

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

Date of decision: 15.05.2018

1. RSA No.3386 of 2012 (O&M)

Kashmir Singh

.....Appellant

Versus

Wassan Singh and others

.....Respondents

2. RSA No.469 of 2014 (O&M)

Avtar Singh and another

.....Appellants

Versus

Wassan Singh and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

**Present: Mr. Vipin Mahajan, Advocate,
for the appellant (in RSA No.3386 of 2012).**

**Ms. Surinder Kaur, Advocate,
for Mr. R.S. Malhotra, Advocate,
for the appellants (in RSA No.469 of 2014).**

**Mr. Dheeraj Mahajan, Advocate,
for respondent Nos.1 and 2.**

**Mr. A.S. Manaise, Advocate,
for respondent Nos.8 and 9.**

Ritu Bahri, J.

**This judgment shall dispose of RSA No.3386 of 2012 and RSA
No.469 of 2014 together as both the appeals have arisen out of one
judgment. For reference, facts are being taken from RSA No.3386 of 2012.**

RSA No.3386 of 2012 has been filed against the judgment of

reversal dated 07.05.2012 passed by the Additional District Judge (Ad hoc),

Fast Track Court, Gurdaspur, whereby appeal filed by plaintiffs (respondent Nos.1 & 2 herein) against the judgment & decree dated 26.09.2008 passed by the Civil Judge (Junior Division), Gurdaspur, has been accepted and suit filed by the plaintiffs for declaration, has been decreed.

Wassan Singh and Malkiat Singh-plaintiffs (respondent Nos.1 & 2 herein) filed the aforesaid suit for declaration to the effect that they were owners in possession in equal share of the suit property mentioned in Schedule 'A' and 'B' in the head note of the plaint. It was pleaded that Pal Singh alias Palo, predecessor-in-interest of the parties, was the original owner of the property measuring 52 Kanals, as detailed in the head note of the plaint. Wassan Singh (plaintiff No.1) and Sulakhan Singh (father of plaintiff No.2 & defendant Nos.3 to 5 and husband of defendant No.2) were sons, defendant Nos.7 to 9 were daughters and defendant No.6 was widow of Pal Singh and Palo. Aforesaid Sulakhan Singh had died prior to the death of Palo and left behind plaintiff No.2 and defendant Nos.2 to 5 as his legal heirs. Wassan Singh was born from previous wife of Palo and after her death, Palo performed his second marriage with Surjit Kaur-defendant No.6. Out of this marriage, defendant No.1-Kashmir Singh, Sulakhan Singh (predecessor-in-interest of plaintiff No.2 & defendant Nos.2 to 5) and defendant Nos.7 to 9 were born. During his life time, Palo had executed a registered Will dated 10.03.1995 in favour of the plaintiffs in respect of land measuring 40 Kanals and 7 Marlas as mentioned in Schedule 'A' in his sound disposing mind as the plaintiffs and legal heirs of Sulakhan Singh used to serve him. It was stated that they were in possession of the said property in equal share by virtue of the Will and rest of the land, as mentioned in Schedule 'B' was also inherited by all the legal heirs. It was

further pleaded that defendant-Kashmir Singh and daughters of Palo had never bothered about Palo because Kashmir Singh was not having good relations with him. He used to quarrel with Palo. His wife Surjit Kaur-defendant No.6 was also being served by them. It was further submitted that in the month of February, 2000, defendant Nos.7 and 8 filed a civil suit in connivance with Kashmir Singh, who propounded a false and fabricated will alleged to have been executed by Palo. Later on, the said suit was dismissed as withdrawn on 17.03.2005. In the said suit, present plaintiffs had proved their Will, but Kashmir Singh did not lead any evidence. Ultimately, his evidence was closed by order. Plaintiffs asked the defendants to admit their claim, but they being head strong persons, refused to do so. Hence, the suit.

Upon notice, defendant No.1 (appellant herein) filed written statement taking preliminary objections with regard to maintainability, estoppel and suit being barred by the principle of *res judicata*. On merits, relationship between the parties was admitted. It was submitted that Palo had executed a Will in favour of defendant No.1 (appellant) and his brothers Wassan Singh and Malkiat Singh (plaintiffs) on 04.04.1998 in his sound disposing mind. On the basis of said Will, they have become owners in possession of the entire moveable and immoveable property of Palo. Other co-sharers had no right in the suit property. The Will dated 10.03.1995 was denied. All other allegations levelled by the plaintiff in the plaint were denied and prayer for dismissal of the suit was made.

Defendant Nos.7 and 8 filed their separate written statements by admitting the relationship of the parties. They had denied execution of any Will by Palo. It was denied that Joginder Kaur was born out of the wedlock

of Surjit Kaur and Palo. It was submitted that she had come with Surjit Kaur from her first marriage. Pal Singh had great love with them and they used to serve him during his lifetime. Will dated 10.03.1995 was forged and fictitious. Mutation No.4090 was rightly sanctioned by the revenue authorities.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiffs are owners in possession of suit property to the extent of their share mentioned in Schedule 'A' and 'B' of the head note on the basis of Will dated 10.03.1995? OPP
2. Whether the plaintiffs are entitled to declaration as prayed for? OPP
3. Whether the suit is barred by the principle of res judicata and under Order 2 Rule 2 CPC? OPD 1
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the plaintiffs are estopped by their act and conduct from filing the present suit? OPD
6. Whether Shri Palo son of Sh. Bhagat Singh executed a legal and valid Will in favour of defendant No.1 on 04.04.1998? OPD-1
7. Relief.

Trial Court, after taking issue Nos. 1, 2 and 6 together, gave a finding that both the Wills dated 10.03.1995 Ex.P1 & 04.04.1998 Ex.D1 were not duly proved. Moreover, nothing has been given to Surjit Singh wife of Pal Singh in both the Wills. Accordingly, issue Nos. 1 and 2 were decided against the plaintiffs and issue No.6 was decided against defendant No.1 and in favour of the plaintiffs. Finally, trial Court, after going through the evidence led by the parties, dismissed the suit. It was ordered that all the legal heirs of Pal Singh son of Bhagat Singh were entitled to the natural

succession in respect of the suit property.

On appeal, the lower appellate Court reversed the finding on issue No.1 with respect to the Will dated 10.03.1995 Ex.P1. It was observed that in order to prove the Will dated 10.03.1995 Ex.P1, plaintiffs had examined Balkar Singh Scribe (PW-3), who stated that he wrote the Will Ex.P1 at the instance of Palo @ Pal Singh in favour of Wassan Singh and Malkiat Singh. After scribing the Will, its contents were read over and explained to Palo @ Pal Singh and he thumb marked the Will after admitting the same to be correct. The Will was attested by Suba Singh and Tarsem Singh, Nambardar (PW-2). Both the attesting witnesses had signed the Will Ex.P1 in the presence of Palo @ Pal Singh and Pal Singh thumb marked the Will in the presence of those witnesses. Pal Singh @ Palo was in sound disposing mind at the time of execution of the Will. This witness (PW-3) had made entry in his register at serial no.75 dated 10.03.1995, where Palo @ Pal Singh affixed his thumb impression and attesting witnesses had put their signatures. The original register was brought in Court at the time of statement of Balkar Singh (PW-3). Tarsem Singh (PW-3) was the attesting witness of the Will Ex.P1, who deposed that contents of the Will dated 10.03.1995 Ex.P1 were read over and explained to the testator and he thumb marked the same in token of its correctness in the presence of attesting witnesses. Second attesting witness of the Will namely Suba Singh did not appear in the witness box. However, his son Jatinder Singh appeared as PW-5 and deposed that his father had expired on 02.02.2005. Jatinder Singh had seen the Will Ex.P1 and identified the signatures of his father Suba Singh thereon, as an attesting witness. Tarsem Singh (PW-2) further deposed that after execution of Will Ex.P1, it was presented before Sub Registrar, Gurdaspur for registration. Both the attesting witnesses also affixed their

signatures on the Will before the Sub Registrar. In order to prove that the Will Ex.P1 was bearing thumb impression of Pal Singh, the plaintiffs have proved on record mortgage deed Ex.P3 and sale deed Ex.P4 purported to be bearing thumb impressions of Pal Singh. In order to prove these documents, they had examined Natha Ram (PW-4), who deposed that vide mortgage deed dated 03.07.1996 Ex.P3, Palo @ Pal Singh had mortgaged 5 Kanals 7 Marlas of land, situated at village Rania, in his favour and his brother Tilak Raj. He further deposed that Palo @ Pal Singh affixed thumb impression over the mortgage deed Ex.P3 and he (PW-4) had signed the same. Natha Ram (PW-4) further deposed that Wassan Singh and Gurbax Singh attested the execution of mortgage deed Ex.P3. Dharam Chand, Wasika Navis (PW-6) deposed that he had scribed the mortgage deed dated 03.07.1996 Ex.P3 as well as sale deed dated 10.06.1996 Ex.P4 at the instance of Palo @ Pal Singh. Sale deed dated 10.06.1996 Ex.P4 was executed in favour of Prabhdayal Singh. This witness stated that both these deeds were bearing thumb impressions of Pal Singh. The plaintiffs had further examined Arvind Sood, Handwriting and Fingerprints Expert (PW-7), who compared the disputed thumb impression of Palo @ Pal Singh on the Will dated 10.03.1995 Ex.P1 as well as registration endorsement Ex.P2 with his standard thumb impressions appearing over mortgage deed Ex.P3 and sale deed Ex.P4. As per his report Ex.PW7/A, the disputed and standard thumb impressions belonged to one and the same person. The lower appellate Court has held that the above said evidence was sufficient to prove the due execution of Will Ex.P1 in favour of the plaintiffs. Even Surjit Kaur-defendant No.6 had entered into the witness box as DW-4 and supported the Will dated 10.03.1995 Ex.P1 propounded by the plaintiffs. Hence, the Will

Ex.P1 was not surrounded by any suspicious circumstance. It was observed that the trial Court had wrongly discarded the Will Ex.P1 on the ground that Palo @ Pal Singh was having knowledge to affix signatures in Urdu and he could not have thumb marked the Will Ex.P1. It was further observed that the purpose of execution of Will Ex.P1 was to disturb the natural line of succession. The testator has given proper reasons in his Will for excluding his other legal heirs while bequeathing his estate in favour of the plaintiffs.

Thereafter, the lower appellate Court proceeded to examine the second Will dated 04.04.1998 Ex.D1 set up by Kashmir Singh-defendant No.1 (appellant herein). In this Will, Pal Singh @ Palo did not mention that he has cancelled the earlier Will dated 10.03.1995 Ex.P1. He has termed this Will (Ex.D1) as the first and last. This in itself has created doubt with regard to its authenticity. Moreover, Will Ex.D1 bears the photograph of Pal Singh. There were not signatures of the testator on this photograph. No evidence was led to show that the property was Joint Hindu Family Coparcenary Property in the hands of Pal Singh. Davinder Kaur-defendant No.8 (DW-3), who was one of the daughters of Pal Singh, deposed that the Wills propounded by plaintiffs as well as defendant No.1 were forged and fabricated documents. In her cross-examination, she stated that she was not on the visiting terms with his brother-Kashmir Singh (defendant No.1). She had admitted that deceased Sulakhan Singh and his family members, including plaintiff No.2 used to serve her father. She further stated that she was living in the house of Sulakhan Singh and was being looked after by the legal heirs of Sulakhan Singh. She also admitted that plaintiffs were in possession of the suit land, mentioned in the Will. She had identified the photographs of her father on the Will appearing over mortgage deed Ex.P3

and sale deed Ex.P4. Finally, she stated that 'bhog ceremony' of her father was performed by the plaintiffs (respondent Nos.1 and 2). On the basis of above evidence, the lower appellate Court decreed the suit filed by the plaintiffs (respondent Nos.1 and 2) to the effect that they (plaintiffs) have become owners in possession of land measuring 40 Kanals 07 Marlas, as described in Schedule 'A' of head note of plaintiff in equal proportion on the basis of Will dated 10.03.1995 Ex.P1.

Learned counsel for the appellant has vehemently argued that the only Will executed by Pal Singh @ Palo was Ex.D1.

This argument is rejected because plaintiffs (respondent Nos. 1 and 2) have led sufficient evidence to prove due execution of Will Ex.P1 by examining Balkar Singh, Scribe (PW-3) and attesting witness of the Will namely Tarsem Singh (PW-2). On the other hand, defendant No.1-appellant has failed to establish that Will dated 04.04.1998 Ex.D1 was executed by Pal Singh @ Palo, as alleged by him. Accordingly, after going through the impugned judgment passed by the lower appellate Court, no illegality, much less perversity, has been found therein, warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Resultantly, both appeals i.e. RSA No.3386 of 2012 and RSA No.469 of 2014 are dismissed.

15.05.2018
ajp

(RITU BAHRI)
JUDGE

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