

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

RSA No.3718 of 2015 (O&M)

Date of Decision : 27.07.2018.

Sanjiv Bector

... Appellant

VERSUS

Anjana Bector and others

... Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Gurcharan Dass, Advocate for the appellant.

B.S.WALIA, J., (Oral)

1. Regular Second Appeal has been filed by the appellant-defendant against the dismissal of appeal by the learned Additional District Judge, Ludhiana upholding the judgment and decree in the suit for declaration with consequential relief of permanent injunction filed by the respondents-plaintiffs i.e. widow and two minor children of late Sandeep Bector, brother of the appellant-defendant.

2. Brief facts of the case leading to the filing of the instant appeal are that the respondents-plaintiffs filed a suit claiming that they are the lawful owners in possession to the extent of 1/4th share in house bearing Municipal No.B. XXXIV 3628, Street No.1, Durgapuri, Haibowal Kalan, Ludhiana, on the basis of natural succession to deceased Sandeep Bector and that Will dated 06.05.2005 allegedly executed by Sandeep Bector in favour of the appellant-defendant vide Vasika No.149, was a result of fraud and fabrication, shrouded by suspicious circumstances and having no effect on their rights.

3. Learned counsel contended that Sandeep Bector who had been harassed by his wife respondent No. 1 and eventually committed suicide on 09.05.2006, had executed a Will in favour of the appellant-defendant on 06.05.2005. Learned counsel further contended that the Will executed by Sandeep Bector was duly proved by examining Gurjant Singh, one of the attesting witness of the Will as DW-2 and that Gurjant Singh categorically deposed about the execution and registration of Will dated 06.05.2005 and proved on record the Will as Ex.D1 besides endorsement of registration on the back thereof as Ex.D2, therefore, in the circumstances, the finding of the Will being shrouded by suspicious circumstances was without any basis.

4. I have considered the submissions of learned counsel and am of the view that for the reasons as are recorded hereunder, the appeal is bereft of merit and is liable to be dismissed as such.

5. The learned Civil Judge (Junior Division), Ludhiana decreed the civil suit by observing that at the time of his death, Sandeep Bector, was 39 years old, hale and hearty and not suffering from any chronic or incurable disease which could cause apprehension in his mind about premature or early death and that normally, it was not expected of a young, hale and hearty person to execute a Will nor could any person expect his early death at such a young age unless and until, there were any special circumstance like chronic disease etc. The learned Civil Judge further recorded that the appellant-defendant had admitted during cross-examination that at the time of his death, Sandeep Bector was not suffering from any chronic disease, rather he was 39 years old, hale and hearty. Aforementioned aspect of the matter was corroborated by DW-2, Gurjant Singh, by deposing that at the time of death,

Sandeep Bector was hale and hearty and was not suffering from any health problem. The aforementioned circumstance weighs heavily against the execution of Will by Sandeep Bector at a young age.

6. The learned Civil Judge also took into account that Will dated 06.05.2005 proved on record as Ex.D1 alleged to have been executed by Sandeep Bector did not mention any reasons for depriving the respondents-plaintiffs (wife, minor son and daughter) from his natural inheritance and for executing the Will in favour of the appellant-defendant (brother). The learned Civil Judge held that normally a Will was executed by an executant in favour of his natural heirs and if the executant did not do so, then it was expected from the executant to explain the reasons for depriving the natural heirs from inheritance. In the instant case since it is the stand of the appellant-defendant that Sandeep Bector was not having good relations with his wife and children then he ought to have mentioned said fact while executing the Will in favour of his brother, appellant-defendant as a reason to deprive his wife and minor children from inheritance. However, there is nothing on the record to suggest that the relations of the respondents-plaintiffs with Sandeep Bector were not cordial. On the contrary, evidence on record reveals that relations of the respondents-plaintiffs with Sandeep Bector were cordial and they were residing together, with mess and residence separate from the appellant-defendant and his father as is evident from the copy of report U/s 173 Cr.P.C., prepared by the police and proved on record as Ex.D11. The learned Civil Judge also took into account that even in the written statement the appellant defendant had pleaded that Sandeep Bector was not having cordial relations with his wife and due to ill-treatment and harassment he started residing with him since the year 2005 and later on committed suicide but during cross-

examination he admitted separate mess and residence of Sandeep Bector and his family from the appellant-defendant and his father for the last many years and of Sandeep Bector and his family residing jointly in separate portion of House No.3628 which fell to the share of Sandeep Bector. Likewise, DW-2, Gurjant Singh also admitted in his cross examination that Sandeep Bector was having full love and affection towards his minor children. In the circumstances, the learned Civil Judge observed that execution of Will Ex.D1 by Sandeep Bector in favour of his brother i.e. appellant-defendant by excluding his wife and two minor children and that too without assigning any reason created suspicion qua execution of the Will Ex.D1.

7. Appeal against the judgment and decree of the learned Civil Judge (Junior Division), Ludhiana was dismissed by the learned Addl. Additional District Judge, Ludhiana.

8. Admittedly it has come on record not only from the cross-examination of appellant-defendant but also from the deposition of DW-2 that Sandeep Bector was having full love and affection towards his minor children as well as his wife and that they were residing together in separate portion of House No.3628 belonging to Sandeep Bector and were having mess and residence separate from the appellant defendant and his father. The same contradicts the stand of the appellant-defendant in the written statement that Sandeep Bector was not having cordial relations with his wife and due to ill-treatment and harassment he started residing with him since the year 2005 and later on committed suicide. If as per stand of the appellant-defendant, his brother Sandeep Bector was not having cordial relations with his wife and two minor children, he would have mentioned the said fact while executing the

Will in favour of the appellant-defendant brother as also the reasons for depriving his wife and two minor children from inheritance but nothing of that sort has been mentioned in the Will Ex.D1. All these facts creates suspicion qua due execution of Will Ex.D1. In Gurdial Kaur and another vs. Chand Kaur (deceased) through L.Rs. 2012 (3) CCC, 111, it has been held that Will executed in favour of sister without assigning reasons for depriving natural heirs rendered the Will a suspicious document.

9. Besides the name of minor son of Sandeep Bector which is Shikhar Bector, has been mentioned in the Will Ex.D1 as Sahil Bector. It is beyond comprehension as to how a father would not know the name of his son and would wrongly mention the same in the Will. Besides, Gurjant Singh, DW2, marginal witness to the Will is none else than a colleague of the father of the appellant-defendant.

10. In the light of the position as noted above, Will dated 06.05.2005 although proved on record as Ex.D1 cannot be treated as a genuine document of the testator, rather the same is shrouded by suspicious circumstances, and is undoubtedly a result of fraud and misrepresentation. Consequentially, Will dated 06.05.2005 as well as subsequent mutation sanctioned on the basis of said Will are unsustainable and were rightly set aside by the learned Civil Judge (Junior Division), Ludhiana by decreeing the claim of the respondents-plaintiffs as legal heirs of Sandeep Bector to be owner in possession of 1/4th share in house bearing No.B.XXXIV. 3628, Street No.1, Durgapuri, Haibowal Kalan, Ludhiana on the basis of natural succession. Another aspect of the matter which needs noticing is that on death of Sandeep Bector, a statement was made by respondent/plaintiff No.1 before the police that her husband had

committed suicide due to heavy loss in business on the basis of which report under Section 173 of Cr.P.C. was prepared but later on while relying on the intimation of one Rajiv Verma, respondent/plaintiff No.1 had got registered a case against the accused/appellant-defendant for having instigated Sandeep Bector to commit suicide. However, the appellant-defendant was acquitted of the said charge vide judgment dated 20.04.2012 by the learned Addl. Sessions Judge, Ludhiana. However, the said document does not have any bearing on the civil case because acquittal of the appellant was due to hearsay evidence regarding alleged instigation by the appellant-defendant to respondent/plaintiff No. 1's husband. Apart from the FIR which was registered against the appellant-defendant and his father under Section 306 IPC, father of the deceased Sandeep Bector also filed a separate complaint against respondent/plaintiff No.1 and one Sanjiv Seth i.e. brother of respondent/plaintiff No.1. However, as per statement made by learned counsel appearing on behalf the respondents-plaintiffs before the learned trial Court, respondent/plaintiff No.1 and her brother were acquitted. The learned trial Court decreed the suit while the learned Additional District Judge, Ludhiana dismissed the appeal by reiterating the reasoning given by the learned Civil Judge by relying upon the decision of Hon'ble the Supreme Court in H. Venkatachala Iyengar vs. B.N. Thimmajamma and others AIR 1959 SC 433 on the ground that due execution of the Will to satisfy the conscious of the Court was not proved.

11. In the light of the position as noted above as also in the light of decision in Gurdial Kaur and Thimmajamma's cases (supra) I am satisfied that due execution of the Will is not proved. Accordingly, there is no reason warranting taking of a view different than the one taken by the Courts below

of the Will set up by the appellant-defendant being shrouded by suspicious circumstances especially as no provision was made therein for the wife and minor children nor was any reason given for depriving them from natural succession. No substantial question of law arises in this appeal. Accordingly, finding no merit in the appeal, the same is dismissed in limine.

(B.S.WALIA)
JUDGE

27.07.2018.
rajesh.k.khurana

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