to disinherit her own granddaughter and daughter-in-law.

She was not expected to leave the plaintiffs in lurch like the manner she did, leaving no source of livelihood for the plaintiffs. It is so said because it is not even the pleaded or argued case on behalf of the defendants-appellants that the plaintiffs had other source of livelihood at their disposal. In such a situation, the Will in question cannot said to be a genuine document. Further, since Smt.Resham Kaur was living with the appellants, it was also for the appellants to plead and prove that they did not exercise any undue influence on the testator Smt.Resham Kaur at the time of execution of the Will in question. In this regard, there is not even an iota of evidence placed on record by the appellants. In this view of the matter, no fault can be found with the concurrent findings of facts recorded by the learned courts below and the impugned judgments and decrees deserve to be upheld, for this reason as well.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court in Bharpur Singh and others Versus Shamsher Sigh, 2009(3) SCC 687, Baljinder Singh Versus Rattan Singh, 2008(16) SCC (785), Nirmal Singh and another Versus Smt.Harbans Kaur and others, 2014(89) RCR (Civil) 117, Dhar Kaur (Smt.) Versus Parkash Singh and others,

2007(3) RCR (Civil) 308, Bhajan Singh Versus Smt.Jaswant Kaur, 1996 (1) Civ.C.C. 628, Om Parkash and others Versus Shiv Kumar and others, 2007(5) RCR (Civil) 542 and Apoline D'Souza Versus John D'Souza, 2007(7) SCC 225.

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned courts below. He was also unable to refer to any question of law much less substantial question of law, which is *sine qua non* for entertaining any 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 judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others**, 2009 (2) RCR (Civil) 286 and **Santosh Hazari Versus 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 wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

September 11, 2017
seema

(**RAMESHWAR SINGH MALIK**)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No