

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

**RA-RS No.11-C of 2017 (O&M) in
RSA No.1179 of 1992
Date of Decision.03.08.2017**

Surjit Kaur

.....Appellant

Vs

Kulwinder Kaur and others

.....Respondents

Present: Mr. H.S. Dhandi, Advocate
for applicant-respondent Nos.1 and 2.

Mr. G.S. Bajwa, Advocate and
Mr. R.K. Vashishtha, Advocate
for the non-applicant/appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

C.M. No.1762-C of 2017

There is a delay of 101 days in filing the review application on the premise that the applicants-respondents came to know about the judgment dated 28.9.2016 sought to be reviewed only when the non-applicant/appellant got effected the mutation in respect of her share as per the natural succession of the property.

For the reasons stated in the application, delay of 101 days in filing the review application is condoned.

Application is allowed.

RA-RS No.11-C of 2017

Review application has been filed seeking review of the order dated 28.09.2016 passed in RSA No.1179 of 1992 which stood admitted on the premise that the applicants-respondents, though were represented by the counsel but did not appear on the date and therefore, could not address arguments and certain facts, resulting into some errors apparent i.e. that Will

of Gurdial Singh dated 18.12.1983 was not attested by one witness but by two i.e. (i) Piara Singh and (ii) Gural Singh and written by Amrik Singh, though he was not a regular deed writer at village Belan where the plaintiffs, who had been represented by their grandfather's brother were residing and also there is compliance as Piara Singh had deposed in terms of provisions of Section 63 (c) of the Indian Succession Act. Had these facts been noticed, perhaps this Court would have arrived at a different decision.

Mr. Dhandi, learned counsel appearing on behalf of the applicants-respondents/plaintiffs submits that though the suit seeking declaration to the effect that the plaintiffs are owners to the extent of half share in 3/4th share of Gurdial Singh son of Sadhu Singh, resident of village Dhuman, Tehsil Rajpura was dismissed by the trial Court but the lower Appellate Court being a last court of fact and law after examining the oral and documentary evidence reversed the finding. The aforementioned finding is required to be maintained on the premise that the statement of Piara Singh i.e. one of the attesting witnesses of the Will was not noticed/examined and there is compliance of provisions of Section 68 of the Indian Evidence Act and Section 63(c) of the Indian Succession Act. In the judgment instead of Piara Singh, Rattan Singh has been mentioned. In support of his contention, he has relied upon ratio decidendi culled out by Hon'ble Supreme Court in **Gopal Swaroop Vs. Krishna Murari Mangal and others 2010 (14) SCC 266** to submit that in view of the compliance, this Court's judgment is liable to be reviewed being error apparent on the face of record.

Mr. Bajwa, learned counsel appearing on behalf of the non-applicant-appellant/defendant No.1 submits that the Will is not only

surrounded by suspicious circumstances as Gurdial Singh did not execute the Will for being resident of Village Dhuman and his daughter Surjit Kaur married with Jagdev Singh son of Bachan Singh. The plaintiffs are born from the first marriage of Surjit Kaur with Jagdev Singh. Jagdev Singh and Surjit Kaur had already parted ways and Surjit Kaur was living with her father since long. No documentary evidence with regard to ailment of Gurdial Singh or of place of abode of the minor children had been led or brought on record. Signatures of Gurdial Singh and as well as of Piara Singh are under their names but not above and appeared to have been written on a blank paper allegedly signed by Gurdial Singh as the page of writing reveals that there has been an attempt to make adjustment of the lines, thus, urges this Court for upholding the findings of this Court.

I have heard learned counsel for the parties, appraised the paper book and of the view that no doubt this Court did not advert to the statement of PW1-Piara Singh, which has been extracted after translation in paragraph 7 of the application and that of Gurpal Singh, PW-5, which read as under:-

“PW1 Piara Singh s/o Sigal Singh s/o Bir Singh aged 60 yers, agriculturist, R/o Khanpur Belan.

I was knowing Gurdial Singh. He had died. Plaintiffs are maternal grand daughters of Gurdial Singh son of Sadhu Singh. Name of father of plaintiffs is Jagdev Singh, again said Gurdial Singh. Plaintiffs are daughters of Jagdev Singh. Surjit Kaur has no relation with plaintiffs. Surjit Kaur is wife of Jagdev Singh and plaintiffs are from Surjit Kaur. Gurdial Singh had died after execution of the Will. Will was executed in favour of plaintiffs and in favour of Gurudwara also. I have seen the Will, it was written by Amrik Singh. At the time of writing of Will, Gurdial Singh was in good health. Will was read over to Gurdial Singh by Amrik Singh. Will was written in my presence, which his Ex.P1. Gurdial Singh after hearing has signed. I and member of Dhuman witnessed it. I do not know his name was Hardev Singh or Jagdev Singh. When

Gurdial Singh signed, we both witnesses were present there. When we signed then Gurdial Singh was present.

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Gurdial Singh had only one daughter Surjit Kaur defendant. Gurdial Singh was Lambardar of village Dhuman. Being Lambardar he used to go to Rajpura Tehsil for depositing revenue. Dhuman falls in Tehsil Rajpura. Belan is in Tehsil Kharar. From Dhuman, Belan is 6-7 miles. In village Dhuman there are number of Lambardars and panch Sarpanch also. From Belan, Kharar is 10 miles. We suggested to Gurdial Singh to get the Will scribed by deed writer at Kharar and get registered with Tehsildar. Gurdial Singh had died four years back. Gurdial Singh had gone to village Belan at night. Will was made in the morning. Will was written at 8-9 a.m. Other witness came with Gurdial Singh. I and Amrik Singh witness were called by maternal grand daughter of Gurdial Singh. Gurdial Singh went back on the same day. For making Will it took quarter to hour. I brought stamp from my home after coming back. Will was started to be written after my coming back from my home of bringing stamp. In village Belan there are two Lambardar. No Lambardar was called. Will was not entered into my proceedings book. Age of Gurdial Singh was about 60 years. Gurdial Singh's colour was wheatish. He was of medium height. I do not know how many foot he was. Will was written four years back. Season was of some cold and date was 18th December, on which day Will was written. I am remembering it orally. I have 6-7 children. I cannot tell the date of birth of my any child. I have not appeared as witness in the mutation proceedings earlier. It is wrong to suggest that fictitious and false Will was prepared in connivance with Jagdev Singh. It is wrong that Gurdial Singh has not executed any Will."

PW5 *Gurpal Singh s/o Sohan Singh s/o Chiman Singh aged 55 years, agriculturist, resident of Dhuman.*

I was knowing Gurdial Singh. He had died. He had executed Will in favour of his daughter, two maternal grand daughters and Gurudwara Sahib. Kulwinder Kaur and Ravidner Kaur are his maternal grand daughters. Surjit Kaur is his daughter. Will was executed in favour of plaintiffs and defendant.

Will was written by Amrik Singh. I have seen which is Ex.P1.

At the time of Will, Gurdial Singh was in conscious state of mind and Will was read over to him. Subject matter of Will was explained to him. I was one witness and one was Piara Singh. We witnesses signed in his presence. On Ex.P1, I identified my signatures.

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Gurdial Singh was Lambardar. He used to go to Rajpura to deposit govt. revenue. He had died about 3-1/2, 3-3/4 years back. Belan village is 6-7 miles from our village. In our village there are two more Lambardars i.e. Dharam Singh and Ram Kishan and Panchayat and members Panchayats are also there. From village Dhuman to Belan has gone to meet. He was saying that I was to keep secret, it should not be known to anybody, so should not be executed at Kharar. Except of Sarpanch of village Belan Piara Singh, no other Sarpanch was called. This may be written in Panchayat proceedings. Will was executed about 3-3/4 years ago. Will was written at about 10/11 O'clock. Paper and pad was brought by Sarpanch. I came back on the same day. Gurdial Singh came later on. It is correct that Jagdev Singh was not having good relations with Surjit Kaur. Jagdev Singh was not present there. He had gone abroad. Surjit Kaur sometimes used to come at Dhuman and sometime used to go out. In my presence Jagdev Singh has not asked money from Gurdial Singh for truck. It is wrong that Gurdial Singh has not gone to Belan and neither he has executed the Will. It is wrong that I am deposing falsely."

On conjoint reading of the aforementioned statements, no doubt Gurdial Singh has not stated in terms of provisions of Section 63(c) of the Indian Succession Act to the effect that he saw Gurdial Singh signing the Will but Piara Singh stated so. But the examination-in-chief would not be a clincher for compliance of the provisions of aforementioned Act. It has to be read in conjunction with cross-examination. In the cross-examination, it surfaced that Gurdial Singh was resident of village Dhuman and he had gone to village of his maternal grand daughters who were living at village Belan and witnesses are also of village Belan. Gurdial Singh was not a

simpleton. Admittedly, he was a Lambardar. He knew where he has to affix his signatures if the Will had been actually written. However, assuming the role of an expert as per the provisions of Section 45 of the Indian Evidence Act, there is an attempt to reduce the margin of the lines while reaching almost close end of the page for the reason that it had been typed on a blank paper. Even the thumb impression of Piara Singh is also under his name and that of the other witnesses on the left side of the page. Factually if the Will was to be lengthy, it could have been taken to another page, as set out in the plaint and submitted by the witnesses.

To a specific question in cross-examination it had come out that the witnesses and the Amrik Singh were called by the maternal grand daughter of Gurdial Singh. No evidence except a passing reference of having known to Gurdial Singh has come on record whereas distance between two village is not more than 10 miles. The witnesses in the cross-examination stated that they did not accompany Gurdial Singh at the time of going to the village Belan nor had also come back on the same day. One of the witnesses had given time of execution of Will as 8-9 a.m. whereas another as 10-11 a.m. No evidence has been brought on record that the daughters were living with their maternal grandfather and it was out of love and affection he executed the Will in their favour.

The aforementioned facts leads to irresistible conclusion that there are suspicious circumstances and leading to the fact that Gurdial Singh did not execute the Will in favour of the plaintiffs being represented by their paternal grandfather's brother. Jagdev Singh and Surjit Kaur had parted ways and were living separately as per the evidence brought on record. The factum of Surjit Kaur living separately from Jagdev Singh was also not

disputed or controverted. Even Amrik Singh, the alleged deed writer, who was not a regular deed writer, in cross-examination, admitted that he had never gone to village of Gurdial Singh then how Gurdial Singh would repose faith in Amrik Singh for writing a Will, being a Lambardar.

In view of the aforementioned facts and circumstances, no case for error apparent on the face of record is made out to bring the judgment dated 28.09.2016 in the ambit of review. Noticing the aforementioned facts and particularly statement of Piara Singh, I am of the view that entire thrust of the judgment was not only Section 63(c) of the Indian Succession Act and Section 68 of the Indian Evidence Act but also of suspicious circumstances. There is no dispute to the ratio decidendi referred to above but facts and circumstances of each case has to be seen.

No ground of interference is made out. The review application is dismissed.

(AMIT RAWAL)
JUDGE

August 03, 2017
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No