

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

RSA No. 5361 of 2018 (O&M)

Date of decision : September 26, 2018

Amarjit Kaur

.....Appellant

Versus

Devinder Singh and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Anish Gautram, Advocate
for the appellant.

LISA GILL, J.

Appellant - plaintiff is aggrieved of concurrent findings rendered against them by the learned Civil Judge (Junior Division), Chandighr vide judgment and decree dated 22.01.2016 as well as by the learned Additional District Judge, Chandigarh vide judgment and decree dated 17.05.2018 and consequential dismissal of her suit.

Appellant – plaintiff filed a suit for declaration to the effect that Will dated 13.09.2005 (Mark PX/Ex.P1) executed by Ajmer Singh son of Jaimal Singh is a result of fear, force, coercion, undue influence upon him at the instance of respondents No. 1 to 4, therefore, not binding on the rights of the plaintiff who is the widow of the predeceased son of Ajmer Singh namely Kulbir Singh. She further claimed to be entitled to 1/6th share in the house in question. It was pleaded that Ajmer Singh and his wife Panjab Kaur had three sons Surinder Singh, Devinder Singh, Kulbir Singh and four daughters Pritpal Kaur, Charanjit Kaur, Sukhjeet Kaur and Manjit Kaur. Surinder Singh died on 06.06.1984. He was survived by his widow Harbhajan Kaur – respondent No. 4. The appellant's husband Kulbir Singh

died on 19.11.2003 leaving behind his widow i.e. the present appellant. No child was born out of this wedlock. Panjab Kaur had died earlier on 19.06.1996. Ajmer Singh died on 30.11.2008. It is further pleaded that the appellant did not remarry and by way of a family arrangement arrived at in the year 1992, the appellant – plaintiff was living in two rooms and a kitchen on the ground floor of the house in question. Respondent No. 4 – Harbhajan Kaur alongwith her three daughters was also residing in the other two rooms and kitchen on the ground floor. Respondent No. 1 alongwith his wife and sons was residing on the entire first floor of the house. The top floor was let out on rent, which earlier used to be taken by Ajmer Singh and after his death by Harbhajan Kaur. Electricity consumption in the house was shared with Harbhajan Kaur by the plaintiff. Letter dated 23.12.2009 from the Estate Officer, UT, Chandgiarh was received by the appellant on 02.01.2010 informing her that defendants No. 1 to 7 sought a transfer of the house in dispute on the basis of will dated 13.09.2005. The appellant was asked to submit any documentary evidence in support of her claim by the Estate Officer, UT Chandigarh. Legal notice was issued by the appellant asking the Estate Officer, UT Chandigarh not to proceed with transfer of the house on the basis of Will as the same was executed under duress and misrepresentation. It was claimed by the appellant that letter dated 16.02.2010 issued by the Estate Officer asking her to submit documentary evidence revealed some extra ordinary interest being shown in the matter by officials of the Estate officer. The Will in question was highly suspicious as Class-I heirs had been ousted in an unequitable manner. The appellant further stated in the plaint that exclusion of the married daughters could be legitimate but there is no reason for excluding the appellant – plaintiff from

her share in the house without even a right of residence therein. It was denied that any amount was paid by Ajmer Singh to the husband of the appellant for buying a residential house in Chandigarh in the year 1993 when the appellant's husband had about ten years of Government service to his credit. Deceased Ajmer Singh had separated his sons. Harbhajan Kaur widow of his elder son alongwith her three daughters was given two rooms and a kitchen on the left hand side portion of the ground floor whereas on the right hand side two rooms and store used as kitchen were given to the plaintiff who had no children. Another son Devinder was given the first floor to reside. Deceased Ajmer Singh, it was stated, used to dine with the family of his choice. Entire salary of the appellant's husband was given to Ajmer Singh. It is only their basic expenses which were retained by them. Fixed amount was paid to Ajmer Singh by the appellant's husband till his death in the year 2003. It was contended that the appellant served Ajmer Singh in his old age till he died at the age of about 85. She has no other residential house in Chandigarh or at any other place. Will dated 13.09.2005 and all other wills if any granting an inequitable share in the house in favour of few selected legal heirs are illegal, fraudulent and as a result of undue influence and coercion, force by respondents No. 1 to 4. The same be declared null, void and ineffective qua the rights of the appellant.

Defendants No. 1 to 3 resisted the suit. Various preliminary objections were raised. It was stated that the present suit was filed only with an ulterior motive to grab the property in question which she could not take during the life time of the owner and testator of the Will namely Ajmer Singh. No part of the house in question, it was pleaded, is in possession of the plaintiff. Ajmer Singh, it was claimed, disowned the plaintiff from his

moveable and immovable property vide declaration dated 31.07.2007 and 01.08.2007 duly published in the newspapers. Will dated 13.09.2005 had been rightly executed by Ajmer Singh as per his own wishes and consent in a sound disposing mind, without any kind of undue influence or coercion. It was further pleaded that the plaintiff or her husband never paid a single penny nor made any contribution for the welfare of the family rather caused distress to Ajmer Singh. The appellant never had good relations with her father-in-law. It is denied that the possession of part of the demised premises was ever handed over to the plaintiff in a family settlement. Ajmer Singh in his Will dated 13.09.2005 has made a clear mention of disrespect, fraud and hostile behaviour of the appellant towards him. Reasons for not bequeathing any part of the property upon the appellant has been clearly mentioned in the said Will. Will dated 13.09.2005 is a registered document. Two earlier wills, which were executed by Ajmer Singh were specifically cancelled and revoked in his last will and testament dated 13.09.2005.

Defendants No. 8 to 11 gave their statements to the effect that the defendant Preetpal had no interest in the case and defendant Charanpreet and Manjeet had no objection in case will dated 13.09.2005 is implemented.

Rejoinder to the written statements was filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

- i) Whether the plaintiff is entitled for the declaration and permanent injunction as prayed for?OPP.
- ii) Whether the suit is frivolous?OPP
- iii) Whether suit is bad for want of notice under Section 80 CPC? OPD.
- iv) Whether the suit is misconceived? OPD.
- v) Relief.

Evidence was led by both the parties.

Learned trial Court dismissed the suit filed by the plaintiff – appellant while holding that Will dated 13.09.2005 was valid having been proved in accordance with law and the plaintiff – appellant failed to prove that it was executed under undue influence, coercion or misrepresentation. Appeal filed by the appellant was also dismissed by the learned Additional District Judge, Chandigarh vide judgment dated 17.05.2018. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that will dated 13.09.2005 is shrouded in suspicious circumstances and has not been proved on record, therefore, both the learned courts below have grossly erred in dismissing the suit filed by the plaintiff – appellant.

Learned counsel while referring to the statements of DW1 and DW3 submits that there are material and major contradictions in the testimony of the material witnesses, even in respect to how Will dated 13.09.2005 (Ex. D1) came to the knowledge of the beneficiaries. Ex. D1 is proved to be a result of fear, force and undue influence at the instance of respondents No. 1 to 4. It is vociferously argued that there was no occasion for not even affording the right of residence in the house in question as has specifically been mentioned in the earlier Will dated 06.04.2004 'Mark Z'. It is further submitted that the plaintiff – appellant is in possession of the portion of the house in question in terms of Will dated 06.04.2004 and she is entitled to retain her possession as she is entitled to 1/6th share in the demised premises. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 22.01.2016 passed by the learned Civil Judge (Junior Division), Chandigarh and judgment and decree dated 17.05.2018 passed by the learned Additional District Judge, Chandigarh be set aside and suit

filed by the appellant be decreed throughout.

I have heard learned counsel for the appellant and have perused a photocopy of the record, which was furnished by learned counsel in Court today.

Present suit was filed by the appellant – plaintiff seeking a declaration to the effect that Will dated 13.09.2005 executed by Ajmer Singh is a result of fear, force, coercion, undue influence, misconception created by and at the instance of defendants – respondents No. 1 to 4. It was, thus, incumbent upon the appellant to prove that the said Will was a result of fear, force, coercion, undue influence, therefore, not binding upon the appellant.

At this stage, it is relevant to reproduce the relevant extract of Will dated 13.09.2005:-

“During his lifetime I gave a handsome amount to my youngest son, Kulbir Singh, to purchase a residential plot at Chandigarh. But against my wishes and without my consent he at the instance and under the influence of his wife, Amarjit Kaur, purchased some agricultural land at village-Mirza Talla in Distt. Muzzaffarnagar (U.P.), the place where her parents also own landed property, which has been exclusively inherited through succession by his widow said Amarjeet Kaur. The price of that land now runs into lacs of rupees. After the death of Kulbir Singh his widow Amarjeet Kaur has also received a huge amount on account of his G.P. Fund, amounting to about Rs. 8.0 Lacs, Leave encashment etc. amounting to Rs. 1.5 Lacs, ex-gratia payment Rs. 50,000/-, on account of dues from group

insurance scheme Rs. 40,000/-, Gratuity of Rs. 3.0 lacs, bank deposits, more than Rs. 4.0 lacs and LIC claim on account of his death Rs. 5.0 lacs. As such she has already received about Rs. 20.0 lacs after the death of my son Kulbir Singh, exclusively without paying even a penny out of the same to me. Moreover, she has no issue to support and as such the said amount may be more than enough to support her till her death besides she is getting pension of about Rs. 8,000/- p.m. on account of death of my son. Moreover, she is quite disrespectful, haughty and hostile towards me and she does not care at all of me and resides with her parent at Village-Lakhnaur, Distt. Ropar. She even threatens to drag me to court in this old age. Therefore, as detailed above she having already received more than her dues. I do not intend to give anything more to her from my said property constituting H. No. 1205, Sector 21-B, Chandigarh. Therefore, she stands excluded from inheriting or getting anything out of my said H. No. 1205, Sector-21-B, Chandigarh.

I have already made, executed and got registered Will dated 10.2.1998 and then the second WILL 6.4.2004 and so it is made clear that both of my said WILLS are hereby revoked and stand cancelled, due to the death of my son Kulbir Singh, and this WILL is made and executed by me as my last WILL and Testament in the presence of Sh. Ang Pal Kapur and Sh. Bodh Raj and I have affixed my signatures on and executed the same in the presence of both of them after having heard,

understood and admitting the contents of this Will to be correct and they have also signed and attested the same in my presence on this 13th day of Sept. 2005 at Chandigarh.”

I have also gone through the earlier Wills dated 10.02.1988 and 06.04.2004 which have not been exhibited but are available as marked documents i.e. mark Y and mark Z at the instance of the plaintiff. In Will dated 10.02.1998, it is specifically mentioned that the testator's son Kulbir Singh i.e. the husband of the appellant refused to own any responsibility of the daughters of the other son, namely Surinder Singh (deceased) at the instance of his wife. It is further mentioned that behaviour of his son Kulvir Singh at the instance of his wife has been cruel and unbearable. Substantial amount had been given to the appellant's husband for purchase of the residential plot but Kulvir Singh utilised this amount for purchase of some agricultural land in the village of his in-laws. It is mentioned that much more had been given to Kulvir Singh and he did not deserve anything more. The daughters, it was mentioned, are well placed in their matrimonial home. In respect to portion of the ground floor, it was mentioned that Kulvir Singh and his wife would have a right to reside therein but will not have any right to sale, mortgage or rent out any part of the house neither would he donate the same to anyone. In case, they had a son at a later stage, the child would be entitled to the ownership of the property but an adopted child would not have any share therein. In the subsequent will dated 06.04.2004, it is again mentioned that the husband of the appellant – Kulvir Singh, who passed away on 19.11.2003, had refused to share any responsibility. Cruel treatment at their hands is also mentioned. Second floor of the house was stated to be given to the appellant - Amarjeet Kaur

for residence during her life time, she would not have any right to sale, mortgage or transfer of the property and she would not have any right to allow any person or relative to live with her. In the event of her re-marriage or death, Arvinder Singh and Jagdeep Singh (grandsons of Ajmer Singh) would be the owner of the top floor of the property. Subsequently, Will Ex.D1 was executed by Ajmer Singh while specifically revoking the earlier wills dated 10.02.1998 and 06.04.2004. All the three Wills are registered wills.

Will dated 13.09.2005 was duly proved by DW4 - A.P. Kapoor of the attesting witness of the said will. DW4 deposed that said will was executed by Ajmer Singh in his presence and in the presence of other attesting witnesses. DW4 was the neighbour of Ajmer Singh. He specifically stated that Ajmer Singh executed the will in sound disposing mind. In his cross examination, nothing favourable would be elicited by the appellant in her favour. Copy of the notice published in newspapers mark D and DB have not been denied. There is indeed no evidence on record to indicate that Will dated 13.09.2005 is a result of any kind of fraud, coercion or undue influence exerted upon Ajmer Singh. There is nothing on record to indicate that Ajmer Singh was not in a sound disposing mind at the time of execution of will dated 13.09.2005.

Argument on behalf of the appellant that that difference in signatures upon earlier wills and the last will casts a suspicion thereon is fallacious and not substantiated by any evidence on record, hence, rejected. In this respect, it is rightly observed by the learned trial Court that such argument is beyond the pleadings of the appellant. The earlier wills were not even proved on record, no expert was examined to substantiate this plea.

For the sake of argument even if the Wills 'Mark Z and Y' are accepted, there is a clear cut indication of the hostile behaviour of the appellant and her husband towards Ajmer Singh and his wife. Moreover, both the said wills stand specifically revoked vide last will dated 13.09.2005.

There can be no dispute that mere ouster of some of Class I legal heirs by itself does not per se cast any suspicion upon will dated 13.09.2005. There is no dispute that the property in question was the self acquired property of Ajmer Singh and he was well within his rights to make the dispensation of his property as per desire.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

No other argument was addressed.

Learned counsel for the appellant is unable to point out any illegality and infirmity in impugned judgment and decree dated 22.01.2016 passed by the learned Civil Judge (Junior Division), Chandigarh as well as judgment and decree dated 17.05.2018 passed by the learned Additional District Judge, Chandigarh which calls for interference by this Court.

Accordingly, this appeal is dismissed with no order as to costs.

September 26, 2018
rts

(Lisa Gill)
Judge

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