

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

**RSA No.4377 of 2018 (O&M)
Date of Decision: 02.08.2018**

**Surjit Singh (since deceased) through his LRs
.....Appellants**

Vs

**Pritam Singh (since deceased) through his LRs and others
.....Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Gaurav Sharma, Advocate for
Mr. Parveen Bhardwaj, Advocate
for the appellant(s).

RAJ MOHAN SINGH, J.

CM Nos.11577 and 11578-C of 2018

Prayer made in both the applications is for bringing on record the legal representatives of deceased/appellant and respondent No.1.

For the reasons mentioned in the applications, the same are allowed and the legal representatives of deceased appellant Surjit Singh and respondent No.1 as shown in para no.2 of the respective applications are ordered to be brought on record, subject to all just exceptions.

Amended memorandum of parties is taken on record.

RSA No.4377 of 2018 (O&M)

[1]. Defendant No.1 is in Regular Second Appeal in a suit for declaration with consequential relief of joint possession.

[2]. Brief facts of the case are that plaintiff and defendant no.1 are the brothers being sons of Tarlok Singh. House and a plot are in dispute which are claimed to be owned and possessed in the ratio of 50% each after the death of Tarlok Singh. Will dated 30/31.12.1996 executed by Tarlok Singh in favour of defendant No.1 is claimed to be illegal, forged, fabricated, null and void.

[3]. The suit was contested by the defendants. Ownership of Tarlok Singh over the suit property was admitted. During lifetime of Tarlok Singh, partition took place between his family members and the property mentioned in para no.1 of the plaint, fell to the share of the defendants. The said fact was in the knowledge of the plaintiff from the date of Will dated 30/31.12.1996. The Will was claimed to be valid.

[4]. Both the parties went to trial and thereafter led their respective evidence in support of their contentions.

[5]. Both the Courts below have observed that the Will was executed on 30.12.1996 and it was registered on 31.12.1996. Father of plaintiff Tarlok Singh died on 20.11.1997. The suit in question was filed on 26.02.2008. Will was scribed by Randhir

Singh deed writer. The entry was made in the Register in the name of Tarlok Singh, but the witness did not know Tarlok Singh personally. Jaspal Singh son of attesting witness was examined under Section 69 of the Evidence Act. He could only identify the signatures of his father and not the contents of the Will. The property was self acquired property of Tarlok Singh.

[6]. Plaintiff raised the plea that the Will in question was obtained by the defendant No.1 Surjit Singh by undue influence. Surjit Singh was living with Tarlok Singh since the year 1961. Tarlok Singh was paralysed during the pendency of the suit filed by him against one Vijay Kumar and others. The said suit was filed in respect of suit property and the same was contested right upto the Hon'ble Apex Court. Defendant Surjit Singh contested those civil litigations as Tarlok Singh was paralysed.

[7]. Both the Courts below have found that defendant Surjit Singh had all the opportunities to obtain the aforesaid Will in his favour by undue influence. Onus to prove due execution of Will is on the person, who propounds the same. He must establish the competence of the testator to the Will at the time of its execution. The testator has to remove all such circumstances which may be read as suspicious circumstances in the execution of Will, thereby creating clout on its execution. The propounder has to satisfy the Court affirmatively that the testator

knew the contents of the Will and was in sound disposing mind and capacity.

[8]. It has been further observed by the Courts below that in terms of Section 68 of the Evidence Act, at least one attesting witness should be examined (if alive). The onus was on the defendants to prove the execution of Will. Randhir Singh scribe of the Will has been examined. The defendant examined himself. Fingerprint expert namely Parveen Kumar and one Jaspal Singh son of one of the attesting witness have also been examined. As per testimony of Randhir Singh, he only pointed out that the entry in the register was in the name of Tarlok Singh, but he did not know him personally. The scribing of the document without personal knowledge was considered to be one of the doubtful circumstance. Son of one of the attesting witness only identified the signature of the attesting witness without endorsing the contents of the Will. The evidence of expert Parveen Kumar was in relation to thumb impression appearing on the sale deed dated 26.03.1977. Whether the signatures were of the father of parties or not could not be proved. The difference which was pointed out by the expert that a line visible on the upper portion S1 to S3 i.e. temporary crease in S1 to S3 which was not present in other standard thumb impression and questioned thumb impression. The report was

discarded.

[9]. Both the Courts below have also taken note of medical condition of Tarlok Singh as admitted by the defendant in the suit titled '*Shri Tarlok Singh vs. Vijay Kumar*'. Defendant Surjit Singh had specifically deposed that age of his father was 80 years and he remained usually ill. His father had difficulty in hearing, speaking and telling.

[10]. The execution of Will was found to be surrounded with suspicious circumstances and the Courts below have taken note of the aforesaid facts with reference to appreciation of evidence. The cause of action accrued in favour of the plaintiff on the date on which his possession was threatened. After death of Tarlok Singh, plaintiff and defendant No.1 succeeded to the estate in the ratio of 50:50. Subsequent transactions in favour of defendants No.2 and 3 are totally dependent upon title of the vendor based on the Will in question. Since the Will has been found to be suspicious and its execution was not proved in accordance with law, therefore, the findings of fact recorded by the Courts below cannot be re-appreciated in Regular Second Appeal.

[11]. In view of above, no question of law worth cognizance is involved in the present appeal. The findings recorded by the Courts below are not perverse, nor the same are based on any

misreading of evidence. This appeal is found to be devoid of merits and the same is accordingly dismissed in *limine*.

[12]. Since the appeal has been dismissed in *liminie*, therefore, there is no necessity of passing any order in the application under Section 5 of the Limitation Act. All other civil misc. applications are disposed of in the light of aforesaid order.

August 02, 2018

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No