

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

**RSA No.6693 of 2016 (O&M)
Date of Decision.08.05.2018**

Gurbax Singh and others

.....Appellants

Vs

Sukhjinder Kaur and another

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Malkeet Singh, Advocate
for the appellants.

-:-

AMIT RAWAL J.(ORAL)

C.M. No.17465-C of 2016

For the reasons stated in the application, delay of 9 days
in re-filing the appeal is condoned.

Application is allowed.

RSA No.6693 of 2016

The appellants-defendants are in appeal against the
concurrent finding of fact whereby the suit of the respondent-plaintiff
seeking following relief, has been decreed by the trial Court and
affirmed by the lower Appellate Court:

*“Suit for joint possession as owner of land i.e. 1/3 share
comprising of khewat No.108, khatauni No.121, khasra
No.14//3(7-11), 6/2(2-0), 7 (87-0), 8(8-0), 14 (8-0) 16/1
(2-18), 19//9/2(4-16) and 53/160 share out of Khewat
No.109, Khatauni No.122, Khasra No.19//12(8-0)
standing in the name of Ravinder Singh now deceased
situated in the area of village Kang Arayan, as per
jamabandi for the year 2006-07 along with all other*

rights appurtenant thereto after declaring the mutation No.2168, if sanctioned, in the name of defendants on the basis of alleged unregistered Will dated 26.10.2007 allegedly executed by deceased Ravinder Singh in favour of defendants being illegal, null and void, forged, fabricated and illogical act of fraud.

AND

For possession by partition of 1/3 share by metes and bounds or the alternative suit for joint possession of 1/3 share of the house property shown red in the site plan attached marked ABCDE bounded as under:-

East: Rasta

West: Street and house of others.

North: Street and house of others

South: Bhajan Singh

Situated within the abadi of village Kang Arayan, Tehsil Phillaur, District Jalandhar being the estate of deceased.

With consequential relief of permanent injunction restraining the defendants from alienating by way of sale, gift, mortgage etc. the above mentioned properties situated in the area of village Kang Arayan, Tehsil Phillaur, District Jalandhar.”

The aforementioned suit was filed by the plaintiffs on the premise that plaintiff No.1 was widow of Ravinder Singh. The controversy in the present regular second appeal revolves around the estate of Ravinder Singh i.e. respondent-plaintiff No.1 and father of

plaintiff No.2 by laying challenge to the unregistered Will dated 26.10.2007 executed by Ravinder Singh in favour of the defendants, appellants herein, i.e. nephews. It was averred in the plaint that the Will propounded by the defendants was surrounded by suspicious circumstances as it did not give any reason of deviation from the actual line of succession. The mutation proceedings were decided in favour of the plaintiffs by discarding the Will.

The appellants-defendants opposed the aforementioned suit and also set up a counter-claim claiming exclusive ownership of the suit property on the basis of the Will.

Both the parties at variance led their respective evidence in support of their case.

The trial Court on the basis of evidence brought on record decreed the suit, which was affirmed by the lower Appellate Court.

Mr. Malkeet Singh, learned counsel appearing on behalf of the appellants submitted that the Courts below have gravely erred in not appreciating the fact that one of the attesting witness namely Satwinder Singh had been examined as DW2, who submitted his affidavit as DW2/A, therefore, there was compliance of provisions of Section 68 of the Indian Evidence Act, much less, Section 63(c) of the Indian Evidence Act. He categorically stated that Ravinder Singh had signed the Will in his presence and in the presence of Kuldeep Singh Lambardar. There was a litigation between plaintiff No.1 with Ravinder Singh inasmuch as that a divorce petition was also filed, though it was withdrawn as compromise arrived at was long time ago,

which itself was a pointer for disinheriting the plaintiffs from the line of natural succession. It is not necessary that every Will is required to be registered. The ration card also found that Ravinder Singh was not living with the plaintiffs. All these factors have not been looked into and therefore, there is gross illegality and perversity. Since there was a matrimonial dispute between plaintiff No.1 and Ravinder Singh (since deceased) had been living with his nephews as they were taking care of the him and serving him. It is on account of services rendered, he bequeathed the entire share in their favour, thus, urges this Court for setting aside the finding under challenge.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Malkeet Singh. During the course of hearing, he handed over to this Court copy of the Will and the testimonies of Satwinder Singh, Sarpanch and DW3, Karamvir Singh, Scribe. On going through the Will, the signature of the testator is not at the end of the page of the Will but on the left hand side where witnesses put their signatures. There is a gap in the line for purpose of adjustment of the page. Both the witnesses have not deposed in terms of the provisions of Section 63(c) of the Indian Succession Act as there is no reference that they appended signatures on the direction of the testator. For the sake of brevity, provisions of Section 63 (c) of the Indian Succession Act are reproduced herein below:-

“63(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person

sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

This aforementioned view of mine with regard to applicability of Section 63(c) of the Indian Succession Act is derived from the ratio decidendi culled out by Hon'ble Supreme Court in **Janki Narayan Bhoir Vs. Narayan Namdeo Kadam 2003(1) RCR (Civil) 409**. The contents of the Will also do not reveal reasons as to why Ravinder Singh was disinherited from the line of natural succession.

All these factors weighed in the mind of the Courts below to form an opinion that the Will was surrounded by suspicious circumstances, thus, the argument of Mr. Malkeet Singh has not been able to cut ice enabling this Court to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 08, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No