

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.3564 of 2008 (O&M)

Date of Decision: February 14, 2018

Sarvjit Kaur

...Appellant

Versus

Balraj Kaur & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Mr.Arun Jain, Senior Advocate with
Mr.Sunil Sharma, Advocate,
for the appellant.

Mr.Atul Lakhanpal, Senior Advocate with
Mr.R.S.Chahal, Advocate,
for respondent No.1.

Mr.U.K.Agnihotri, Advocate,
for respondent No.3.

Mr.Amit Singla, Advocate,
for respondent No.5.

AMIT RAWAL, J.

Appellant Sarvjit Kaur-defendant No.2 is in Regular Second Appeal against the concurrent findings of fact, whereby the suit preferred by Balraj Kaur, Kulwant Kaur (respondent Nos.1 and 2) and Gurnam Kaur @ Gurcharan Kaur (since deceased), who was transposed from defendant as plaintiff being represented by plaintiffs No.1 and 2, for possession on the ground of inheritance of Chanchal Singh son of Bhan Singh in respect of land measuring 69 kanals 7 marlas being 1387/16277 shares of land measuring 813 kanals 17 marlas, has been decreed by disbelieving the unregistered Will dated 13.11.1988 executed by Chanchal Singh in favour

of defendant No.1 by setting-aside the resultant mutations and protecting the interest of defendant Nos.4 to 10 as bonafide purchasers/transferors of the land.

Before advertng to the respective arguments of learned counsel representing the parties to the lis, it would be apt to refer concise pleadings and the evidence of the parties.

Plaintiffs instituted the aforementioned suit on the ground that Chanchal Singh was father of the plaintiffs, Jasbir Singh and husband of Gurnam Kaur @ Gurcharan Kaur-defendant No.3. He was owner in possession of land measuring 138 kanals 15 malas comprising in Khewat No.227, kittas 119 and 01 marla being 1/10th share of the land 11 marla comprised in Khewat No.228 and 01 kanal 12 marlas land being 1/5th share of 08 kanals 02 marlas comprised in Khewat No.229, total measuring 139 kanals 18 marlas. Chanchal Singh died on 18.11.1988. Upon his death, the plaintiffs and defendant Nos.1 and 3 inherited the aforementioned land as detailed in Para No.2 of the plaint in equal shares. In essence, plaintiffs became the owners in possession of 69 kanals 07 marlas land of 813 kanals 17 marlas and 16 marla land being 1/10th share of 08 kanals 02 marlas land respectively.

Jasbir Singh-defendant No.1, as co-sharer, was cultivating the land measuring 139 kanals 18 marlas on behalf of the plaintiffs and Gurnam Kaur @ Gurcharan Kaur and was giving share of produce to the plaintiffs from time to time, but after harvesting the crop of Rabi 2001, defendants No.1 and 2 refused to give the share of the crop to the plaintiffs. On making reasonable enquiries, it transpired that on account of the death of his father, Jasbir Singh got entered mutation No.4024 without notice, knowledge and

consent of the plaintiffs on the basis of a registered Will dated 13.11.1988 in collusion with Davender Singh, father-in-law of defendant No.1 and Bhajan Singh, cousin of defendant No.1 and also prepared, forged and fictitious affidavits dated 15.9.1993 of plaintiffs No.1 and 2 and also mutation No.4023 dated 26.9.1993. The Will was challenged by stating that it was unregistered as it did not bear the signatures of Chanchal Singh, who was in Military service and never used to sign in the manner in which the signatures were made.

Defendant No.1 suffered a decree dated 18.5.2006 in Civil Suit No.2161 of 1995 titled as “Smt.Sarvjit Kaur Versus Jasbir Singh” in respect of 119 kanals 13 marlas land being 2393/16277 shares of 812 kanals 17 marlas and in respect of 01 marla being 1/10 share of 11 marlas land comprised in Khewat No.229 and in respect of 01 marla comprised in Khewat No.227, which was also assailed. It was averred that defendant No.2 did not have any pre-existing right and, therefore, the impugned judgment and decree, *ibid*, was required to be registered. Defendant No.1 also suffered a judgment and decree dated 20.11.1993 in Civil suit titled as “Joginder Singh Versus Pal Singh etc.” in respect of 10 kanals land being 200/16277 share of 813 kanals 17 marlas comprised in Khewat No.227, whereas defendant No.1 was not the owner of the suit land. The aforementioned judgment and decree and the mutation bearing No.4026 of 2001 sanctioned on 17.12.1993 were also challenged. Challenge was also laid to another judgment and decree dated 3.9.1993 stated to have been suffered by defendant No.4 in favour of defendants No.9 and 10 in Civil Suit No.923 of 1994 titled as “Avtar Singh etc. Versus Joginder Singh” in respect of 18 kanals land comprised in Khewat No.227.

It was further stated that registered sale deed No.1239 dated 27.5.1994 executed by defendant No.1 in favour of defendant No.5 in respect of 01 kanal 15 marlas being 35/16277 share of 813 kanals 17 marla land and resultant mutation No.4069 dated 30.12.1994 as well as registered sale deed No.549 dated 5.6.1995 executed by defendant No.1 in favour of defendant Nos.6 to 8 of 07 kanals 07 marlas being 147/16277 share of 813 kanals 17 marlas and resultant mutation No.4100 sanctioned on 20.6.1995 were also without any notice, knowledge and consent of the plaintiffs. Defendant Nos.1 and 2 also concealed the judgment and decree dated 13.5.1996 and got entered mutation No.4282 on 17.12.2000, which was sanctioned on 7.6.2001 in favour of defendant No.2 for the first time.

In pursuance to the notice, defendant No.1 appeared and filed written statement by taking various preliminary objections. It was denied that plaintiffs and defendants were also owners of the property left behind by Chanchal Singh, but it was stated that Chanchal Singh, during his life time, had executed Will dated 13.11.1988 and the affidavits were also executed by the plaintiffs, which were got attested from the Executive Magistrate. The factum of the Will being falsely prepared was also denied. It was stated that the decrees were executed in accordance with law and could not have been challenged.

Defendant No.2 filed a separate written statement and took same pleas as taken by defendant No.1. Defendant No.4 filed the written statement and raised plea of mis-joinder and non-joinder of parties and stated that Chanchal Singh expired on 18.11.1988 and did not deny the factum of death of Chanchal Singh on 18.11.1988, but stated that defendant No.1 had alienated the land to him by virtue of judgment and decree by

putting him into possession and at that time, defendant No.1 had claimed himself as owner in possession of the land on the basis of Will executed by Chanchal Singh. Before suffering the decree, he verified from the revenue record about the ownership of the land in favour of Jasbir Singh.

Defendant No.5 filed the written statement and took the plea of bonafide purchaser. Similar was the written statement on behalf of other respondents, i.e., defendants No.6 to 8.

The trial Court was at variance and, therefore, framed as many as fourteen issues including the issue of relief. Both the parties examined witnesses in support of their respective cases. The trial Court though decreed the suit, but protected the interest of defendant No.4 to 10 by holding them to be bonafide purchasers. The appeal filed before the Lower Appellate Court was also dismissed by discarding the Will and as well as the affidavits.

Mr.Arun Jain, learned Senior Counsel assisted by Mr.Sunil Sharma, representing the appellant-defendant in support of his case has raised numerous arguments, which are enumerated here-in-below:-

- a) The plaintiffs did not examine any expert to challenge the signatures on the affidavits, though challenge was laid in Paragraph 4 of the plaint;
- b) On the demise of Chanchal Singh, mutation proceedings (Ex.P12) were initiated before the Revenue Court, but the same were dismissed in default. However, again an application was submitted to the Revenue Court for sanctioning of the mutation in favour of the husband, wherein plaintiffs and Gurnam Kaur @ Gurcharan Kaur, wife of Jasbir Singh suffered affidavits

Ex.DW11/A, Ex.DW11/B and Ex.DW11/C. Jasbir Singh had executed three sale deeds Ex.P13 to Ex.P15 in favour of defendant Nos.5 to 10 and a consent decree dated 18.5.1996 in favour of his wife Sarvjit Kaur;

- c) The suit was filed belatedly in 2001 only.
- d) Jasbir Singh-defendant No.1, though contested the suit by filing written statement, but during the pendency of the suit, connived with the plaintiff-respondents and started supporting their case putting the interest of his wife Sarvjit Kaur in jeopardy;
- e) During the pendency of the appeal, an application under Order 41 Rule 27 of CPC was filed for taking the assistance of the expert to prove the signatures of the plaintiffs on the affidavits, but the same has erroneously been dismissed. Thereafter, by taking the aid of Order 43 Rule 1-A CPC, a separate application has also been filed seeking leave of the Court;
- f) Jasbir Singh thereafter was murdered by the accused, who is none else but Mukhtiar Singh, husband of plaintiff Balraj Kaur;
- g) In the mutation proceedings (Ex.P12), there was a reference of the Will dated 13.11.1988. Even the specimen signatures of Kulwant Kaur, Balraj Kaur and thumb impression of Gurnam Kaur @ Gurcharan Kaur were also taken by the Court. Despite that, plaintiffs did not discharge the onus by taking the aid of the expert and, therefore, adverse inference

was liable to be drawn;

h) The report Ex.PW7/A of the Handwriting Expert Shamsheer Singh Malik with regard to the signatures of Chanchal Singh on the Will could not be believed as it has become a common practice for the experts to toe to the lines of the client, who engages them;

i) Appellant-defendant examined DW-11 Bhuri Ram attesting witness, who had been consistent in his statement with regard to the affixation of the signatures/thumb impressions by Kulwant Kaur, Balraj Kaur and Gurnam Kaur @ Gurcharan Kaur wife of Chanchal Singh on the affidavits Ex.DW11/A, Ex.DW11/B and Ex.DW11/C respectively;

j) Davender Singh DW-12 was the attesting witness to the Will, thus, the provisions of Section 68 of the Evidence Act, much less the provisions of Section 63-C of the Indian Succession Act have been proved to the hilt.

k) All the aforementioned facts have been ignored by both the Courts below and, therefore, there is illegality and perversity;

l) Even the statement of PW-2 Narsi Ram, who had come from the office of Kanungo along with record of mutation No.4024, to the effect that he had brought original sale deed dated 13.11.1988 of Chanchal Singh son of Bhan Singh and affidavit dated 15.9.1993 of Kulwant Kaur and Balwant Kaur, has not been taken into consideration. The Courts below have misdirected the cross-examination of Sarvjit Kaur-appellant-

DW8, where through a specific question, it surfaced that the marriage of Balkar Kaur was solemnized out of the income of the land in dispute as she was unmarried when Chanchal Singh died. All these factors were in the knowledge of the plaintiffs, yet they kept mum for many years but woke from slumber only in the year 2001 when the suit was filed.

This Court, on 1.12.2015 framed the following substantial questions of law for adjudication by this Court:-

- i) Whether in the facts and circumstances of the instant case the appellant having led affirmative evidence showing due execution and validity of the Will dated 13.11.1988 duly supported by affidavits of the contesting respondents, sworn before the Executive Magistrate, the suit filed by the plaintiff/respondents could be decreed?
- ii) Whether in the facts and circumstances of the instant case the approach of the learned first Appellate Court in declining the application for additional evidence is illegal and unsustainable in law?"

Per contra, Mr.Atul Lakhanpal, learned Senior Counsel assisted by Mr.R.S.Chahal Advocate, representing respondent No.1 submitted that the judgments and decrees of the Courts below are perfectly legal and justified and do not call for any interference, much less any substantial question of law. Jasbir Singh when appeared as DW-7 denied the contents of the written statement and supported the case of the plaintiffs. He also denied the affidavits of the plaintiffs and his mother Gurnam Kaur @ Gurcharan Kaur.

It was further submitted that DW-12 Davender Singh in cross-examination admitted that the Will was not written by him but by his clerk. The evidence brought on record weighed in the mind of the Courts in decreeing the suit as defendants could not prove on record the execution of the Will, much less mutation in favour of Jasbir Singh. The plaintiffs have accepted the sale in favour of defendant Nos.4 to 10, who have been held to be bonafide purchasers. In fact, Jasbir Singh was never murdered by Mukhtiar Singh as alleged by Mr.Jain.

It was next contended that the consent decree dated 18.5.1996 in respect of land measuring 119 kanals 13 marlas was outcome of a fraud played upon Jasbir Singh. The judgments and decrees of the Courts below are based upon preponderance of the evidence. Filing of the application belatedly for additional evidence would tantamount to filling up the lacunae. No explanation has come forth to prove the signatures, particularly when the plaintiffs challenged their affidavits. Onus was upon the defendants to prove the same, but having failed to do so, such an access cannot be permitted at the second appellate stage.

Sucha Singh, scribe of the Will had died and his daughter Prem Paramjit Kaur appeared, but the appellant did not examine any expert but otherwise specifically denied the execution of the affidavit emphatically relied upon by the defendants with regard to the mutation of land belonging to Chanchal Singh in favour of Jasbir Singh, thus, adverse inference has rightly been drawn. The Will was discarded as propounder Jasbir Singh did not support the same, thus, urged this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the paper book, records of the Courts below and of the view that there is no

force and merit in the submissions of Mr.Jain as the reason is not one but many.

On plain and simple perusal of the Will from the naked eye, it is evident that a blank paper bearing the signature of Chanchal Singh was used as an attempt had been made to reduce the spacing while concluding the contents of the Will. The Will is attested by Davender Singh, who in cross-examination spilled the beans by stating that the signatures of the testator were already on the Will. He did not remember, who had brought the stamp papers. He admitted that the Will was written by his clerk. These were the circumstances which weighed in the mind of the Courts in disbelieving the same and so is the view of mine. I concur with the findings of both the Courts below regarding the Will.

As regards the affidavits executed by the plaintiffs, during the cross-examination, when confronted, were specifically denied. It was incumbent upon the defendants to take the aid of the expert to prove the signatures/thumb impressions, but having failed to do so, the onus has not been discharged. An attempt had been made at an appellate stage by moving an application under Order 41 Rule 27 CPC, but the same was discarded by the Lower Appellate Court as the defendant failed to lead evidence at appropriate stage. The additional evidence, in my view, would tantamount to filling up the lacunae being an afterthought, thus, such prayer is declined.

The conduct of DW-12 Davender Singh, attesting witness had also been very strange, for, he feigned ignorance as to who had purchased the stamp papers for the purpose of execution of the affidavits Ex.DW11/B and Ex.DW11/C. Davender Singh is none else but nephew of Jasbir Singh and, therefore, he had taken active part in all the proceedings.

Defendants have failed to lead any evidence contrary to the report of the expert, who, *prima-facie*, found that the Will did not bear the signatures of Chanchal Singh. The aforementioned expert PW-7 Shamsheer Singh Malik compared the signatures of Chanchal Singh with the standard signatures on the summoned file of Civil Suit No.396/86 titled as “Kanwaljeet Kaur Versus Chanchal Singh as well as from the summoned record of mortgage deed No.1087 dated 11.9.1986. Even DW-7 did not support the case of Sarvjit Kaur appellant, which itself is a clincher that he realised that some mischief was played upon his sister. Even no suggestion was put to PW3 Kulwant Kaur with regard to the fact that judicial record did not bear the signatures of Chanchal Singh, i.e., the record which had been compared by the expert for the purpose of examining the signatures on the Will. She categorically stated that the affidavits were not got typed in her presence.

Bhuri Ram had also not supported the defendants with regard to the affidavits Ex.DW11/A, Ex.DW11/B and Ex.DW11/C as to a specific question in cross-examination, he candidly admitted that no document in his presence was presented before the Executive Magistrate for attestation. He also admitted that the Patwari could do hanky panky on receipt of the illegal gratification.

I am of the view that the aforementioned evidence leads to an irresistible conclusion that the consent decree executed by Jasbir Singh in favour of the appellant Sarvjit Kaur and as well as the mutation of the entire land in his favour other than the land, whereby the interest of defendant Nos.4 to 10 had been protected was a result of fraud played upon the plaintiffs, thus, suit had rightly been decreed because even her cross-

examination, defendant No.1 Jasbir Singh did not support the case of the defendants.

For the reasons stated above, the concurrent findings of fact and law arrived at by the Courts below cannot be faulted with. Resultantly, the questions of law raised above are answered against the appellant-defendant and in favour of the respondent-plaintiffs. Appeal stands dismissed.

February 14th, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No