

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

**RSA No.3525 of 1986 (O&M)
Date of Decision.31.01.2019**

Kisso (died) through LRs ...Appellant

Vs

Mejo and others ...Respondents

2. RSA No.3614 of 1986

Anok Singh and others ...Appellants

Vs

Kiso and another ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vikas Singh, Advocate
for the appellant in RSA No.3525 of 1986 and
for respondent No.1 in RSA No.3614 of 1986.

Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Rajesh Narang, Advocate
for the appellant in RSA No.3614 of 1986 and
for respondents No.2 to 4 in RSA No.3525 of 1986.

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AMIT RAWAL J.

This order of mine shall dispose of two regular second
appeal bearing No.3525 and 3614 of 1986 arising out of civil suit
bearing No.12 dated 17.02.1982 decided on 20.09.1984.

The uncontroverted facts are that Buta Singh had three
sons namely Mehar Singh, Hukam Singh and Mota Singh. Mota
Singh was married and had two daughters i.e. Mejo, defendant No.1
and Kisso, plaintiff.

Plaintiff Kisso filed civil suit and claimed declaration
with regard to estate of Mehar Singh on the basis of Will dated
04.02.1976. Mehar Singh died issueless and therefore, bequeathed

half share each to both the nieces vide aforementioned Will. The defendant Mejo alleged that Mehar Singh had executed a registered Will dated 5.12.1977 and bequeathed entire share in her favour whereas defendants No.2 to 4 propounded Will of Hukam Singh regarding his entire share in the suit property vide Will dated 19.07.1981. The total land of these two brothers was 170 kanals 16 marlas i.e. 85 kanals 8 marlas each. The trial Court discarded all the Wills and granted half share each to both the nieces whereas the lower Appellate Court upheld the finding of the trial Court regarding Wills dated 04.02.1976 propounded by the plaintiff of Mehar Singh and 19.07.1981 propounded by defendants No.2 and 4 executed by Hukam Singh and reversed the finding with regard to Will dated 05.12.1977 of Mehar Singh propounded by defendant No.1 Mejo.

Mr. Vikas Singh, learned counsel appearing on behalf of the appellant-plaintiff Kisso in RSA No.3525 of 1986 in support of memorandum of appeal made following submissions:-

- (i) No doubt Will dated 05.12.1977 was registered but finding of the trial Court in conferring half share each with regard to share of Mehar Singh and Hukam Singh is the most appropriate and justified decree. The Pedigree as reflected above has not been denied by both the parties.
- (ii) Mejo and Kisso both were daughters of Mota Singh whereas defendants No.2 to 4 were sons of Mejo. One daughter cannot usurp entire property of her uncle.

- (iii) Will dated 05.12.1977 did not assign reasons of not taking care of Kisso-plaintiff. In fact, it has been proved on record that deceased was a literate man as he was serving as a Clerk with an advocate but despite that thumb marked the alleged Will. No reasons have been assigned why he did not append his signatures as he was not incapable of.
- (iv) The handwriting expert DW9 admitted that the Will dated 05.12.1977 was partly inferred with the writing and partly ink smudged. The core in the thumb impression encircle red was not decipherable. The Will did not reflect that Mehar Singh had any other niece namely Kisso but only mentioned Gurmej Kaur @ Mejo.
- (v) Statements of attesting witnesses were contradictory to each other.
- (vi) The Will dated 04.02.1976 Ex.P1 bequeathing property in favour of both sisters is quite genuine and in accordance with principles of natural justice. The finding of the lower Appellate Court in discarding the Will is wholly erroneous and preposterous, much less, unwarranted.
- (vii) It is not necessary that registration of Will would overcome the objection of having been surrounded by suspicious circumstances.

Dr. Anmol Rattan Sidhu, Senior Advocate assisted by

Mr. Rajesh Narang, learned counsel appearing on behalf of the appellants-defendants No.2 to 4 in RSA No.3614 of 1986 submitted that mother of appellants served Mehar Singh and Hukam Singh for number of years and in such circumstances, Hukam Singh bequeathed the property in their favour vide Will dated 19.07.1981. The lower Appellate Court has erroneously discarded the Will by holding that thumb impressions of Hukam Singh were smudged. It failed to notice that respondent No.1-plaintiff Kisso was residing in village Buttar Roshan Shah Wala and therefore, there was no love and affection for Hukam Singh to bequeath.

I have heard learned counsel for the parties, appraised the paper book, records of the Courts below with the assistance of respective counsel and of the view that following substantial questions of law arises for determination by this Court:-

(i) Whether judgment and decree of the lower Appellate Court in reversing the finding of the trial Court by upholding the Will dated 05.12.1977 by Mehar Singh in favour of Mejo is perverse or not?

(ii) Whether the judgment and decree of the trial Court suffers from illegality and perversity in discarding all the Will and conferring equal shares to both the sisters i.e. Kisso and Mejo?

(iii) Whether the trial Court ignored the testimony of attesting witnesses and as well as fact that the Will dated 05.12.1977 was registered?

The first Will dated 04.12.1976 propounded by the

plaintiff was not registered. The said Will was scribed by Prem Lal and thumb marked by Mehar Singh. Harnam Singh, Lambardar was witness of the Will. He stated to have seen Mehar Singh thumb marking the Will but during cross-examination, stated that he knew Mehar Singh for the last 4 years and used to come village Buttar Roshan Shah Wala for about six months. He did not know how many brothers they were and admitted that Mehar Singh purchased the paper for executing the Will.

The second attesting witness was stated to have died but the provisions of Section 69 of the Indian Evidence Act were not complied with. It is matter of record that the original Will did not see light of the day but only certified copy thereof as Ex.P2 was tendered as the same was stated to be submitted at the time of mutation proceedings, therefore, the finding of the lower Appellate court in discarding the Will cannot be stated to be suffering from any illegality and perversity.

Coming down to the veracity of the Will dated 05.12.1077, both the witnesses admitted signatures of the testator and the expert DW9 compared thumb impression of Mehar Singh with the sale deed as well as the Will and found of the same person. Kisso did not place on record any material to establish that she was residing in village where Mehar Singh was residing. It is natural tendency amongst testator to execute Will in favour of person, who had been close and living with him and taking care. No doubt, he was a clerk but it is not necessary he would have appended signature, as thumb impression rules out element of suspicion. Plaintiff failed to lead any

evidence that the Will Ex.D1 was thumb marked by an impostor. Execution of Will is always an act of deviation from the line of natural succession. In my view, plaintiff was not able to make a dent into ingenuity of the Will, being a registered document also carried presumption of truth, thus, finding of the lower Appellate Court in upholding the Will dated 05.12.1977, Ex.D1 cannot be said to be erroneous and perverse.

Now coming to question whether Will dated 19.07.1981, Ex.D2 was valid and genuine or not, keeping in view the arguments of Mr. Sidhu and whether the Courts below were justified in discarding the same, the answer would be 'yes', for, concededly thumb impression of the testator on the Will are blurred. Scribe Mangal Singh had appeared as DW4 and Mohinder Singh and Harcharan Singh attesting witnesses appeared as DW5 and DW7 respectively. Scribe was a young cultivator and he had read upto matric but did not know Urdu language. Witnesses were asked by Ajit and not by Anokh Singh to appear before the Sub Registrar for registration of the Will, for, the entire transaction leading to the execution of the Will had taken place at the house of Anokh Singh. The aforementioned Will was executed a week before the death of Hukam Singh, which remained incapable of identification, in view of the smudged thumb impression. All these factors weighed in the mind of the lower Appellate Court while discarding the Wills dated 04.02.1976 and 19.07.1981 and upholding the Will dated 05.12.1977.

As an upshot of my finding, I do not find any illegality and perversity in the finding of fact and law arrived at by the lower

Appellate Court. The substantial questions of law are decided against the appellants in both appeals and in favour of respondents in RSA No.3614 of 1986 and respondent No.1 in RSA No.3525 of 1986. No ground for interference is made out. Resultantly, both the appeals are dismissed.

(AMIT RAWAL)
JUDGE

January 31, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No