

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

RSA No.344 of 2018 (O&M)

Date of decision:18.01.2018

Gurmail Singh (since deceased) through LRs ... Appellant

Vs.

Jaswinder Singh and another ... Respondents

RSA No.345 of 2018 (O&M)

Gurmail Singh (since deceased) through LRs ... Appellant

Vs.

Jaswinder Singh and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. F.S.Virk, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

C.M.No.861-C of 2018 in RSA No.344 of 2018

For the reasons stated in the application which is duly supported by an affidavit, delay of 19 days in re-filing the appeal, is condoned.

C.M. stands disposed of.

C.M.No.863-C of 2018 in RSA No.345 of 2018

For the reasons stated in the application which is duly supported by an affidavit, delay of 19 days in re-filing the appeal, is

condoned.

C.M. stands disposed of.

RSA Nos.344 and 345 of 2018 (O&M)

The appellant-plaintiff is aggrieved of the judgment and decree rendered by the Lower Appellate Court, whereby his suit has been dismissed.

Before I could advert to the arguments of learned counsel for the appellant, it would be in the fitness of things to give precise conspectus of the controversy.

The respondent-plaintiff instituted a civil suit seeking possession of the suit property in the following manner:-

“suit for possession as owners of $\frac{3}{4}$ share of land situated in village Rani Majra H.B.No.85 Tehsil Khara, Distt. Mohali left by Harnek Singh son of Dalip Kumar and Tej Kaur which was inherited by his mother Tej Kaur who left a registered Will dated 13.08.2003 and permanent injunction restraining the defendants from alienating therefore suit land in any manner by way of sale, gift, mortgage, exchange situated in village Rani Majra Tehsil Kharar, District Mohali vide jamabandi for the year 1995-96.”

on the premise that suit property belonged to Harnek Singh, who was the brother of plaintiff and uncle of both the defendants. He was unmarried and issueless, died on 22.01.1998. At the time of death, Harnek Singh's mother Tej Kaur was alive. Harnek Singh was living with his mother, so the entire

estate of Harnek Singh was inherited by her. Tej Kaur died on 26.12.2003 but before death, executed a registered Will dated 13.08.2003 vide which the plaintiff inherited $\frac{3}{4}$ share of Tej Kaur which she inherited from Harnek Singh. Both the defendants Jaswinder Singh and Major Singh sons of Bhag Singh got the mutation no.1404 of Harnek Singh sanctioned in their favour without any basis as the property of Harnek Singh was inherited by his mother Tej Kaur who was alive at the time of his death. When defendants refused to hand over the possession, the suit aforementioned was filed.

The respondent-defendants contested the suit on the premise that Harnek Singh had relinquished the rights in the property by virtue of a Will dated 30.12.1997 and plaintiff-Gurmail Singh is father's brother of the defendants. They were residing in village Rani Majra. Harnek Singh being issueless and unmarried resided with his real brother Bagh Singh, were jointly cultivating the land. Being attached to the family of Bagh Singh, Harnek Singh out of love and affection executed a Will dated 30.12.1997 in favour of sons of Bagh Singh, i.e., the present defendants. The Will executed by Tej Kaur was not regarding the property of Harnek Singh but of her own share which had wrongly been procured by the plaintiff. The defendants also set up a Will dated 11.11.2002 of Tej Kaur which was registered on 14.11.2002 whereby, she bequeathed $\frac{1}{2}$ share to the plaintiff and other $\frac{1}{2}$ share to the father of the defendants i.e. Bhag Singh. Even the mutation on the basis of the said Will, vide order dated 28.02.2006 was sanctioned by the Assistant Collector Ist Grade (SDM Kharar) bearing mutation no.1512. The mutation No.1404 was sanctioned in favour of the

defendants on the basis of Will dated 30.12.1997 of Harnek Singh. In fact, the suit property was never inherited by Tej Kaur but by the defendants as per the Will dated 30.12.1997.

Since both the parties were at variance, they led evidence in support of their defences. The trial Court on the basis of the preponderance of evidence held that both the Wills dated 30.12.1997 and 13.08.2003 set up by the defendants and plaintiffs respectively has not been proved on record and further held that since Harnek Singh had died, his property would be inherited by Tej Kaur being Class I heir. On account of death of Tej Kaur, the suit property devolved upon the legal heirs as per the provisions of Sections 15 and 16 of Hindu Succession Act. Both the parties aggrieved of the aforementioned findings preferred two appeals before the Lower Appellate Court, bearing No.1155 of 16.04.2015 titled as Gurmail Singh (since deceased) through LRs vs. Jaswinder Singh and others; and 15 of 10.03.2015 titled as Jaswinder Singh and another vs. Gurmail Singh (since deceased) through LRs. The appeal preferred by the appellant-plaintiff, has been dismissed and that of the defendants has been allowed and the Will dated 30.12.1997, has been upheld.

Learned counsel appearing on behalf of the appellant submitted that judgment and decree rendered by the Lower Appellate Court by accepting the Will is neither here nor there as the same is based upon the surmises and conjectures. The Lower Appellate Court failed to consider that the Will (Ex.D2) was surrounded by following suspicious circumstances:-

- i) Firstly, the Will Ex.D2 was unregistered.

- ii) There was no reference how the other brother and mother of the executant Harnek Singh were excluded, thus, sans the reason of depriving the other brother and mother.
- iii) In case, there were not in cordial relations, the reason could have been assigned.
- iv) There was no reason why the executant executed Will Ex.D2 at the age of 40 years. .
- v) All the aforementioned suspicious circumstances were not eradicated by the defendants. This fact has not been noticed by the Court below.
- vi) The Courts below failed to notice the act and conduct of the plaintiffs/appellants/respondent, as nowhere they had concealed the material facts. The plaintiffs have been fair enough to prove the registered Will dated 13.08.2003 (Ex.PW3/7).
- viii) In fact, once Tej Kaur inherited the property of Harnek Singh, the property at the best could have been ordered to be succeeded by natural succession by discarding both the Wills as ordered by the trial Court.

He, thus, urged this Court to formulate the substantial questions of law as culled out in the memorandum of appeal.

I have heard learned counsel for the appellant-plaintiff, appraised the judgments and decrees of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Virk, for,

concededly, the Will dated 30.12.1997 propounded by defendants was produced for sanctioning the mutation, *ibid*, in favour of the defendants. Tej Kaur was very much present at that time. She remained alive during all this period and died on 26.12.2003. During all this period, neither she challenged by her or by the plaintiff.

If at all, Tej Kaur had inherited the property on demise of Harnek Singh by way of natural succession, no explanation has come forth of having not taken any steps to get the mutation sanctioned in favour of Tej Kaur. Tej Kaur did not raise any objection with regard to the same. A copy of the judgment of SDM Kharar produced on record as Ex.D4 shows that Tej Kaur had already executed a Will dated 11.11.2002 registered on 14.11.2002 in favour of Bhag Singh and Gurmail Singh in equal shares and mutation was duly sanctioned on the basis of that Will and Will dated 13.08.2003 was ignored. All these points, in my view, weighed in the mind of the Lower Appellate Court for giving a finding different that of the trial Court.

It could not be believed that Tej Kaur executed another Will on 13.08.2003 stating therein that Gurmail Singh was entitled to $\frac{3}{4}$ share and defendant as $\frac{1}{4}$ share qua the share of Harnek Singh. Whether Tej Kaur had any right or title in the property because the property had already been mutated in favour of the defendants, i.e., sons of Bhag Singh. Even the Will of 2003 also did not fulfill the ingredients of Section 63(c) of Indian Succession Act.

The findings of the Lower Appellate Court being the last Court of facts and law do not call for any interference enabling this Court to form a different opinion to bring the case within the expression “perversity” much less no substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

January 18, 2018
savita
Whether Speaking/Reasoned
Whether Reportable

Yes/No
Yes/No