

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

RSA No.1495 of 2014(O&M)

Date of decision: 17.5.2018

Shiv Raj Kumari

.....Appellant

VERSUS

Balbir Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Parminder Singh-I, Advocate for the appellant.

Mr. Vipin Mahajan, Advocate for respondents.

REKHA MITTAL, J.

The present appeal directs challenge against judgment and decree passed by the Appellate Court whereby the appeal preferred by Balbir Singh- defendant/respondent against the judgment and decree dated 23.08.2010 passed by the trial Court has been allowed. Resultantly, suit filed by the appellant/plaintiff staking her claim to suit property on the basis of natural succession to Sh. Satya Pal (since deceased), her father, has been dismissed.

Briefly stated, the present lis pertains to inheritance to the estate of Satya Pal who left behind his daughter Shiv Raj Kumari (appellant herein) and Smt. Dharmo Devi, his widow. Balbir Singh – defendant/respondent is the nephew (brother's son) of Satya Pal and he propounded registered Will dated 03.09.1991 executed by Satya Pal in favour of Balbir Singh whereby Shiv Raj Kumari and Smt. Dharmo Devi

were excluded from inheritance for the reasons duly recorded in the Will in question.

The plea of the appellant, as per the case set up in the plaint, is that Satya Pal had not executed any Will nor did he was physically and mentally capable of executing such a document. Plaintiff and defendant No.2 served Sh. Satya Pal during his lifetime. Defendant No.1 and his father had been living separate from Satya Pal and never served him. There was no occasion or compelling reason for Sh. Satya Pal to execute any Will in favour of defendant No.1 and disinherit his daughter and wife from his properties. Plaintiff and defendant No.2 performed last rites of Satya Pal who was not keeping good health more than 5 years before this death.

Respondents/defendants filed joint written statement, raising preliminary objections that the suit is not maintainable; the same is barred by limitation and the plaintiff has not approached the Court with clean hands. It is averred that Satya Pal, in his sound disposing mind and with his free consent, executed Will dated 03.09.1991 duly registered with the Sub Registrar. It is specifically recited in the Will that at the time of marriage of the plaintiff, she had been given sufficient property in the shape of dowry and defendant No.2 had also been given sufficient property. Plaintiff was married about 30 years back and since then she has been residing with her in laws at village Gokla District Gurdaspur and has now shifted to village Chakrai, Tehsil Pathankot for the past about 10 years.

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

1. Whether the plaintiff is entitled for declaration as prayed for? OPP.
2. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
3. Whether the suit is within limitation? OPP
4. Whether the will dated 03.09.1991 executed by Satya Pal in favour of defendant No.1 is legal and valid, if so its effect? OPD
5. Relief.

To prove her case, Shiv Raj Kumari- plaintiff appeared herself in the witness box and examined Chaman Lal PW-2, Bishan Dass PW-3 and tendered into evidence documents Ex.P/1 and P/2.

To prove the Will and rebut evidence adduced by the appellant, the respondents examined Yogesh Kumar, deed writer DW-1, Ajit Singh and Om Parkash DW-2 and DW-3, attesting witnesses of the Will and Balbir Singh – respondent appeared as his own witness.

The trial Court considered issues No.1 and 4 jointly and answered the same in favour of the appellant by discarding the Will set up by respondent/defendant No.1 for the reasons culled out in paras 12 and 14 of the judgment. The trial Court has discredited testimonies of Ajit Singh and Om Parkash, attesting witnesses of the Will for the following reasons:-

"DW-1 and DW-2 have contradicted each other regarding bringing of jamabandi/revenue record and its reference in the Will in question. There is contradiction pertaining to use of ordinary paper/stamp paper/ number of pages of the Will in

question. Both the attesting witnesses have stated differently as to how they started from the village for registration of the Will on the relevant date. There is difference in the version of both the attesting witnesses regarding the manner in which the Will in question was registered in the office of Sub Registrar, Pathankot i.e. DW-2 had stated that signatures on the Will in question were obtained in the room of Registration Clerk and then the Will was put up before the Sub Registrar for registration whereas DW-3 had stated that they had not gone to the room of Registration Clerk."

In addition, the Court has taken a serious view that the testator excluded his only daughter and wife from inheritance and preferred his nephew Balbir Singh viz-a-viz his class I heirs.

The Court in appeal, on re-appraisal and analysis of evidence led by the parties came to conclusion, in view of discussion in paras 30 to 34 of the judgment, that version of defendant is more cogent and convincing than that of respondent/plaintiff. The defendant had been rendering service to Satya Pal and also performed his last rites.

With regard to exclusion of daughter and widow from inheritance, the Court has held that widow of the deceased has not supported cause of the plaintiff/appellant, her daughter. The testator has duly explained in Will Ex.D1 as to why he decided to exclude his daughter and widow from inheritance and decided to bequeath his property in favour of his nephew Balbir Singh. It has further been held that statement of the appellant is sufficient to prove that it was Balbir Singh who performed last

rites of Satya Pal and he has been looking after Smt. Dharmo, widow of Satya Pal.

Counsel for the appellant would urge that the trial Court has rightly taken into consideration material contradictions in testimonies of attesting witnesses of the Will that assume more significance in the light of another vital aspect that the deceased ignored his only daughter and widow from inheritance to his agricultural land. It is argued that indisputably, the appellant had cordial relations with her parents and had been visiting them on different occasions, therefore, there was no reason for the deceased to deny right of inheritance to the appellant/plaintiff. It is further argued that the very fact that deceased excluded his only daughter from inheritance is a strong telling circumstance to create suspicion qua validity and genuineness of the Will propounded by the respondent/defendant. In support of his contention, he has relied upon judgment of this Court **Baltej Singh Vs. Hamir Kaur, 2001(3) RCR (Civil) 134.**

Counsel representing respondent No.1 has supported judgment passed by the Appellate Court with the submission that the Will has been duly proved by the attesting witnesses examined, in addition to testimony of Yogesh Kumar DW-1, scribe of the Will. Further argued that the Appellate Court on detailed consideration and re-appreciation of evidence has rightly held that Balbir Singh had been serving the deceased and his wife during lifetime of Satya Pal and after his death, Smt. Dharmo Devi widow of Satya Pal is being looked after by Balbir Singh. The last rites of Satya Pal were performed by Sh. Balbir Singh who is none else but son of brother of Sh. Satya Pal. It is strenuously argued that as Smt. Dharmo Devi has not supported cause of the appellant/plaintiff, her only

daughter to claim inheritance to the estate of deceased on the basis of natural succession, it speaks volumes that Smt. Dharmo Devi admitted execution of Will by the deceased and opposed plea of the plaintiff/appellant with regard to her right in the suit land on the basis of natural succession. Another submission made by counsel is that the so-called contradictions in the testimonies of DW-2 and DW-3, taken note of by the trial Court, are the result of failure of the trial Court to appreciate that the witnesses were examined more than 13 / 14 years after execution of the Will in the year 1991 as Ajit Singh and Om Parkash were cross examined in October 2005. It is argued that had there been no discrepancy in the statements of said witnesses, they would have been branded as highly tutored and not natural witnesses. According to counsel, some variations are bound to occur in the statements of natural witnesses and that too when they are examined after considerable gap.

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

As has been rightly argued by counsel for the respondent/defendant No.1, the trial Court has taken a serious note of the aforesaid variations in testimonies of the attesting witnesses without correctly appreciating that some contradictions were bound to happen in the statements of natural witnesses particularly when they narrate an event that had taken place many years before they were examined in the Court. This Court cannot ignore that human memory fades away with passage of time, therefore, it is difficult to expect from a witness to give minute details of an event with complete accuracy even after passage of number of years. In the case at hand, attesting witnesses are not the beneficiary under

the Will in question. They were examined and cross examined in the case after a gap of more than 13 years since the Will in question was executed and got registered by Sh. Satya Pal. In this view of the matter, the so-called contradictions pointed out by the learned trial Court are not at all sufficient to create suspicion qua validity and genuineness of the Will in question.

This brings the Court to the issue of exclusion of the appellant and Smt. Dharmo Devi from inheritance by Sh. Satya Pal. Indisputably, Smt. Dharmo Devi has been arrayed as one of the defendants by the appellant/plaintiff. Meaning thereby that Smt. Dharmo Devi, mother of the appellant neither had any grievance to express against the Will in favour of Sh. Balbir Singh nor she supported cause of the plaintiff/appellant to claim inheritance on the basis of natural succession. There is no denial that the appellant/plaintiff was married for the past about 40 years and since then she had been living in her matrimonial home. The appellant/plaintiff had been residing in village Chakral whereas her parents are the residents of village Chella Chak. Even if the appellant had been visiting her parents occasionally, it is difficult to accept that she had been rendering services to Sh. Satya Pal and Smt. Dharmo Devi. The appellant has not disputed that after death of Sh. Satya Pal, Smt. Dharmo Devi is being looked after by Sh. Balbir Singh, nephew of Sh. Satya Pal. It has also been proved on record that last rites of Sh. Satya Pal were performed by Sh. Balbir Singh. There is a recital in the Will explaining the circumstances under which the deceased decided to exclude his daughter and widow from inheritance. There cannot be denial that purpose of a testament is to disrupt natural succession. In the light of materials on record, exclusion of the appellant

from inheritance is of no consequence or avail to interfere in the well considered findings recorded by the Appellate Court.

The judgment in **Baltej Singh's case** (supra) was rendered in the peculiar facts and circumstances of the case such as plea that the blank paper got them marked from the testator while admitting him in the hospital has not been properly rebutted; spacing of the lines in some portion of the Will is wider than the spacing in last 4-5 lines; in normal circumstances the Will should have been executed at village of the testator but it was executed at the village of his brother in law in favour of sons of his sister; no proof that they were serving the deceased and Will ignored the widow and daughters. That being so, the appellant cannot derive any advantage to her contention from the referred authority. Even otherwise, every case involving the question of testamentary succession has its own facts and circumstances, to be decided on the basis of relevant pleadings and evidence available on record. In this view of the matter, I do not find an error much less perversity in the judgment passed by the Court in appeal, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed with costs. Resultantly, the judgment and decree passed by the Appellate Court are affirmed.

MAY 17, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

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