

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

RSA No. 4821 of 2016(O&M)

Date of decision: 16.2.2018

Joginder SinghAppellant

VERSUS

Gurmail Singh and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Arun Takhi, Advocate for the appellant.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against consistent findings recorded by the Courts whereby suit filed by the appellant claiming inheritance to the estate of deceased Gurbachan Singh, his father, has been dismissed and Will dated 15.12.2003 in favour of respondent/defendant No.3 and transfer deed dated 10.07.2007 in favour of respondent/defendant No.1 have been held to be valid.

The appellant/plaintiff sought declaration that he is owner to the extent of 1/3rd share in the suit property, detailed in headnote of the plaint on the basis of natural succession after death of Gurbachan Singh son of Prema on 01.06.2008. Further declaration has been sought that Will dated 15.12.2003 in favour of respondent No.3 is a forged document having no effect upon right of the plaintiff. Similarly, challenge has been

laid against title deed dated 10.07.2007 purported to be executed by Gurbachan Singh in favour of defendant No.1.

The Courts upheld the Will dated 15.12.2003 in favour of defendant No.3, grand-son of Gurbachan Singh and title deed dated 10.07.2007 in favour of Gurmail Singh son of Gurbachan Singh, erstwhile owner of the suit property.

Counsel for the appellant has challenged concurrent findings qua Will dated 15.12.2003 by pointing out certain discrepancies in the statement of Balwinder Singh DW-2, one of the attesting witnesses of the Will in question. It is argued that the witness failed to disclose as to how many copies of the Will were prepared, Will consisted of how many pages. His testimony that the Will was scribed on a stamp paper is contradictory as Will Ex.D2 is not scribed on a stamp paper. He has failed to disclose correct name of the person in whose favour Gurbachan Singh executed the Will as he stated that his name was Wasiyat Singh (appears to be wrongly written) and his father name was Surjit Singh when as a matter of fact the Will is in the name of Surjit Singh.

He has challenged findings of the Courts qua title deed dated 10.07.2007 primarily on the ground that as per Will Ex.D2, Gurbachan Singh was not served by his two sons namely Joginder Singh and Gurmail Singh, therefore, there was no occasion for the deceased to execute title deed dated 10.07.2007 in respect of land measuring 16 kanal in favour of Gurmail Singh.

Before advertng to the submissions made by counsel for the appellant, it is appropriate to recapitulate that in the Regular Second

Appeal the Court cannot re-appreciate the evidence and set aside the concurrent findings on the ground that a view different from what has been held by the Courts below is possible. Equally settled is that the Second Appeal can be admitted for hearing only if there is a substantial question of law that requires to be answered.

The respondents/defendants examined both the attesting witnesses of the Will namely Balwinder Singh and Harbhajan Singh DW-2 and DW-3 respectively. Counsel for the appellant has not pointed out any discrepancy in the statement of Harbhajan Singh, the other attesting witness of the Will. The Will is a registered document and perusal thereof would reveal that the deceased cancelled his earlier registered Will dated 29.08.2000 which was made in favour of Satnam Kaur, daughter of the deceased, as said Satnam Kaur is stated to have passed away. A careful reading of cross examination of Balwinder Singh DW-2 would make it evident that contradictions pointed out in his testimony are natural and result of gap between execution of the Will and date of recording of his statement. The Will was executed in December 2003 and the witness was examined in January 2013, after more than 9 years. Failure of the witness to depose about the number of copies of the Will and number of pages of the Will can be attributed to the time lag between the date of document and the date on which the witness was examined. The other two discrepancies also appear to be the result of time lag. Rather these discrepancies show natural conduct of the witness who appears to have not been tutored by counsel representing the respondents nor the witness refreshed his memory. However, he has correctly stated that Will was executed by the

deceased in favour of his grand son and the earlier Will was executed by the deceased in favour of his daughter Satnam Kaur who has passed away and thereafter the Will was made in favour of the grand-son. The discrepancies/contradictions noticed hereinabove are not sufficient to record a finding that judgments passed by the Courts suffer from perversity much less give rise to a substantial question of law. This apart, it has been established on record that appellant Joginder Singh did not have cordial relations with his father Gurbachan Singh. Gurbachan Singh gave a publication in the newspaper disinheriting Joginder Singh wherein the deceased had mentioned that his son had been physically beating him after consuming liquor. Under the circumstances, deceased had every reason to disinherit the appellant from succession.

So far as challenge to the document (*tabdil malkiatnama*) dated 10.07.2007 executed by Gurbachan Singh in favour of Gurmail Singh, no doubt, in the Will it has been mentioned that both his sons Gurmail Singh and Joginder Singh are not rendering services to him (Gurbachan Singh) and have been residing separately. The Will Ex.D2 was executed by Gurbachan Singh in favour of Surjit Singh son of Gurmail Singh. The Will was executed in the year 2003 whereas the document *tabdil malkiatnama* was executed in July 2007. The very fact that the deceased executed Will in favour of son of Gurmail Singh goes a long way to show that the deceased did not have acrimony against his son Gurmail Singh. Secondly, Gurmail Singh might not have been serving his father in the year 2003 but there could be change in his conduct/behaviour during the intervening period of more than 3 years. Under the circumstances, the

mere fact that in December 2003, the deceased excluded his sons from inheritance is not a conclusive evidence to set aside the *tabdil malkiatnama* which is a registered document and presumption of correctness is attached to endorsement made by the registering authority in the discharge of official functions. This apart, Gurmail Singh has deposed in his cross examination that he had paid an amount of Rs.2.5 lakhs to his father on the basis of *tabdil malkiatnama* meaning thereby that there was some understanding between the father and son which persuaded the deceased to transfer his 16 kanal of land in favour of Gurmail Singh. In this view of the matter, I do not find any reason to differ with the findings recorded by the Courts below rejecting claim of the appellant that the document Ex.D2/A is liable to be set aside on any ground whatever much less on the ground of fraud/forgery required to be proved by leading evidence beyond shadow of reasonable doubt. Analyzed from any angle, plea of the appellant to challenge the testament Ex.D2 and title deed Ex.D2/A is not meritorious and liable to be rejected.

For the foregoing reasons, the appeal fails and is accordingly dismissed in *limine*. No order as to costs.

FEBRUARY 16, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no