

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

**Regular Second Appeal No. 2420 of 2017 (O&M)
Date of decision: 14.11.2017**

Jinder Kaur alias Manjit Kaur

.....Appellant

Versus

Balbir Kaur and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Arun Bansal, Advocate,
for the appellant.

Ritu Bahri, J.

This appeal has been directed against the judgments (dated 11.12.2013 & 27.02.2017) of concurrent findings of fact recorded by both the Courts below i.e. Addl. Civil Judge (Senior Division), Bathinda and the Additional District Judge, Bathinda, whereby suit filed by the plaintiff-appellant for declaration and possession, has been dismissed.

Jinder Kaur alias Manjit Kaur-plaintiff (appellant herein) filed a suit for declaration and possession alleging that Hardev Singh son of Chana Singh was owner in possession of land as detailed in the head note of the plaint. Hardev Singh expired on 12.08.2005. Land in dispute in the hands of Hardev Singh was ancestral, joint Hindu family property and he was *karta* of the said joint Hindu family consisting of plaintiff and defendant Nos. 1 and 5. Plaintiff was having $\frac{1}{2}$ share in the said land being a member of joint Hindu family. After the death of Hardev Singh, plaintiff-appellant became owner in possession of her share in the suit land. Defendant Nos. 1 to 4 alleged that Hardev Singh had executed Will No.173 dated 20.11.2003 in their favour. As per plaintiff-appellant, the said Will was illegal, null and

void, inoperative and unconstitutional as the land in the hands of Hardev Singh was ancestral property, which was inherited by him from his forefathers and purchased with the income of joint Hindu family. He had no right to alienate the same by way of Will. It was further alleged that Hardev Singh was not keeping good health and did not possess any testamentary capacity. Taking advantage of his feeble mental and physical condition, defendant-respondent Nos.1 to 4 and Balbir Kaur (deceased) had manipulated the execution of alleged Will, whereby entire land in the hands of Hardev Singh had been taken away by them. By way of civil suit, mutation sanctioned on the basis of aforesaid Will, has been challenged by the plaintiff.

Upon notice, defendant-respondent No.1 filed written statement taking preliminary objections with regard to maintainability; locus standi; cause of action to file the suit etc. On merits, it was stated that mutation No.5046 regarding inheritance of Hardev Singh was sanctioned by SDM, Bathinda after visiting the spot on 23.11.2005, which was upheld by the Deputy Commissioner, Bathinda vide order dated 28.02.2006. Against the said order(s), plaintiff had preferred revision before the Commissioner, Faridkot Division, Faridkot, whereupon the case was remanded back to the SDM, Bathinda. Thereafter, SDM, Bathinda, passed a fresh order dated 29.02.2008 and again decided the matter in favour of defendant Nos.1 to 4 on the basis of aforesaid Will. The said order was upheld by ADC vide his order dated 29.07.2008. Against this order, plaintiff filed a revision before the Commissioner, Faridkot, which was wrongly accepted and vide order dated 20.05.2009, mutation was sanctioned on the basis of natural succession. Operation of the said order was stayed by the Financial

regard to these litigations in her plaint. It was further stated that Hardev Singh did not constitute any joint Hindu family. Relationship between the parties was not disputed. Defendant Nos. 2 to 4, in their separate written statement, reiterated the averments made by defendant No.1 in her statement. Defendant No.5 also reiterated the stand taken by other defendants.

Defendant Nos.1 to 4 also filed counter claim seeking the relief of declaration that orders dated 20.05.2009 and 18.02.2010 passed by Commissioner, Faridkot and FCR, Punjab, whereby mutation sanctioned on the basis of Will No.17 dated 20.11.2003, had been rejected, were illegal, null and void. They also sought relief of permanent injunction restraining the plaintiff from transferring/alienating any portion of the suit property and dispossessing the counter claimants from the suit property. All other averments made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled for the relief of declaration as prayed for? OPP
2. Whether the plaintiff is entitled for the relief of joint possession as prayed for? OPP
3. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
4. Whether the plaintiff has no locus standi or cause of action to file the present suit? OPD
5. Whether Will No.173 dated 20.11.2003 executed by late Hardev Singh is a genuine and valid Will? Onus on counter claimants

5-A. If, issue No.5 is proved, whether counter claimants are entitled to declaration as prayed by them? Onus on counter

claimants.

5-B. Whether counter claimants are entitled to permanent injunction as prayed for? Onus on counter claimants

6. Whether the suit is not maintainable in the present form? OPD

7. Whether the suit of the plaintiff is within limitation? OPP

8. Whether the suit is barred under Order 2 Rule 2 CPC? OPD-CC

9. Whether the counter claim is not properly valued for the purpose of court fee and jurisdiction? OPP

10. Relief.

Trial Court had taken up issue Nos.1, 2, 3, 5, 5A and 5B together being interconnected. Defendant-respondents had taken permission from the trial Court to prove the Will by way of secondary evidence. In order to prove execution of the Will in question, defendants examined attesting witness namely Chamkaur Singh (DW-5), who stated that he had seen the original Will. During trial, revenue record was got summoned by the plaintiff herself, in which original affidavit dated 12.11.2007 given by Chamkaur Singh was lying. He had tendered into evidence certified copy of the Will before the Assistant Collector, Ist Grade. Thus, existence of the Will stood duly proved and permission to prove the said Will by way of secondary evidence was granted to the defendants. Consequently, in order to prove due registration of the Will in question, defendants examined Naresh Kumar from the office of Sub Registrar as DW-2. Naresh Kumar, Advocate, scribe of the Will, was examined as DW-3, who had categorically deposed that the Will in question was scribed by him at the instance of Hardev Singh. Jasvir Singh (DW-1) proved on record DDR No.8 dated 17.01.2006 Ex.DW1/A with regard to loss of Will. Naresh Kumar (DW-2) proved certified copy of Will dated 20.11.2003 as Ex.DW3/1. Bhupinder Kaur, daughter of Hardev Singh stepped into the witness box as DW-8 and deposed that her father had executed the Will in question in his free mind and in sound disposing mind

without any fear.

While deciding the pleading of plaintiff that the Will was surrounded by suspicious circumstances, trial Court has observed that not even an iota of evidence had been led by the plaintiff to prove that Hardev Singh was not keeping good health. However, during cross-examination plaintiff-Jinder Kaur had deposed that her father was able to walk properly prior to his death. The plaintiff had also tendered into evidence copy of judgment passed by this Court in Criminal Appeal No.263 of 1994 as Ex.P8, which showed that Hardev Singh had suffered injuries as defined under Section 307 IPC at the hands of Jinder Kaur. Trial Court held that this would not be sufficient to return a finding that Hardev Singh was not keeping good health in 2003. This was so said because the injuries were inflicted in the year 1990 and the Will was executed in 2003. Further, plaintiff (PW-1) and Harmail Singh (PW-2), in their cross-examination, admitted that they were not on visiting terms with his in-laws. Since the plaintiff was not having cordial relations with Hardev Singh, the Will could not be said to be surrounded by suspicious circumstances. With these observations, trial Court held that the Will in question was a valid document and the suit filed by plaintiff was dismissed with costs.

On appeal, lower appellate Court affirmed the findings recorded by the trial Court. It was observed that the main contention of plaintiff-appellant that Will Ex.AX was the result of fraud, misrepresentation of facts, undue pressure and coercion, was devoid of any merit. Except bald assertions, no evidence was led by the plaintiff to prove that Will Ex.AX was the result of fraud, forgery and undue influence. Only vague and general plea of forgery would not be sufficient to declare the Will as illegal and null

appellant to prove the fact that the Will in question was not executed by Hardev Singh or it did not bear his thumb impression. The Will has been admitted by the real sister of plaintiff namely Bhupinder Kaur, who had appeared as DW-8 and admitted execution of the same by her father Hardev Singh. Even Balbir Kaur, who was widow of Hardev Singh, had admitted execution of the Will in favour of defendant Nos.1 to 4. The Will being a registered document, a strong presumption of truth is attached therewith as the registration was performed in the presence of competent official/officer appointed to act as Registrar, whose duty is to attend the parties during the registration and see that the proper parties are present and all the things done before him in his official capacity are verified by his signatures. The lower appellate Court has placed reliance on the decision given in **Subash Chander Kumar vs. Prabhu Dayal**, 1994 PLJ 443, **Kartar Kaur and another vs. Bhagwan Kaur and others**, 1993 PLJ 63 and **Lila Dhar vs. Smt. Badho and another**, 1993 PLJ 801, wherein consistently, it has been held that certificate endorsed by Registering Officer on the document is admissible to prove that executant was of sound mind. In this backdrop, Will Ex.AX was held to be a legal document.

The lower appellate Court further observed that the main purpose to execute the Will was to interfere with the natural line of succession. Once, execution of the Will is proved, even divesting of close relations was not a suspicious circumstances as divesting of close relations was the main purpose for the execution of the Will. This aspect has been considered by Hon'ble the Supreme Court in **Sadasivam vs. K. Doraisamy**, 1996 (1) Apex Court Journal 1 (SC), **Harpal Singh vs. Jagdish Singh and others**, 2006 (1) PLR 503 and **Krishna Kumar Birla vs. Rajendra Singh Lodha and others**,

could not lead any evidence to show that the property in the hands of her father Hardev Singh was ancestral in nature. In the absence of any evidence, the property was presumed to be a self acquired property and on this point, reference was made to a judgment passed by this Court in **Harpal Singh vs. Jiwan Kumar and others**, 2013 (1) Civil Court Cases 459 (P&H). With these observations, appeal filed by plaintiff-appellant has been dismissed by the lower appellate Court.

After going through the impugned judgments, this Court is of the view that suit filed by plaintiff-appellant has rightly been dismissed by both the Courts below, as the plaintiff has miserably failed to prove that the suit property at the hands of Hardev Singh was ancestral property. On the other hand, defendant-respondents have duly proved execution and registration of the Will in question by examining attesting witness namely Chamkaur Singh (DW-5), who stated that he had seen the original Will on 12.01.2007. Naresh Kumar (DW-2) proved on record certified copy of Will dated 20.11.2003 as Ex.DW3/1. Further, defendants have also examined Naresh Kumar, Advocate as DW-3, who had scribed the Will in question.

Hence, having examined the impugned judgments, no illegality, much less perversity, has been found therein, warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Dismissed.

14.11.2017
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No