

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

RSA No.1083 of 2017 (O&M)

Date of decision: 23.02.2017

Subhash and another

... Appellants

Vs.

Smt. Omi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Ajay Kumar Kansal, Advocate
for the appellants.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the impugned judgment and decree dated 12.01.2017 passed by the learned first appellate Court, whereby their first appeal was dismissed and the impugned judgment and decree dated 21.11.2013 of the learned trial Court, dismissing the suit for declaration and injunction, plaintiffs have approached this Court by way of present regular second appeal.

Brief facts of the case, as noticed by learned first appellate Court in para 3 of its impugned judgment, are that the plaintiffs filed a suit for declaration to the effect that they were owners in possession of the suit land detailed in the head note of plaint situated in revenue estate of village Bhartana, Tehsil Safidon, District Jind as per Jamabandi for the year 2004-2005 vide Will dated 16.08.2007 executed by deceased Balwant Singh s/o Hazari in their favour and mutation No.1236 sanctioned on 15.12.2007 by AC II Grade, Pillu

Khera in favour of defendants was illegal and null and void, with a consequential relief of permanent injunction restraining defendants from making any kind of interference over suit land forcibly and illegally. The plaintiffs had averred that plaintiff No.2 is minor and he was being sued through his mother and natural guardian - Smt. Bhateri widow of Muni Ram, who had no adverse interest to that of minor. It was alleged that the suit property as detailed in paragraphs (i) to (v) head note of the plaint was earlier owned and possessed by Balwant son of Hazari, who was father of plaintiff No.1 and grandfather of plaintiff No.2. Said Balwant used to reside with the plaintiffs and he had special love and affection for them. During his lifetime, Balwant had bequeathed his entire movable and immovable properties, including the suit land in favour of the plaintiffs by way of Will dated 16.08.2007, which was executed in the presence of Baljeet Singh son of Ram Narain, Ram Narain son of Hazari and Bijender, Panch son of Om Parkash. Said Balwant died on 17.08.2007, due to heart attack in the wee hours. After his death, the plaintiffs inherited the suit land as per the Will dated 16.08.2007 and they also continued to be in possession of the suit property since the lifetime of said Balwant. Therefore, the defendants had no right, title or interest in the suit property. It was further alleged that in the first week of May 2008, the plaintiffs approached the Halqa Patwari for sanctioning of inheritance Mutation of deceased Balwant Singh as per the Will dated 16.8.2007, however, they came to know that the defendants had succeeded in obtaining inheritance mutation No.1236 dated 15.12.2007 despite having the knowledge of the Will dated 16.8.2007. It was also alleged that impugned mutation No.1236 in favour of defendants was illegal, null and void and not binding upon their rights. The plaintiff requested

the defendants several times to get the impugned mutation set aside and also not to interfere in their possession upon the suit property, but they refused to accede to their requests.

Having been served in the suit, defendants appeared. Defendants No.1 and 2 filed their joint written statement admitting the claim of the plaintiffs. However, defendants No.3 and 4 contested the suit and filed their written statement, raising more than one preliminary objections. Defendants No.3 and 4 also set up a counter-claim contending that inheritance mutation No.1236 was rightly entered and sanctioned ignoring the Will dated 16.08.2007. Plaintiffs filed their written statement to counter-claim, reiterating their averments taken in the plaint.

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

1. Whether the plaintiffs are entitled for declaration as well as injunction, as alleged? OPP
2. Whether the suit of the plaintiffs is not maintainable in the present form? OPD
3. Whether the plaintiffs have got no cause of action and locus standi to file the present suit? OPD
4. Whether the plaintiffs are estopped from filing of the suit by their own act and conduct? OPD
5. Whether the plaintiffs have suppressing true and material facts from the court? OPD
6. Whether the plaintiff has estopped by his own act and conduct from filing the present suit? OPD

7. Relief.

With a view to prove their respective pleaded cases, both the parties produced their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiffs have failed to prove their case. Will Ex.P8 was found surrounded by suspicious circumstances. Accordingly, the suit of the plaintiffs was dismissed and counter-claim of defendants No.3 and 4 was decreed, declaring the Will dated 16.08.2007 Ex.P8 as illegal, null and void, vide impugned judgment and decree dated 21.11.2013. Dissatisfied, plaintiffs filed their first appeal, which also came to be dismissed by the learned first appellate Court, vide its impugned judgment and decree dated 12.01.2017. Hence this regular second appeal at the hands of unsuccessful plaintiffs.

Heard learned counsel for the appellants.

The entire case of the plaintiffs-appellants revolves around the Will which is dated 16.08.2007 Ex.P8 and photocopy thereof has been placed on record of the present file as Annexure A-1, at page 77 of the paper book. When translated into English, the Will reads as follows: -

“I, Balwant Singh son of Hazari son of Harke resident of Bhartana state that I being unwell, my moveable and immovable property will be mine till I am alive and after my death, it will be of my son Subhash and my grandson Sahil.

Dated: 16.08.2007

Balwant Singh son of Hazari (Hindi)

Sd/- in English

1. Witness Baljeet Singh

2. Witness Ram Narayan

3. Witness Panch Bipender

16.08.2007”

A bare perusal of the abovesaid Will dated 16.08.2007 Ex.P8 will make it abundantly clear that there was not even a passing reference of any other family member of late Sh. Balwant Singh, in spite of the fact that he had three daughters namely Smt. Omi, Smt. Kamlesh and Smt. Rajbala. It is also pertinent to note here that Balwant Singh died on the very next day i.e. on 17.08.2007. Plaintiffs did not seek entering and sanctioning of the mutation qua the moveable and immovable property of Balwant Singh on the basis of abovesaid Will. The revenue authorities entered and sanctioned mutation No.1236 dated 15.12.2007 Ex.DW2/A on the basis of inheritance. Thereafter, the present suit came to be filed by the plaintiffs on 13.12.2008 as a suit for declaration and injunction, propounding the Will dated 16.08.2007 Ex.P8 and also challenged the abovesaid mutation No.1236 to be illegal and not binding on their rights.

Since the plaintiffs were propounders of the Will, heavy onus was on them to dispel the suspicious circumstances. Not giving even passing reference of other legal heirs, itself was a suspicious circumstance about the genuineness of the Will Ex.P8. Plaintiffs-appellants have miserably failed to discharge their onus and they could not dispel suspicious circumstances 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 pass the impugned judgments and decrees and the same deserve to be upheld.

The abovesaid view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in **Rani Purnima Debi and another Vs. Kumar Khagendra Narayan Deb and another**, 1962 AIR (SC) 567, 2001 (3) RCR (Civil) 134, **Om Parkash and others Vs. Shiv Kumar and others**, 2006 (12) SCC 369 and **Bharpur Singh and others Vs. Shamsher Singh**, 2009 (1) RCR (Civil) 826.

A bare combined reading of both the impugned judgments passed by the learned Courts below would show that the learned Courts have considered each and every relevant aspect of the matter in minute details, before recording their concurrent findings, which have been found based on sound reasons. There is another serious suspicious circumstance surrounding the Will and it is that Subhash-plaintiff/appellant himself scribed the Will, despite being himself as beneficiary of the Will. Will was scribed on 16.08.2007 and Balwant Singh expired on the very next morning i.e. at 07.00 am on 17.08.2007. This is what has been stated by plaintiff-appellant Subhash in his cross-examination as PW1.

Plaintiffs also failed to prove that the Will bears signatures of its executant-Balwant Singh. They did not examine any handwriting and fingerprints expert in spite of the fact that the defendants had categorically pleaded that it was a forged and fabricated document. As noticed hereinabove, the total Will was not covering more than 1/4th of an ordinary paper sheet. It is also not in evidence on behalf of the plaintiffs-appellants that Balwant Singh testator was unable to scribe the Will himself, in spite of the fact that he was matriculate. Further, the Will and signatures of the testator are in different inks, meaning thereby the Will was scribed with different pen, which was quite dark,

whereas it was signed by Balwant Singh with separate light pen.

The Will did not contain any details of the property belonging to Balwant Singh nor any reason, whatsoever, was assigned as to why he was excluding his other children from the natural inheritance. Under these circumstances, it can be safely concluded that the Will was surrounded by very many suspicious circumstances, rendering the Will to be doubtful and not a genuine document. Since the learned Courts below have rightly appreciated this material aspect of the matter in correct perspective, the impugned judgments and decree deserve to be upheld, for this reason also.

So far as the judgments of the Hon'ble Supreme Court as well as this Court and High Court of Patna in **Mahesh Kumar (Dead) by LRs Vs. Vinod Kumar and others, 2012 LawSuit (SC) 170, Inderjit Kaur Vs. Hari Singh and others, 2015 LawSuit (P&H) 864, MT Ramjhari Kuer Vs. Deyanand Singh, 1945 LawSuit (Pat) 114 and Ambika Devi Vs. Balmakund Pandey, 1980 LawSuit (Pat) 16**, relied upon by learned counsel for the appellants are concerned, there is no dispute about the observations made and law laid down therein. However, a close perusal of the cited judgments would show that none of them is of any help to the appellants, being distinguishable on facts. It is settled proposition of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausund Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas,**

2006 (1) SCC 275 and State of Rajasthan Vs. Ganeshi Lal, 2008 (2) SCC 533.

With a view to avoid repetition and also for the sake of brevity, the observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in **Ganeshi Lal's** case (supra), reiterating its earlier view taken in **Amrit Lal Manchanda's** case (supra) and **Mohd. Illiyas's** case (supra), which can be gainfully followed in the present case, read as under:-

“11. “12....Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason

or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. Ed. See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact

situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V. Sandham (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of

Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the

side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it Ed. See Union of India Vs. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

Before arriving at a judicious conclusion, learned first appellate Court reconsidered the factual as well as legal aspect of the matter, rightly appreciating the evidence available on record. The cogent findings recorded by the learned first appellate Court in para 16 of its impugned judgment, which deserve to be noticed here, read as under: -

*"It may also added here that our Hon'ble High Court in **Hazara Singh (Dead) Through L.Rs. And Ors. Versus Vs. Kashmir Kaur & Ors, 1998(2) CCC 453** while dealing with due execution of Will, held that since Will was scribed on an ordinary paper, did not contain Khasra numbers and there were contradictions in the statement of witnesses, as such, due execution of Will as well as its attestation can not be said to have been proved. In **Bharpur Singh v. Shamsheer Singh : 2009(1) R.C.R.(Civil) 826**, the Hon'ble Apex Court held that when the Will is allegedly shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and defendant and that an adversarial proceeding in such cases becomes a matter of Court's conscience and propounder of the Will has to remove all suspicious circumstances to satisfy that Will was duly executed by testator wherefor cogent and convincing explanation of suspicious circumstance shrouding the making of Will must be offered. With regard to one of the contention raised by*

*ld. Counsel for appellants to the effect that since sisters of plaintiffs i.e. defendants no. 1 and 2, have admitted execution of Will in question, as such, ld. Trial court ought to have held it valid, it needs mentioning here our Hon'ble High Court in **Mohinder Kumari v. Prem Lata , (P&H) : 2008(2) R.C.R.(Civil) 288**, while dealing with a dispute regarding proof of Will, held that once a party propound a Will, in that case, the said party has to prove the fact that the same is a legal and valid document and is the last testamentary of deceased and that mere admission of validity of Will by one of several parties will not bind the others, because the Will cannot be held valid qua others only on the basis of such admission by one. In the light of above, the contentions raised by ld. Counsel for appellants are not tenable and the various judgments cited by learned counsel for the appellants are not applicable to the facts and circumstances of the instant case. Each case depends on its own facts and circumstances. One particular circumstance may not be a suspicious circumstance in a given case but the same may be so in another case. However, the cumulative effect of all the circumstances mentioned above leads to the conclusion that the alleged Will is not a genuine document. It is thus, apparent that the Court below after minutely examining the deposition of witnesses in right perspective, returned a categorical finding that the Will is shrouded by suspicious circumstances and therefore, impugned judgment can not be faulted with. ”*

During the course of hearing, learned counsel for the appellants

could not point out any patent illegality or perversity in the concurrent findings of facts recorded by the learned Courts below. He also could not raise 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 law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

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 regular second appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground 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.

23.02.2017

vishnu

**[RAMESHWAR SINGH MALIK]
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No