

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

RSA No.2243 of 2013(O&M)

Date of decision: 1. 10.2018

Savitri Devi and others

.....Appellants

VERSUS

Satish Kumar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rajesh Sethi, Senior Advocate with
Ms. Pridhi Jaswinder Sandhu, Advocate for the appellants.

Mr. Sunil Chadha, Senior Advocate with
Mr. Chetan Bansal, Advocate for the respondents.

REKHA MITTAL, J.

CM No.6121-C of 2013

Prayer in this application is for bringing on record legal representatives (in short 'LRs') of Lakhmi Chand (since deceased) and Tej Ram (since deceased).

Heard.

In view of averments made in the application supported by an affidavit of Sukh Ram, one of the alleged LR's of Lakhmi Chand, the application is allowed and persons mentioned in para 4 of the application are allowed to be brought on record as LR's of deceased Lakhmi Chand and Tej Ram subject to just exceptions and for the purpose of present lis.

Amended memo of parties is taken on record.

Disposed of accordingly.

RSA No.2243 of 2013

The present *lis* pertains to inheritance qua land measuring 17 kanal 6 marlas comprising khasra numbers, detailed in para 2 of judgment of the trial Court, previously owned by Sh. Chattar Singh who passed away on 31.07.1994. Sh. Chattar Singh had two wives namely Smt. Sarupi (since deceased) and Suraj Kaur, four sons namely Chand Ram, born out of his wedlock with Suraj Kaur, Nand Lal, Lakhmi Chand and Lal Chand sons of Sarupi.

The appellants/plaintiffs namely Nand Lal (since deceased) represented by his LRs, Lakhmi Chand, Smt. Sarupi (since deceased) represented by her LRs, Smt. Shanti daughter of Sh. Chattar Singh, Kamal Singh and others, successors in interest of Sh. Lal Chand son of Sh. Chattar Singh challenged Will dated 01.07.1994 allegedly executed by deceased Sh. Chattar Singh in favour of Satish, minor son of Chand Ram being illegal, null and void and not binding on the plaintiffs, thereby claiming 1/7th share each for all the class I heirs or their successors in interest including Chand Ram left behind by Sh. Chattar Singh. The appellants challenged the Will inter alia on the following grounds, detailed in sub paras (a) to (e) of para 5 of the plaint:-

- (a) The land in dispute is ancestral property which cannot be alienated or transferred by way of Will.
- (b) Sh. Chattar Singh could not execute the Will in respect of Rect No.61 where houses of plaintiffs had been constructed during his lifetime and the house owners have become owners of their respective area.

- (c) Sh. Chattar Singh was not having sound mind and physique and was hard of hearing.
- (d) The Will was not an act of free will and intention of deceased Chattar Singh.
- (e) Smt. Suraj Kaur and Chand Ram had strangled (sic) relation with deceased Chattar Singh and Will in favour of Satish son of Chand Ram is not genuine.

Initially, there were three defendants in the suit namely Satish, minor son of Chand Ram, Chand Ram son of Chattar Singh and Suraj Kaur widow of Chattar Singh. Later, claim against Smt. Suraj Kaur was withdrawn. Suit of the plaintiffs/appellants was contested by defendant No.1 through his guardian Chand Ram, his father.

Defendant No.1 filed the written statement and raised preliminary objections that the appellants have concealed material facts and made incorrect statements in the plaint. Sh. Chattar Singh belonged to Jat community, one of the major agricultural tribes of Punjab territory including Gurgaon district. The institution of Joint Hindu Family and Coparcenary Property did not exist in the said tribe. The suit land was not ancestral property in the hands of Sh. Chattar Singh. Chattar Singh had four sons namely Nand Lal, Lakhmi Chand, Chand Ram and Lal Chand. In the year 1970, Sh. Chattar Singh made gift of two acres of his land to Nand Lal – plaintiff. Defendant No.1 had rendered services to Chattar Singh and Chattar Singh being pleased with him and out of love and affection executed registered Will on 01.07.1994 and bequeathed the suit land to the answering defendant. On death of Chattar Singh, mutation in

respect of suit land was sanctioned in favour of answering defendant who is owner in possession of land in dispute together with house existing in land. The plaintiffs being not in possession of the suit property, suit for declaration simplicitor is not maintainable. The suit is false and vexatious to the knowledge of the plaintiffs and liable to be dismissed with costs. He had denied the averments on the basis whereof the appellants have sought to assail the registered Will dated 01.07.1994 and mutation No.265 sanctioned on the basis thereof.

The appellants filed replication, reiterated their stand taken in the plaint while denying the averments raised in the preliminary objections.

The controversy between the parties led to framing of following issues by the trial Court:-

1. Whether the plaintiffs are owners in possession of the suit property as alleged? OPP
2. Whether the will dated 01.07.1994 executed in favour of defendant No.1 by late Chattar Singh is valid and legal, if so its effect? OPD
3. Whether the parties to the suit were governed by agricultural custom in the matters of inheritance. If so, to what effect? OPD
4. Whether the suit property was ancestral joint Hindu family property of the parties. If so to what effect? OPD
5. Whether the suit is not maintainable in the present form? OPD
6. Relief.

The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, the trial Court answered issue No.2 against the respondent/defendant No.1 and as a consequence, suit of the appellants/plaintiffs was decreed to the effect that after death of Chattar Singh (Chatra), his four sons, one daughter would get one share each and his widows would take one share jointly out of property left by him. Further held that appellants being in exclusive possession of house constructed in Rect. No.61 are entitle to injunction till the property is partitioned by metes and bounds.

The judgment and decree passed by the trial Court became subject matter of appeal filed by Satish and another that came to be decided by the Additional District Judge, Gurgaon. The findings of trial Court on the question of Will were set aside and accordingly defendant No.1/respondent No.1 Satish was held to be owner of the suit land on the basis of testamentary succession to Sh. Chattar Singh.

Counsel for the appellants would urge that judgment passed by the Appellate Court accepting the Will dated 01.07.1994 in favour of Satish, minor son of Chand Ram is the result of mis-appreciation of evidence on record and legal aspects involved in the case. Counsel has reiterated that the Will in question is liable to be set aside on the grounds raised in paras (a) to (e) of para 5 of the plaint. It is argued with vehemence that as the suit property was Joint Hindu Family Coparcenary Property in the hands of Sh. Chattar Singh, he was not competent to alienate the suit property by way of Will. It has further been argued that Chattar Singh was not physically and mentally sound on 01.07.1994, who

admittedly passed away on 31.07.1994. It is further argued that Smt. Suraj Kaur filed an application under Section 125 Cr.P.C. claiming maintenance from Sh. Chattar Singh by alleging that there were strained relations between her and Chattar Singh and she had been turned out of the matrimonial home. She also claimed that Chand Ram was not being provided maintenance by Sh. Chattar Singh, sufficient to show that Smt. Suraj Kaur and Chand Ram did not have cordial relations with Sh. Chattar Singh and the said fact is sufficient to falsify and belie plea of the respondent that Sh. Chattar Singh executed the Will in question due to love and affection towards Satish, minor son of Sh. Chand Ram. It is argued that Satish was barely 11 years old and a student of 6th class in the year 1994, there is no question of his having rendered service to Sh. Chattar Singh in lieu whereof Chattar Singh could decide to bequeath the suit property in favour of Satish.

Another submission made by counsel is that testimony of Ranjit Singh DW-2, one of the alleged attesting witnesses to the Will, is not worthy of credence and reliance much less sufficient to prove that Will in question was executed by Sh. Chattar Singh in his sound disposing mind and without any influence. It is argued that in the opening lines of his examination in chief, he had stated that Chattar Singh was the brother in law (Sala) of his uncle (Chacha). In his cross examination, he has admitted that Deep Ram is his Chacha from brotherhood (Parivarik) and there is no blood relation between him and Deep Ram. Ranjit Singh DW-2 is a resident of village Jharsa whereas Chattar Singh was resident of village Brijpura, therefore, there was no reason for Chattar Singh to call Ranjit Singh to attest the Will in question. Further argued that in his cross

examination, Ranjit Singh was not able to disclose various facts regarding family of Chattar Singh and as such, his testimony cannot form the basis to hold that the respondent has successfully proved the Will, in accordance with law.

Counsel for respondents has supported judgment passed by the Appellate Court with the submission that the appellants have failed to adduce any evidence that the suit property was Coparcenary Property in the hands of Sh. Chattar Singh. There is not even an iota of evidence on record that Chattar Singh had any mental or physical disability to execute the Will which is a registered document. There is no material on record that the Will in question is not an act of free will of the deceased. It is vehemently argued that the land in question is approximately 2 acres. Chattar Singh was owner of land measuring 14½ / 15 acres out of which he had already sold land measuring 6 ½ acres and was left with land measuring 8 acres. It has been established on record that out of that 8 acres of land, Chattar Singh had already given two killas each to Nand Lal, Lakhmi Chand and Lal Chand, as has been admitted by Nand Lal in his cross examination. It is argued that as Sh. Chattar Singh had already given 6 killas of land to his other three sons to the extent of 2 killas each, there is nothing unnatural and abnormal if he had decided to give remaining land approximately 2 killas to Satish, son of his 4th son namely Chand Ram.

According to counsel, Ranjit Singh had not stated in his examination in chief that Chattar Singh was the brother in law of his real Chacha. No evidence has been led by the appellants to controvert statement of Ranjit Singh that Chattar Singh was brother in law (sala of Deep Ram) and Deep Ram was Chacha of Ranjit Singh from brotherhood.

Ranjit Singh had admitted existence of houses in khasra No.61 as pleaded by the appellants. He was subject to searching and lengthy cross examination but nothing tangible and material has been brought-forth in order to create any dent in his testimony much less to prove that he had any hostility against the appellants or was favourably inclined towards the respondents/defendants.

To refute contention of the appellants with regard to strained relations between Chattar Singh and Chand Ram, it is argued that the application for maintenance was filed only by Smt. Suraj Kaur and Chand Ram was not a party in those proceedings. Chattar Singh filed reply and denied that relationship between Smt. Suraj Kaur and Chattar Singh were strained. The Court decided application filed in the year 1982 vide order passed in the year 1986 and rejected plea of Smt. Suraj Kaur that she has been neglected to be maintained by Sh. Chattar Singh. It is further argued that the appellants have not produced on record copy of the statement of Chand Ram recorded in those proceedings in order to show that Chand Ram had made any such statement that relations between him and his father were strained. In addition, it is argued that as the appellants did not challenge sale of some land by Chattar Singh and they have got 6 acres of land to the extent of 2 acres each by Nand Lal, Lakhmi Chand and Lal Chand (other three sons of Chattar Singh) it demolishes entire case of the appellants that either suit property or other property was Joint Hindu Family Coparcenary Property in the hands of Sh. Chattar Singh or Sh. Chattar Singh had no reason to exclude his other sons from inheritance by way of Will Ex.D1. He has further argued that Ram Karan PW-2 examined by the appellants has admitted in his cross examination that

Chattar Singh had executed a Will in favour of respondent No.1 sufficient to negate plea of the appellants that the Will in question is liable to be set aside on any score whatever.

Counsel for the respondents, in the alternative, has argued that during pendency of suit before the trial Court dispute between the parties was settled vide compromise dated 13.09.2004 Ex.C1 which bears signatures of Nand Lal, Lakhmi Chand, Kamal Singh and counsel for the appellants/plaintiffs on behalf of the plaintiffs and Chand Ram on behalf of the defendants/respondents. Not only this, Nand Lal, Lakhmi Chand, Kamal Singh, Sh. D.P. Sharma, Advocate, counsel for the appellants/plaintiffs, Chand Ram, respondent/defendant for himself as well as guardian of Satish and Sh. M.S. Vashisht, Advocate counsel for defendants No.1 and 2 got recorded their statement with regard to compromise Ex.C1 with a prayer to dispose of the case on the basis of compromise, leaving the parties to bear their own costs. Chand Ram son of Chattar Singh also got recorded his separate statement to the effect that compromise Ex.C1 is in the interest of minor defendant No.1 and he may be permitted to compromise the matter on behalf of minor defendant No.1 in addition to affidavit dated 13.09.2004 filed in this regard. Later, Smt. Prem widow of Lal Chand, Balram, Narinder, Tej Ram sons of Sh. Lal Chand and Sh. D.P. Sharma, Advocate for the appellants got recorded their statement dated 12.03.2005 for deciding the suit on the basis of compromise Ex.C1. It is further submitted that in view of compromise between the parties, appellants agreed to give the entire suit land except land comprising khasra No.61 (2-3), on the basis of Will dated 01.07.1994 and stated that Will dated 01.07.1994 should be upheld in favour of Satish

except in respect of khasra No.61. He has submitted that till date, the appellants did not withdraw from their consent and statements made before the trial Court that suit may be decided on the basis of compromise Ex.C1. It is urged that though there is no merit in the appeal preferred by the appellants but still the contesting respondents/defendants have got no objection if the appeal is disposed of in terms of compromise Ex.C1.

Counsel representing the appellants, in reply, has submitted that defendant No.1 has already sold the suit land during pendency of litigation, therefore, he cannot be heard to say that the appeal may be disposed of in terms of compromise Ex.C1. He further argued that Smt. Shanti daughter of Sh. Chattar Singh – plaintiff No.4 has neither signed compromise Ex.C1 nor got recorded statement accepting the compromise, therefore, compromise Ex.C1 is not binding against her. It is further argued that admission made by a party must be unconditional and in unequivocal terms. It is urged that as Satish, in his reply to the application for restoration of suit, had raised protest against compromise Ex.C1, he cannot be allowed to take advantage of compromise Ex.C1. The last submission made by counsel is that even in the appeal filed before the first Appellate Court, the respondents have raised the issue of compromise but the same has not been accepted by the said Court.

I have heard counsel for the parties, perused the paper-book and records.

There is no material on record to substantiate plea of the appellants that suit land was Joint Hindu Family Coparcenary Property in the hands of Sh. Chattar Singh. The appellants examined Jagdish Singh, Moharrar Patwari to prove excerpt PW4/A but the same was objected to by

the contesting party. In his cross examination, he has admitted that he had not brought original record on the basis whereof the excerpt has been prepared. As the witness failed to produce the original documents, basis of the excerpt Ex.PW4/A, the excerpt Ex.PW4/A cannot be taken into consideration nor the appellants can be heard to say that suit land was Joint Hindu Family Coparcenary Property in the hands of Sh. Chattar Singh.

Counsel for the appellants has failed to point out any material on record that Sh. Chattar Singh had any physical or mental disability to understand his good or bad or incapacitating him to make a testament. He has also not advanced any argument much less meaningful that the Will is not an act of free disposition by the deceased. Counsel for the appellants has also not challenged that Sh. Chattar Singh was left with land approximately 8 acres after he had sold some land measuring 6½ acres. The respondents had raised a specific plea in the written statement that Sh. Chattar Singh gifted 2 acres of land in favour of Nand Lal – appellant No.1. In his cross examination, Nand Lal has admitted that Sh. Chattar Singh had given 2 acres land each to three sons namely Nand Lal, Lakhmi Chand and Lal Chand. The suit land is approximately 2 acres, therefore, there is nothing unnatural and abnormal if Sh. Chattar Singh had decided to give the suit land by way of Will in favour of Satish son of his 4th son namely Chand Ram.

Much stress has been laid by counsel that Sh. Chattar Singh had strained relations with Sh. Chand Ram, father of Satish. There is no oral evidence led by the appellants to substantiate their plea in this regard. However, the appellants have sought to rely upon order dated 17.11.1986 passed by Sub Judge Ist Class, Gurgaon in a petition under Section 125

Cr.P.C. filed by Smt. Suraj Kaur against Sh. Chattra. In the said petition, Chand Ram son of Suraj Kaur is not impleaded as a party. Plea of Smt. Suraj Kaur with regard to her being harassed or neglected by Sh. Chattra was not only denied by Sh. Chattra but also rejected by the Court and eventually the petition for maintenance was dismissed. As has been rightly argued by counsel for the respondents, the appellants have not placed on record testimony of Chand Ram AW-2 in order to prove that Chand Ram did not have cordial relation with his father Sh. Chattra. Similarly, testimony of Chattra, in that case, is not a part of records.

Even if Chand Ram had made a statement to support cause of his mother for claiming maintenance from Sh. Chattra, the very fact that Sh. Chand Ram never joined the proceedings initiated by his mother nor claimed maintenance from his father goes a long way that Sh. Chand Ram did not express any grievance against his father. This apart, there is nothing on record suggestive that after dismissal of the petition by Sub Judge Ist Class, Gurgaon, Suraj Kaur pursued her remedy before the Court in appeal. In the given scenario, it is difficult to accept contention of the appellants that Chattar Singh had strained relations with Chand Ram, a circumstance of consequence against Will propounded by Satish son of Chand Ram.

Much stress has been laid by counsel that since Satish was 11 years old in the year 1994, therefore, there was no occasion for him to render services to his grandfather Sh. Chattar Singh. In the Will, it has been mentioned that due to services rendered by Satish and out of love and affection, he had decided to execute the Will in his favour. It is the expression of the testator as to how he perceives the things at a particular

point of time. This recital in the Will cannot be given literal meaning to say that as Satish had not acquired such an age to render services to his grandfather, there was no reason for the deceased to execute the Will in his favour. In view of the discussion made hereinbefore that the deceased had already given 6 acres of land to the extent of 2 acres to each of his sons namely Nand Lal, Lakhmi Chand and Lal Chand, decision to give suit land by Sh. Chattar Singh to his grandson who is none-else but son of his 4th son namely Chand Ram, cannot be entertained with suspicion.

Counsel for the appellants has made submissions to discredit testimony of Ranjit Singh DW-2, an attesting witness to the Will. Ranjit Singh had stated in the opening lines of his examination in chief that deceased was brother in law of his Chacha. He has nowhere stated that deceased was the brother in law of his real Chacha. In his cross examination, he had stated that Deep Ram was his Chacha from brotherhood. There is no challenge to testimony of Ranjit Singh that Chattra was the brother in law/sala of Deep Ram. The appellants have not adduced any evidence to counter version of Ranjit Singh that Deep Ram was his Chacha from brotherhood. Ranjit Singh DW-2 was cross examined at length and his cross examination was completed in two sittings on different dates. The witness was put large number of questions pertaining to different aspects. A close scrutiny of statement of Ranjit Singh DW-2 would reveal that appellants have failed to shake his credibility and veracity much less to prove that Ranjit Singh is an interested witness to support case of the respondents or he had any hostility against the appellants. The mere fact that Ranjit Singh DW-2 belonged to

a village different from village of Chattra Singh is not a very relevant and material fact to discard or disbelieve his testimony.

The Will in question is a registered document. This Court is not oblivious of the fact that Will does not require registration nor registration of a Will can be the only circumstance to accept its validity and authenticity. However, at the same time, registration attaches more weightage to a document as endorsement made by a Registering Authority in discharge of its official functions is presumed to be correct unless proved otherwise. The Will has been attested by Ranjit Singh and Badlu Ram, Nambardar. One of the witnesses examined by the appellants has also admitted that the deceased had executed Will in favour of Satish. Even otherwise, on appraisal of entire evidence led by the appellants and facts elicited in cross examination of the witnesses of the respondents, it can safely be gathered that main anxiety of the appellants is to save their houses built in khasra No.61 of suit land. Ranjit Singh had stated in his cross examination that even Nand Lal and Lakhmi Chand, two sons of Chattar Singh had been asking him to execute the Will. Taking a cumulative view of the facts and circumstances on record coupled with discussion made hereinbefore, it is difficult to accept contention of the appellants that either the respondents have failed to prove the Will in accordance with law or the Will is liable to be rejected on any of the grounds raised in para 5 of the plaint. In this view of the matter, I do not find an error much less perversity in findings of the Appellate Court accepting the Will in question by setting aside the judgment and decree passed by the trial Court.

Indisputably, Nand Lal, Lakhmi Chand and Lal Chand are maintaining their houses in khasra No.61 (2-3) of suit land. Counsel for the respondents has got no objection if compromise Ex.C1 arrived at between the parties is given effect to. As per the compromise, the appellants had agreed to accept the Will as far as rights of Satish in suit land except Rect. No.61 (2-3). The contentions raised by counsel for the appellants that the compromise Ex.C1 cannot be given effect to are not meritorious and deserve to be rejected. Firstly, even if respondent No.1 has alienated the suit property during pendency of proceedings before the Court, the same would be subject to outcome of the present appeal, thus, purchase from respondent No.1 is of no consequence so far as compromise Ex.C1 is concerned. The compromise Ex.C1 has been signed by some of the appellants as well as counsel for all the plaintiffs. Similarly, the statements made by the appellants except Smt. Shanti recorded on 13.09.2004 and 12.03.2005 have been signed by counsel for the appellants/plaintiffs before the trial Court. Counsel for the appellants has failed to point out if the appellants ever retracted from compromise Ex.C1 and their statements made before the trial Court on 13.09.2004 and 12.03.2005. Smt. Shanti, one of the appellants whose statement was yet to be recorded when the suit was dismissed in default at one point of time neither made any statement nor filed an application either before the trial Court or the Court in appeal or this Court that she does not agree with the compromise effected on her behalf by her counsel Sh. D.P. Sharma, Advocate. Perusal of the compromise Ex.C1 as well as statements of the appellants except Smt. Shanti makes it evident that the appellants have clearly admitted that they accept the suit property to be given to Satish on the basis of Will dated

01.07.1994 except land comprising Rect. No.61 (2-3). Counsel for the appellants has failed to advance any meaningful arguments as to how their stand recorded in compromise Ex.C1 and statements recorded in the Court can be said to be ambiguous or conditional. Taking into consideration close relationship between the parties coupled with that terms and conditions of compromise are reasonable that may create harmony among members of family left behind by erstwhile owner Sh. Chattar Singh, in my considered opinion, interests of justice, equity and good conscience warrant that the appeal is disposed of in terms of compromise Ex.C1.

For the foregoing reasons, the appeal is disposed of in terms of compromise Ex.C1 dated 13.09.2004. Judgment and decree passed by the Court in appeal is modified in the light of terms and conditions of compromise Ex.C1. The terms and conditions of compromise Ex.C1 shall form part of the decree.

OCTOBER 1st, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no