

RSA No. 2839 of 2017 (O&M)

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

RSA No. 2839 of 2017 (O&M)

Date of Decision: 25.7.2017

Baljinder Kaur

.....Appellant

Vs.

Jatinder Kaur

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. V.K. Sandhir, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Instant regular second appeal, at the hands of defendant, is directed against the judgment of reversal dated 14.3.2017 passed by the learned first appellate court, whereby judgment and decree dated 23.4.2015 of the learned trial court were set aside and suit for declaration filed by the plaintiff-respondent was decreed.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that plaintiff filed a suit for declaration to the effect that she was co-sharer/co-owner in possession to the extent of 1/4th share in land measuring 20 Kanals 3 Marlas situated at Village Aliwal Araian H.B No.270, Tehsil Batala District Gurdaspur as shown in Jamabandi for the year 2006-2007 and fully detailed in the head note of the plaint alongwith consequential relief of permanent injunction,

RSA No. 2839 of 2017 (O&M)

restraining the defendant from interfering in joint possession of the plaintiff or alienating the suit property in any manner or in the alternative suit for joint possession of the suit land pleading inter alia that Gurbhej Singh son of Mangal Singh was original owner in possession to the extent of $\frac{1}{2}$ share in the suit land. Said Gurbhej Singh expired on or about 31.3.2011 leaving behind plaintiff and defendant as his daughters and Smt Darshan Kaur as his widow. Subsequently said Darshan Kaur also expired. As such, only plaintiff and defendant were in possession of the suit property left behind by Gurbhej Singh being his legal heirs.

Defendant was alleging that Gurbhej Singh had executed a Will in her favour. In fact, no such Will was executed by Gurbhej Singh. Will if any, was illegal, null, void, inoperative, forged and fabricated document. It must have been prepared by defendant in connivance with scribe and marginal witnesses of the same. There was no occasion for deceased Gurbhej Singh to disinherit his wife Darshan Kaur and plaintiff from the suit property. Even otherwise, Gurbhej Singh was not competent to execute any Will regarding the suit property as same was Joint Hindu Family Ancestral Property inherited from his forefathers. As such, plaintiff and defendant had birthright and title in the suit property. Subsequently, defendant also got sanctioned mutation in her favour in an illegal manner. Same had been got sanctioned by her in connivance and conspiracy with revenue authorities. Even name of plaintiff was not mentioned as daughter of Gurbhej Singh in the pedigree table prepared at the time of mutation. Plaintiff was also not served with any notice of the mutation. As such, said mutation did not confer any title on the defendant over the suit property. However, defendant was threatening that she will interfere in joint possession of the plaintiff or will

RSA No. 2839 of 2017 (O&M)

alienate the suit property illegally and forcibly. Said denial of title of plaintiff and threat given by the defendant cast a cloud on the title of the plaintiff over her share in the suit property. Hence, this suit for declaration, permanent injunction and in the alternative for joint possession of the suit property.

Having been put to notice, defendant put appearance and filed her contesting written statement, raising more than one preliminary objections. Plaintiff filed her replication controverting the averments taken by the defendant in the written statement.. On completion of pleadings of the parties, the learned trial court framed the following issues:-

- 1- Whether the plaintiff is entitled for the relief of declaration as prayed for?OPP
- 2- Whether the suit is not maintainable against the defendant?OPD
- 3- Whether the plaintiff has no locus standi to file the present suit?OPD
- 4- Whether Gurbhej Singh deceased had executed any legal, valid and operative Will dated 14.7.2008 in favour of the defendant?OPD
- 5- Whether deceased Gurbhej Singh was competent to execute the alleged Will dated 14.7.2008 in favour of the defendant qua the land in dispute?OPD
- 6- Relief

In support of their respective stands taken in their pleadings, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiff has failed to prove her case. Accordingly, suit for declaration filed by the plaintiff, challenging Will dated 14.7.2008 executed by late Sh.

RSA No. 2839 of 2017 (O&M)

Gurbhej Singh-father of plaintiff in favour of defendant, was dismissed by the learned trial court, vide its judgment and decree dated 23.4.2015. Feeling aggrieved, plaintiff filed her first appeal, which came to be allowed by the learned Additional District Judge, vide impugned judgment and decree dated 14.3.2017. Hence this regular second appeal at the hands of defendant.

Heard learned counsel for the appellant.

Relationship between the parties is not in dispute. Parties to this litigation are real sisters and daughters of late Sh. Gurbhej Singh. Bone of contention in the instant litigation is the Will dated 14.7.2008 (Ex.D1) executed by late Sh. Gurbhej Singh in favour of defendant, disinheriting his other daughter-plaintiff. In the absence of the Will in question, plaintiff-respondent would have been entitled to inherit the property left behind by her father to the extent of her share.

Since the defendant-appellant was beneficiary and propounder of the Will, onus was on her to prove issue No.4, as to whether Gurbhej Singh-deceased had executed any legal, valid and operative Will dated 14.7.2008 in favour of defendant. However, defendant-appellant failed to dispel more than one suspicious circumstances surrounding the Will, which was rightly held not to be a genuine document by the learned first appellate court. Having said that, this Court feels no hesitation to conclude that the learned Additional District Judge was well within his jurisdiction to pass the impugned judgment and decree and the same deserve to be upheld.

No doubt, presumption of truth is attached with the registered document, registered Will dated 14.7.2008 in the case in hand. However, it is equally true that such presumption would always be rebuttable. A bare

RSA No. 2839 of 2017 (O&M)

perusal of the Will (Ex.D1), would leave no room for doubt that it was a procured document by the defendant-appellant and was surrounded by more than one suspicious circumstances. It is so said, because executant of the Will-late Sh. Gurbhej Singh claimed defendant-appellant to be his only daughter which was factually incorrect. She also did not give any plausible reason as to why late Sh. Gurbhej Singh disinherited his wife. It was only pointed out that she was given cash amount for her maintenance on the date of execution of the Will, however, no amount was specified.

It was also pointed out in the Will that Sh. Gurbhej Singh was living with the defendant-appellant at the time of execution of the Will. There was not even a passing reference in the Will about the plaintiff-respondent. Under these circumstances, it can be safely concluded that the Will was not a valid and genuine document, as it was surrounded by suspicious circumstances and the appellant failed to dispel the same, therefore, the impugned judgment and decree passed by the learned first appellate court deserve to be upheld.

It is also pertinent to note here that pursuant to the Will (Ex.D1), defendant-appellant appeared before the competent revenue authority for sanctioning mutation in her favour on the basis of Will (Ex.D-1). Defendant-appellant seriously misconducted herself, while not disclosing the name of her sister-plaintiff at the time of getting the mutation sanctioned in her favour. It is so established from the order sanctioning the mutation Ex.PX. Subsequently, mutation came be set aside at the instance of the plaintiff-respondent, vide order dated 20.9.2013 passed by the learned Assistant Collector 1st Grade. In this view of the matter, no fault can be found with the impugned judgment and decree passed by the learned first

RSA No. 2839 of 2017 (O&M)

appellate court and the same deserve to be upheld, for this reason also.

The view that has been taken by this Court also finds support from the following judgments of this Court:-

Piara Singh Vs. Harjinder Singh, 2013 (33) RCR (civil) 25 (P&H)

Jaswant Singh Vs. Jaspal Kaur @ Rani and others, 2015 (2) PLR 620 (P&H)

Nazar Singh and others, Vs. Karam Singh and others, (RSA No. 452 of 2016 decided on 20.3.2017) (P&H)

Raj Kumari Vs. Ramesh Kumar @ Kuki and others, (RSA No. 1990 of 2017 decided on 7.4.2017) (P&H)

So far as the following judgments relied upon by learned counsel for the appellant, are concerned, there is no dispute about the observations made law laid down in the cited judgments. However, on a close perusal of the cited judgments, none has been found to be of any help to the appellant, being distinguishable on facts.

Saroja Vs. Santhil Kumar, 2011 (3) RCR (civil) 332 (SC)

Mahesh Kumar (Dead) By LRs. Vs. Vinod Kumar and others, 2012 (2) RCR (civil) 493 (SC)

Kanwarjit Singh Dhillon Vs. Hardyal Singh Dhillon, 1993 (3) PLR 414 (P&H)

Daya Ram VS. Kanwar Pal, 2010 (3) RCR (civil) 40 (P&H)

Mohinder Singh and others Vs. Lachhman Singh and others, 2013 (13) RCR (civil) 607

Gurnaib Kaur Vs. Achhra Singh and others, 2012 (5) RCR (civil) 663 (P&H)

Deepak and others V. Rajkumari and others, 2013 (6) RCR (civil) 2787 (Chhattisgarh High Court)

It is the settled principle of law that peculiar facts of each case

RSA No. 2839 of 2017 (O&M)

are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara 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, 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 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, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Cogent findings recorded by the learned first appellate court in later part of para 23 of its impugned judgment, which deserve to be noticed here, read as under:-

“ However, in the case in hand, there are various other suspicious circumstances which make the execution of Will doubtful alongwith the fact that same was attested by Pritam Singh, husband of respondent/defendant

*Baljinder Kaur who is the only beneficiary of the Will in question. Without doubt, as observed by Hon'ble Punjab and Haryana High Court in case titled as **Bhim Sain Vs Kaushalya Devi alias Prem Lata and Ors** (Supra) that registration of a Will goes a long way to prove genuine execution of the same but at the same time, presumption in favour of registered Will is rebuttable. As discussed above, appellant/plaintiff has been able to rebut the presumption attached to the registered Will allegedly executed by deceased Gurbhej Singh in favour of respondent/defendant but on the other hand, respondent/defendant has failed to dispel suspicious circumstances surrounding the same. It would also not be out of place to mention here that mutation was also got sanctioned by respondent/defendant in this case in a mischievous manner on the basis of Will in question. Mutation sanctioned in favour of respondent/defendant was subsequently set aside by Sh. J.S. Grewal, the then learned Sub Divisional Magistrate cum A.C. Ist Grade, Batala vide order dated 20.9.2013 whereby Will executed in favour of respondent/defendant was discarded by said Court. Perusal of said order Ex. PX shows that respondent/defendant Baljinder Kaur did not disclose name of appellant/plaintiff Jatinder Kaur at the time of getting the mutation sanctioned in her favour. It has also been mentioned by learned Sub Divisional Magistrate in*

RSA No. 2839 of 2017 (O&M)

order Ex. PX that name of appellant/plaintiff Jatinder Kaur was not there in the Pedigree Table. It clearly shows that respondent/defendant Baljinder Kaur had got the mutation sanctioned in her favour by concealing true and material facts from the revenue authorities. In case Will in question had been genuinely executed in favour of respondent/defendant and she had become owner of the property left behind by deceased Gurbhej Singh on the basis of said Will, there was no reason for her to conceal name of appellant/plaintiff at the time of sanctioning of mutation. This fact goes a long way to show that Will in question Ex. D-1 is not a genuine document and at least same was not executed by deceased Gurbhej Singh in a sound disposing state of mind and of his free will.”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in the abovesaid findings recorded by the learned first appellate court. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a 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 **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

RSA No. 2839 of 2017 (O&M)

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 misconceived, bereft of merit and without any substance. Thus, it must fail. No case 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.

25.7.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No