

In the High Court of Punjab and Haryana at Chandigarh

RSA- 374 of 2016(O&M)
Date of Decision:17.9.2018

Surjit Kaur (since deceased) through her LRs

---Appellant

vs.

Sukhdev Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. P.K.S.Phoolka, Advocate
for the appellants

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit for declaration and possession filed by the appellant (since deceased) represented by her LRs was dismissed by the trial court vide judgment and decree dated 29.11.2011 and appeal preferred by unsuccessful plaintiff-appellant did not find favour with the Court of Additional District Judge, Bathinda.

The present lis pertains to inheritance to estate of Sh. Bhola Singh and Smt. Kartar Kaur, widow of Bhola Singh. Surjit Kaur plaintiff (since deceased) is the daughter of Bhola Singh and Kartar Kaur. She claimed 1/3rd share in the suit land on the basis of natural succession to Sh.

Bhola Singh which was inherited by Kartar Kaur, the plaintiff, Sukhdev Singh defendant No. 1 and Malkiat Kaur represented by her sons Jagroop Singh and Darshan Singh defendants No. 3 and 4 respectively. It is averred that Bhola Singh died on 13.8.1976. Defendant No. 1 alleges that Bhola Singh executed Will dated 7.8.1976 in favour of defendants No. 1 and 2 and Kartar Kaur widow of Bhola Singh. The said Will is a forged and fabricated document. Mutation sanctioned on the basis of Will is liable to be set aside and is not binding upon right of the plaintiff. Kartar Kaur died on 7.12.1998 and defendants allege that she also executed an unregistered Will dated 5.3.1998 in their favour which is also forged and fabricated.

Counsel for the appellant would urge that contesting defendants failed to prove Will dated 7.8.1976 in accordance with law. There is no evidence on record that Bhola Singh executed the Will in sound disposing mind. As the plaintiff-appellant is the daughter of Bhola Singh, there was no reason for the deceased to exclude her from inheritance. It is vehemently argued that the courts have failed to appreciate factual and legal aspects involved in the case correctly, therefore, findings recorded by the courts are liable to be set aside.

I have heard counsel for the appellant (since deceased) now represented by her LRs and perused the paper book particularly the judgments impugned.

The Will dated 7.8.1976 bears attestation of Sukhdev Singh, Gurdial Singh and Natha Singh but all of them had already passed away and death certificates have been produced on record as Exs. D3, D4 and D6. Manpreet Singh grand son of Sukhdev Singh was examined and he

identified signatures of Sukhdev Singh, one of the attesting witnesses. Bakhtaur Singh son of Natha Singh was examined to prove signatures of Natha Singh as an attesting witness. Kidar Nath Gupta, scribe of the Will was examined to prove that he scribed the Will at the behest of Bhola Singh. Not only this, the respondents examined Anil Kumar Gupta, Handwriting and Finger Prints Expert to prove on the basis of comparison that Will bears thumb impressions of Bhola Singh and the same tally with thumb impressions of Bhola Singh on gift deed Ex. D2, written statement and statement of Bhola Singh in civil suit No. 150 dated 24.3.1972.

Counsel for the appellant has failed to point out if testimonies of aforesaid witnesses are not worthy of credence and reliance or the same are not sufficient to prove the Will in consonance with the provisions of Section 69 of the Indian Evidence Act.

The appeal was preferred in the year 2016. On 15.2.2018, counsel for the appellant was directed to place on record testimonies of Bakhtaur Singh DW1 and Kidar Nath Gupta DW2. Despite availing three opportunities including one last opportunity, the appellant failed to produce testimonies of the witnesses. A relevant extract from order dated 11.7.2018, reads as follows:-

“Counsel for the appellant prays for some more time to comply with order dated 15.2.2018.

Last opportunity is provided for the purpose failing which it may be of adverse consequence.

Be listed on 17.9.2018.”

The very fact that appellant shied away from producing

testimonies of the aforesaid witnesses goes a long way to show that the appellant has nothing to say to assail findings of the courts by relying upon testimonies of aforesaid witnesses. In this view of the matter, the appellant has failed to make out a case that Will propounded by the respondents-defendants is not proved in accordance with law.

This apart, counsel has failed to point out any materials on record that Bhola Singh was suffering from any physical much less mental disability to make a competent decision as to how his property should be dealt with after his departure from the world. There is no counter to testimony of handwriting expert that the Will is thumb marked by Sh. Bhola Singh.

Bhola Singh died sometime in the year 1976-77. As per the settled position in law, inheritance never remains in abeyance and the same opens on the day of death of a person. The trial court while deciding the question of limitation under issue No. 5, has held that mutation on the basis of Will was sanctioned in the year 1981 and mutation sheet bearing No. 13534 dated 23.5.1981 Ex. P11 records presence of the appellant and the said act of the concerned revenue official in discharge of official duty is to be taken as correct meaning thereby that Will dated 7.8.1976 was to the knowledge of the plaintiff since 23.5.1981.

There is no dispute between the parties that since death of Bhola Singh, brothers of the appellant are in possession of suit property. The fact that the appellant did not raise an issue to challenge the Will in question or assert her claim to be co-owner in the suit land on the basis of natural succession except by filing the suit in the year 2006 speaks volumes

about conduct of the appellant from which it can safely be inferred that the appellant knew well since 1981 that her father has left behind a testament in favour of her brother, mother and nephew to the extent of half share, $1/8^{\text{th}}$ share and $3/8^{\text{th}}$ share respectively.

No doubt, there is no limitation for an owner to seek declaration qua his/her ownership right unless there is a plea raised by the defendants that they are in adverse possession of suit property, ripened into a title in their favour. At the same time, to challenge a document/transaction, suit must be filed within three years from the date of document or its knowledge, depending upon the facts and circumstances of a particular case. However, if the challenge has been laid beyond three years from the date of document and limitation is sought to be invoked from the date of knowledge, conduct of a party assumes relevance/significance. In the light of facts and circumstances discussed hereinbefore, it can safely be held that findings of the courts on the question of limitation can not be faulted with and liable to be affirmed.

The appellant is the married daughter of Bhola Singh and she was married prior to death of Bhola Singh. There is nothing on record suggestive of the fact that she had any difficulty in her matrimonial home much less that she had a disturbed matrimony. As the appellant was married before the Will dated 7.8.1976 was executed, there is nothing unnatural and abnormal for the deceased to exclude his daughter from inheritance while bequeathing his property in favour of his two sons and widow. The deceased has not given equal shares to his other class-I heirs. Rather he has given half of the property to Sukhdev Singh, $1/8^{\text{th}}$ share to Kartar kaur and

remaining 3/8th share to Jagsir Singh. The manner in which the deceased had disposed of his estate is in conformity with usual practice in most agricultural families where the testator does not want that the family property should go outside the family. In this view of the matter, the appellant cannot be heard to say that the Will is shrouded by suspicious circumstances because she has been excluded from inheritance. Even otherwise, the very purpose of Will is to deviate from natural succession. That being so, the trial court has rightly held by relying upon judgment of Hon'ble the Supreme Court **Ramabai Padamakar Patil (D) through LRs and others vs. Rukminibai Vishnu Vekhande 2003(4) RCR (Civil) 92** and judgments of this Court **Lila Dhar vs. Smt. Badho and another 1994(1) RRR 221, Amar Kaur vs. Paramjit Kaur 2003(3) CCC 645** and **Daljit Singh and others vs. Sukhwinder Singh and others 2005(4) RCR (Civil) 296** that exclusion of the appellant from inheritance is no ground to entertain the Will with doubt much less to accept plea of the appellant for setting aside the same.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, applications for condonation of delay of 109 days in refiling and 12 days in filing the appeal are of academic relevance.

(Rekha Mittal)
Judge

17.9.2018
paramjit

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