

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

**RSA No.3525 of 2000
Date of decision:01.08.2018**

Baljit Kaur

... Appellant

Vs.

Surjit Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rajinder Singla, Advocate
for the appellant.

Mr. K.S.Sidhu, Senior Advocate with
Mr. Ramandeep Singh, Advocate
for respondent No.1.

AMIT RAWAL J.

The present Regular Second Appeal is at the instance of appellant-plaintiff, who had not been successful in claiming possession *vis-a-vis* the suit land before the trial Court and Lower Appellate Court.

Succinctly, the facts on the basis of which suit aforementioned was filed, are that plaintiff claimed the possession of the suit land on the basis of un-registered Will dated 31.12.1973 executed by Puran Singh son of Gula Singh. The plaintiff is non-else but daughter in law of Puran Singh, whereas contesting respondent-defendants No.1 and 2 are the daughters and respondent-defendant no.3 is husband of plaintiff. Basically, the contest is between plaintiff and respondents No.1 and 2. It was averted that Puran Singh out of love and affection executed the aforementioned Will in his

sound disposing mind. He died in the year 1974 and therefore, the plaintiff became owner of the suit land. The defendants submitted an application for sanctioning of the mutation which was sanctioned on 16.7.1979.

The defendants cleverly obtained a collusive decree dated 27.03.1992 passed in civil suit no.726 of 1991 which would have no effect on the right of the plaintiff. On 05.02.1994, under the garb of aforementioned decree had taken the forcible possession and therefore, cause of action arose to file the suit on 12.2.1994.

Contesting defendants No.1 and 2 in the written statement contested the suit by raising the plea, want of cause of action and its maintainability, etc. On merit, it was denied that Puran Singh had ever executed any Will in favour of the plaintiff. It was averred that defendant no.3-Hardev Singh through impersonation obtained a decree by producing other ladies which was challenged in the suit bearing No.631 of 20.07.1992. The said decree obtained by defendant no.3 was set aside and cannot be said to be obtained in connivance or collusion.

Defendant no.3 contested the suit by filing a separate written statement projected that he had clash of interest with the plaintiff.

Since both the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the mutation dated 16.7.1979 is null and void?OPP*
- 2. Whether decree dated 27.3.1992 is null and void?OPR*
- 3. Whether Puran Singh executed Will in favour of the*

plaintiff?OPP

4. *Whether the plaintiff is entitled for possession?OPP*

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

6. *Relief.”*

The appellant-plaintiff examined as many as three witnesses and brought on record the documentary evidence, i.e., Ex.P1 to Ex.P8. On the other hand, defendant No.1 appeared herself as DW1 and closed the evidence. On the basis of evidence brought on record, the trial Court dismissed the suit and the appeal laid before the Lower Appellate Court has also been dismissed.

Mr. Rajinder Singla, learned counsel appearing on behalf of the appellant-plaintiff eloquently and vehemently challenged the judgments and decrees of the Courts below to be suffering from illegality and perversity on the ground that finding of the Courts below was the result of mis-direction and mis-appreciation, for, PW2-Mit Singh, attesting witness of the Will, had proved the Will, therefore, there was compliance of the provisions of Section 68 of Indian Evidence Act, 1872 (for short “1872 Act”) and Section 63(c) of Indian Succession Act, 1925 (for short “1925 Act”). The judgment and decree of 1992 could not have been relied upon, as the Courts below did not notice the fact that plaintiff was not a party and therefore, denied the opportunity to cross-examine the witness. Even Scribe- PW1 proved the execution of the Will and the defendants failed to place on record any suspicious circumstances for discarding the Will. Non-registration of the

Will would not be fatal. The defendants failed to lead any evidence to belie the signatures/thumb impressions of the deceased and therefore, onus to disprove the Will had not been discharged.

Per contra, Mr. K.S.Sidhu, learned Senior counsel assisted by Mr. Ramandeep Singh, Advocate appearing on behalf of respondent no.1 submitted that the concurrent findings of facts and law cannot be interfered until and unless there is gross illegality and perversity. Hardev Singh-defendant No.3 obtained a collusive decree against his father Puran Singh by producing some other ladies, who impersonated as defendants No.1 and 2. On realizing the aforementioned fraud, the suit of 1992 was filed which was decreed, i.e., decree obtained by fraud was set aside and thus, in connivance with defendant no.3 coined the story of preparing the Will, *ibid* but did not have the courage to register as they were afraid of surfacing of truth. In such circumstance, deceased Puran Singh could not be having extra love and affection for the daughter in law by disinheriting two daughters, therefore, deemed to have died Intestate. Thus, for all intents and purposes, the property was required to be devolved as per natural succession, i.e., 1/3^d share amongst the siblings, defendants No.1 & 2 and 3.

PW2-Mit Singh did not depose in terms of the provisions of Section 63(c) of 1925 Act. In this regard, he drew the attention of this Court to the aforementioned provisions to submit that there was no compliance of the provisions requiring that Mit Singh had appended his signatures on the direction of the “testator” which is mandatory requirement of law in view of

the law laid down by Hon'ble the Supreme Court in **Janki Narayan Bhoir Vs. Narayan Namdeo Kadam 2003(1) RCR (Civil) 409** and thus, urged this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of the Courts below and of the view that there is no force and merit in the submissions of Mr. Singla. Section 63 (c) of 1925 Act. Section 63 reads as under:-

“63 Execution of unprivileged Wills. —Every testator, not being a soldier employed in an expedition or engaged in actual warfare or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules:—

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of

his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

The aforementioned provisions of the Act envisage three situations: (1) Will has to be attested by two or more witnesses and (2) each of them had seen the testator to either append his signatures or thumb impressions or mark or has seen the other person sign the Will in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and (3) each of the witnesses signed in the presence of the testator.

One of the requirement, *ibid*, is conspicuously wanting. The examination-in-chief (in vernacular) of PW2-Mit Singh was read out in Court during the course of hearing in the presence of learned counsel for the parties and his examination-in-chief was silent with regard to the compliance of the aforementioned requirement of law. Even otherwise, defendant no.3 had been successful in obtaining the decree by impersonating defendants no.1 and 2 which in my opinion would be grave suspicious circumstance *vis-a-vis* Will in favour of appellant-plaintiff being daughter in law of Puran Singh. No evidence has been placed on record to establish that Puran Singh had full love and affection for the daughter in

law, thus, both the Courts below have correctly and honestly dismissed the suit holding to be an act of greed to grab the entire property of Puran Singh.

In view of what has been observed above, I do not find any illegality and perversity in the findings under challenge which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

August 01, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No