

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

Sr. No.244

RSA No.680 of 2017 (O&M)

Date of decision: 05.09.2017

Veerpal Kaur

....Appellant

versus

Jaswant Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Raj Kumar Kakkar, Advocate
for the appellant.

* * *

DEEPAK SIBAL, J. (Oral)

The appellant, who was the plaintiff before the Trial Court, had filed a suit, seeking therein to be declared owner in possession of land measuring 50 kanals 14 marlas i.e. 1/3rd share of the total land measuring 152 kanals 2 marlas in khewat nos.341, 735 and 958 situated at village Khuian Sarwar and land measuring 59 kanals 3 marlas entered at khewat no.13, khatoni no.18 situated in village Lok-ke Khurd Hadbast No.11, Tehsil Zira, District Ferozpur (for short the 'suit property'). The Will of the appellant's grandfather Joginder Singh bequeathing his property to respondents No.1 and 2 was also challenged.

The case set up by the appellant before the trial court was that the suit property was earlier owned by her grandfather-Joginder Singh, who died intestate on 20.03.2006 and the appellant being his heir, by way of inheritance, sought ownership and possession thereof. The Will of Joginder

Singh favouring respondents No.1 and 2 and the mutations entered on the basis of the Will were also challenged.

Respondents No.1 and 2 after putting in appearance before the Trial Court submitted that the suit had been filed with an ulterior motive to grab the suit property on which the appellant had no right. The Will dated 11.08.2000 of Joginder Singh through which he had bequeathed the suit property to respondents No.1 and 2 was also stated to be valid and the mutations based on the Will were also defended.

The Trial Court dismissed the suit and the appeal preferred by the appellant against such dismissal before the Appellate Court met the same fate, giving the appellant a cause to knock the doors of this Court through the present second appeal.

Learned counsel appearing on behalf of the appellant submitted that the Will of Joginder Singh completely excluded from it the appellant, who was admittedly his grand-daughter; that one of the beneficiaries of the Will namely Jaswant Singh had taken active part in its execution and that through the Will in question Joginder Singh had bequeathed his entire estate to respondents No.1 and 2. According to the learned counsel, the afore-referred reasons were enough to hold that the Will had been executed in suspicious circumstances and was a result of forgery by respondents No.1 and 2.

No merit is found in the above submissions of learned counsel for the appellant.

The ownership of Joginder Singh over the suit property was not disputed and qua the nature of the property being ancestral no evidence was

beneficiaries under the Will led and proved, through documentary evidence, that the suit property was self-acquired by Joginder Singh and therefore he could Will the same to whomsoever he desired.

Respondents No.1 and 2, who were the beneficiaries of the Will of Joginder Singh also duly proved its execution by producing before the Trial Court Nirmal Singh and Balkar Singh, its scribe and one of its marginal witnesses respectively. Since Dasonda Singh, the other marginal witness had died, respondents No.1 and 2 produced before the trial court his brother Jasmair Singh.

Nirmal Singh-the scribe clearly deposed that he had scribed the Will on the asking of Joginder Singh and after typing the same he read over the contents thereof to him, who only after understanding the same appended thereupon his signatures in the presence of other witnesses who also put their signatures on the Will in the presence of each other. To the same effect was the statement by Balkar Singh-the marginal witness. Since Dasonda Singh, the other marginal witness had died, his brother Jasmair Singh appeared before the Trial Court and proved the signatures of Dasonda Singh on the Will in question. The cross-examination of the above witnesses could not even dent the stand taken by respondents No.1 and 2 and thus, the execution of the Will of Joginder Singh stood duly proved.

No worthwhile evidence was produced by the appellant to prove that the Will in question was a result of forgery.

Whether the Will in question was executed under suspicious circumstances is the next question which requires determination.

The Will in question was a registered document. Registration of

rebuttable. However, no such evidence was produced by the appellant to show that any fraud or impersonation had been committed at the time of its registration. The signatures of Jaswant Singh on the back page of the Will in question could at the most show his presence at the time of its registration but such fact cannot be considered to be such a circumstance on the basis of which the Will itself could be discarded especially when its execution has been duly proved through leading of cogent evidence. Once the execution of the Will, its registration, as also the fact that at the time of its execution Joginder Singh was of sound disposing mind are duly proved then only because the appellant was found present at the time of its registration shall not render the same null and void. It is then also to be presumed that the only purpose behind the Will was to devolve the suit property upon respondents No.1 and 2 to the exclusion of all which would include the appellant.

In view of the above, the concurrent findings of fact recorded by the Trial Court as also the Appellate Court are plausible findings and thus not perverse warranting no interference. The present appeal also raises no question of law, much less a substantial question of law.

Dismissed.

(DEEPAK SIBAL)
JUDGE

September 05, 2017

Jyoti 1

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No