

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

**RSA-2100-2017 (O&M)
Date of decision:- 10.10.2017**

Paramjit Singh and others

...Appellants

Versus

Sarabjit Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Hardip Singh, Advocate,
for the appellants.

RITU BAHRI J. (Oral)

Appellants-plaintiffs have come up in appeal against the judgment and decree dated 23.05.2016, passed by the learned Additional Civil Judge (Sr. Divn.), Rupnagar, whereby the suit filed by the appellants-plaintiffs for joint possession has been dismissed and the judgment and decree dated 27.01.2017, passed by the Additional District Judge, Rupnagar, by which the appeal against the judgment and decree dated 23.05.2016, has been dismissed.

Plaintiffs were seeking relief of possession on the ground that they are resident of village Barri Rallon, Tehsil & District Ropar. Bakhtaur Singh had inherited the property from his father Munshi. After the death of Bakhtaur Singh, the property in dispute was inherited by his four sons, namely, Sohan Singh, Gurmail Singh, Ajmer Singh and Swaran Singh.

Gurmail Singh (since deceased) was unmarried and issueless and he had been residing with the plaintiffs during his life time. Gurmail Singh died on 02.07.1999 in General Hospital, Sector 16, Chandigarh.

Defendants to Will dated 10.07.1997 alleged to have been executed by Gurmail Singh in favour of the defendants and the mutation has been allegedly and wrongly entered in favour of the defendants on the basis of the said alleged forged and fabricated Will dated 10.07.1997. Gurmail Singh deceased never resided together with the defendants nor he was ever joint in mess and boarding with the defendants. There was no occasion for Gurmail Singh to execute the alleged will in favour of the defendants. Even the last rites and bhog ceremony of deceased Gurmail Singh had been performed by the plaintiffs. No notice has been issued to the plaintiffs at the time of entering of the mutation in question or any other legal heirs of deceased Gurmail Singh and ex-parte mutation has been sanctioned in favour of the defendants at the back of the plaintiffs. An appeal filed by plaintiffs against the order dated 06.01.2009 before the Court of Assistant Collector, 1st Grade, Ropar, which was dismissed on 29.10.2010. Hence, the suit was filed.

On notice of the suit, the claim of the plaintiffs was resisted by the defendants, taking the preliminary objections that suit is not maintainable in the present form. The plaintiffs have no locus-standi to file the present suit. It was averred that Gurmail Singh son of Bakhtawar Singh resident of Bari Railon, has executed a registered Will dated 10.07.1997 in favour of the defendants and the same was executed by him in sound disposing state of mind. The plaintiffs have already challenged the validity

of the Will dated 10.07.1997 firstly before the revenue Courts and after having failedm they have filed the present suit.

From the pleadings of parties, the following issues were framed on 08.02.2012: -

- “(1) Whether plaintiffs are entitled to the joint possession to the extent of 1/6th share each of the land in suit? OPP.
- (2) Whether the Will dated 10.07.1997 alleged to have been executed by Gurmail Singh in favour of the defendants and mutation No.691 on the basis of the same is forged and fabricated documents? OPP.
- (3) Whether the order dated 29.10.2010 passed by Assistant Collector 1st Grade and order dated 28.06.2011, passed by Collector, Ropar are illegal, null and void having no effect on the rights of the plaintiffs? OPP
- (4) Whether the plaintiffs are entitled to permanent injunction as prayed for? OPP
- (5) Wether the suit of the plaintiffs is not maintainable? OPD.
- (6) Whether the plaintiffs have not come to the court with clean hands? OPD.
- (7) Whether the suit is time barred? OPD.
- (8) Relief.”

Issues No.1 to 4 were taken up together.

The evidence of the plaintiff was in the form of oral testimony of plaintiffs, namely, Paramjit Singh, Surjit Kaur and one Balwinder Singh and documentary evidence i.e. jamabandi for the year 2005-06 and orders of the Revenue Courts. PW1 Amarjit Singh in his cross-examination deposed that he does not know as to whether any litigation was pending in the Court of SDM, Rupnagar regarding inheritance of Gurmail Singh or not. Even he could not tell as to whether the said court has decided against the plaintiffs or not. Plaintiffs did not specifically denied as to whether the defendants are in cultivating possession of the property in dispute or not. The execution of the will was admitted by the plaintiffs. Surjit Kaur was examined as

PW2, who although in her examination-in-chief has supported the case of the plaintiffs and has specifically deposed that she know the parties and is well aware of the facts of the present suit. But in her cross-examination she has admitted that she has not seen the revenue record of the property in dispute. Balwinder Singh, who appeared as PW3, did not come forward to face cross-examination by defendants. Thus, the oral evidence of one of the plaintiff PW1 and other one of PW2 Surjit Kaur was not much supported to the plaintiffs.

At the same time, the defendants, who had set up the registered Will in their favour stated to be executed by deceased Gurmail Singh have duly proved the execution of the same as they have produced the original Will executed by Gurmail Singh in favour of the defendants as Ex.D1. The original will dated 10.07.1997 was on record and his execution was duly proved as the same was presented in the office of Sub-Registrar, Rupnagar for its registration in the presence of attesting witnesses. Moreover, as per evidence produced by the defendants, deceased-Gurmail Singh used to reside with the defendants and the defendants were rendering their services towards said Gurmail Singh and plaintiffs never served Gurmail Singh during their life time. Defendants have produced the documents i.e. Ex.D5 and Ex.D6, which shows that last rites of deceased Gurmail Singh were performed by defendants. The will was executed on 10.07.1997 and Gurmail Singh died on 02.07.1999 i.e. after two years of gap from execution of Will.

It has been observed that the plaintiffs have failed to satisfy the Court as to how their suit falls within the period of limitation as the will

executed by Gurmail Singh was of the year and the suit was filed in the year 2001 i.e. after a gap of 14 years. Even on account of limitaiton, the suit was liable to be dismissed. Consequently, the finding on issues No.4 and 5 was given in favour of the defendants and issues No.5 and 6 were not pressed by the plaintiffs and the suit of the plaintiffs was dismissed.

Learned lower Appellate Court has dismissed the appeal and affirmed the finding of fact that the execution of the Will (Ex.D1) was duly proved by examining the attesting witness DW-2 Sharanjit Singh and DW-3 Tirath Singh, scribe of the Will, as per Section 68 of the Indian Evidence Act. Moreover, on the basis of oral evidence of the plaintiffs, the Will could not be declared as null and void. Further, the appeallate Court has referred to a judgment passed by this Court in case **Tara Singh Vs. Smt. Shani and others**, 1988(1) RLR 346, wherein it has been held that the testator deprived his real daughters and bequeathed the property to a relative, with whom he lived, such fact cannot be said to be a suspicious circumstance to discard the will which otherwise was found genuine.

The Supreme court in case **Rabindra Nath Mukherjee & Anr. Vs. Panchanam Banerjee (dead) by L.R.'s and others'**, 1995(2) Civil Court Cases 396, has further held that where natural heirs are deprived, it could not be termed to be a suspicious circumstance because the whole idea behind execution of a Will is to interfere with the natural line of succession.

Learned lower Appellate Court has further referred to a judgment of the Calcutta High Court in case **Shib Prosad Sadhukhan Vs. Nemai Chandra Ghosal**, 1991 Civil Court Cases 124, in which it was held that the Will was produced after about 17 years for sanctioning of

mutation would not be a case of suspicious circumstance for the purpose of judging the validity of a Will.

In the present case, after execution of the Will (Ex.D1), the testator had remained alive for two years and he never challenged the same. Hence, once the scribe and attesting witness have proved the execution of the Will while appearing in the Court and even mutation has been contested by the plaintiffs, the concurrent finding of facts recorded by both the Courts below does not require any interference by this Court.

No substantial question of law arises for adjudication by this Court.

The present Regular Second Appeal is dismissed.

October 10, 2017
naresh.k

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No