

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

RSA No.2007 of 2013 (O&M)

Hardeep Kaur @Harbir Kaur

Appellant

Versus

Narinder Pal Kaur and Others.

....Respondents

Date of Order: 07.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Naresh Kaushik, Advocate for the appellant.

Mr. Chetan Mittal, Sr. Advocate with
Mr. Kunal Mulwani, Advocate for respondents.

AMIT RAWAL, J (ORAL)

The appellant-plaintiff is aggrieved of the judgment dated 21.3.2013 passed by the Ld. Additional District Judge, Hoshiarpur whereby the appeal filed by defendants-respondents against judgment and decree dated passed by the civil Judge Jr.Division, Hoshiarpur decreeing the suit of the plaintiff has been accepted.

The facts of the case are that plaintiff instituted the suit on the ground that her husband was the owner of the Agricultural land measuring 22 kanals, 6 marlas situated in village Basi Kale Khan, Tehsil and District Hoshiarpur as ;per the fard jamabandi of the year 2002-03 and a residential house and haveli situated in Mohalla Ramgaria near elementary school, Hariana, Tehsil and District Hoshiarpur as detailed in the head note of the suit. Gurpal Singh son of Wattan Singh was earlier married to Smt. Nasib Kaur and out of that wedlock three daughters namely Narinder Pal Kaur,

Ravinderpal Kaur and Tejinder Pal Kaur i.e. all the defendants were born. They all are married and living separately in the house of their in-laws. However, said Nasib Kaur expired on 16.10.1985 and her husband Gurpal Singh contracted second marriage with the plaintiff in April 1986. Gurpal Singh retired from Army and he nominated plaintiff i.e. second wife as his heir and next of kin with the Army authorities. Gurpal Singh expired on 25.11.2007 leaving behind plaintiff his widow and the house property as detailed in the head note. During his life time Gurpal Singh in sound disposing mind executed valid will dated 04.1.1987 in favour of plaintiff. It was pleaded that defendants after the death of Gurpal Singh, a mutation No.669 dated 09.01.2008 of the disputed land was sanctioned in their favour as well as in favour of plaintiff, necessitating the plaintiff to file the suit.

The suit was contested by the respondents defendants by admitting the factum of death of first wife-Naseeb Kaur, the alleged will propounded was forged and fabricated document. It was pleaded that no such will was executed by Gurpal Singh and the Will propounded by the plaintiff did not bear the signatures of Gurpal Singh. It was further submitted that the Will has been fabricated by the plaintiff in connivance with her brother who had also signed this document as an attesting witness. Defendants also set a counter claim and a claimed declaration to the effect that they are joint owner to the extent of $\frac{3}{4}$ in the suit property.

The plaintiff also filed the replication reiterating the stand taken in the plaint.

From the pleading of the parties, following issues were framed:-

“1. Whether the plaintiff is entitled to declaration that she is owner in possession of property left by her

husband on the basis of Will dated 4.1.1987?OPP

2. *Whether the plaintiff is entitled to permanent injunction restraining the defendants from interfering in peaceful possession of the plaintiff as well as alienating the same?OPP*

3. *Whether the suit is not maintainable?OPD*

4. *Whether the defendants are entitled to permanent injunction restraining the plaintiff from cutting and removing the trees standing in the land in dispute and from alienating any specific portion of the property as well as interfering in possession of the defendants?OPD*

5. *Whether counter claim is not maintainable?OPP*

6. *Relief.”*

Plaintiffs in order to prove their case examined Dilbagh Singh, deed writer as PW-1, Malkiat Ram as PW-2, besides herself as PW-3. She also tendered documents i.e. attested copy of mutation No.669 Ex.P-6, death certificate of Gurpal Singh her husband Ex. P-7 and jamabandi for the year 2002-03 as Ex-P-8 before closing her evidence.

On the other hand, defendants examined Tejinder Pal Kaur, appeared as DW-1, Tarlok Singh, official of PNB Branch Haryana as DW-2.

On the basis of evidence placed on record, the trial court decreed the suit. The defendants-respondents feeling dissatisfied filed the appeal which has been accepted by the Lower Appellate Court by observing that the plaintiff failed to prove that she is exclusive owner of suit property on the basis of will dated 04.1.1987 and the parties are co-sharer/co-owner in the suit property to the extent of 1/4th share each.

Learned counsel for the plaintiff-appellant submitted that the lower Appellate Court has gravely erred while setting aside a well reasoned judgment of the trial Court as the plaintiff has complied with the provisions

of Section 68 of the Indian Evidence Act, for, the evidence of both the witnesses namely Dilbagh Singh-Deed Writer and Malkiat Ram, who were examined as PW1 and PW2, has throughout with regard to the execution of the will been consistent. In fact, after the death of Nasib Kaur, who died in the year 1985, the plaintiff had been living with Gurpal Singh though the marriage was contracted in 1992. He submitted that on the basis of services rendered by the plaintiff, Gurpal Singh executed unregistered will dated 04.1.1987. PW3-Hardip Kaur and her brother-Malkiat Ram (PW2) admitted in their cross examination that the marriage of Hardip Kaur with Gurpal Singh was performed as per sikh rites but they did not remember the date. Had all the facts of the case been noticed by the lower Appellate Court, the first appeal would not have been accepted. PW1-Dilbagh Singh, Deed Writer stated that he drafted the will at the instance of Gurpal Singh and made an entry in his register thus mutation No.669 sanctioned in favour of the defendants on the basis of natural succession was liable to be set aside. Another witness Girdhari Lal could not be examined as he expired.

Per contra, learned counsel for the respondents submitted that the trial Court did not advert to the documentary evidence especially Ex.P.11 which showed that Gurpal Singh was serving in the army. It revealed that said Gurpal Singh had performed the marriage with Hardip Kaur-plaintiff on 05.9.1992, therefore there was no occasion for execution of the will in the year 1987. No cogent or direct documentary evidence has been brought on record to establish that the plaintiff had been living with Gurpal Singh in 1986. One line of the cross examination cannot be read in isolation as the entire examination and cross examination has to be read simultaneously. Even no voter list or ration card etc had been brought on

record to prove that the plaintiff had been living with Gurpal Singh since 1986. The attesting witness was none else but brother of the plaintiff, which itself created suspicion. Though it has come on record that Dilbagh Singh had lost one of his registers pertaining to the year 1985 to 1987 but lodging of DDR would not suffice the requirement of eradicating the suspicion. The judgment and decree of the lower Appellate Court has been justified and do not call for interference.

I have heard learned counsel for the parties and appraised the paper book besides examining the testimonies brought on record during the hearing of the appeal.

Before proceeding further, it is worthwhile to reproduce the statement made by PW2-Malkiat Ram in his examination in chief, which reads as under:

“That I am attesting witness of Will dated 4.1.1987 Ex.P1 which bears my signature. This Will was scribed by Dilbag Singh deed writer Hariana at the instance of Gurpal Singh son of Wattan Singh s/o Wadhawa Singh r/o Mohalla Ram Garian, Hariana, Tehsil and District Hoshiarpur in favour of his second wife Hardeep Kaur as his first wife Nasib Kaur had already died. Gurpal Singh vide this Will bequeathed his moveable and immoveable properties situated at Village Hariana, and Bassi Kalan Khan, Tehsil and Distt Hoshiarpur. Sh. Dilbagh Singh deed writer readover the contents of Will to Sh. Gurpal Singh in my presence and in the presence of other witness namely Girdhari Lal, Lambardar, Hariana (who has since died) and Gurpal Singh after admitting the contents of the Will as correct put his signatures in English in the presence of witnesses who also put their signatures on the Will in the

presence of each other and Gurpal Singh.”

The requirement of law as provided in Section 63-C of Indian Succession Act, 1925 (for short “the Act”) has not been complied with. It is necessary to reproduce Section 63 of the Act, which reads as under:

“ 63 Execution of unprivileged Wills. —Every testator, not being a soldier employed in an expedition or engaged in actual warfare, 12 [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.”

In terms of sub Section (c) of Section 63 of the Act, statement of only one witness for the purpose of proving the execution of the Will is not enough/suffice. None of the witnesses has stated that Gurpal Singh had ever signed the will. Moreover, perusal of Ex.P.11 (army record) shows the date of marriage of Gurpal Singh with the plaintiff to be 05.9.1992. In order to eradicate the doubt, it was obligatory on the part of the plaintiff to bring on record corroborative evidence to establish the fact that she had been living with Gurpal Singh since 1986. Mere admission of one witness in this

respect and that too at the stage when the suit was fixed for defendants' evidence does not dispense with the proof particularly when onus was heavily upon the plaintiff being propounder of the Will.

Dilbagh Singh-Deed Writer in his cross examination also spilled the beans by stating that one of his registers had been lost. His credibility has also been shattered and all these factors weighed in the mind of lower Appellate Court to set aside the findings of the trial Court.

For the aforesaid discussion, the plaintiff has failed to bring on record any substantial evidence to form a different opinion than the one taken by the lower Appellate Court.

No ground for interference is made out much less no substantial question of law is involved.

Dismissed.

May 07, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No