

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

**RSA No.2012 of 1987 (O&M)
Date of Decision.02.04.2019**

Gurmej Kaur (since deceased) through LRsAppellant

Vs

Darshan Kaur and othersRespondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjay Majithia, Senior Advocate with
Mr. Inderjeet Singh, Advocate
for the appellant.

Mr. Nimanyu Gautam, Advocate
for respondent No.1.

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AMIT RAWAL J.(ORAL)

The present appeal is directed against the judgment and decree of the lower Appellate Court whereby the suit of the respondent-plaintiff claiming possession of suit property being successor-in-interest of Harjinder Singh has been decreed whereby judgment and decree of the trial Court, dismissing the suit, has been set aside.

Respondent-plaintiff sought the aforementioned relief on the premise that Sohan Singh had three sons and three daughters. Sohan Singh died in the year 1979. Husband of the plaintiff died after few days of marriage on 18.12.1980. Sohan Singh during his life time executed a Will, Ex.D2, dated 18.02.1979.

Defendants opposed the suit and stated that plaintiff had asserted right of 128th share i.e. 7 kanals 18 marlas of land.

After the death of Sohan Singh, his widow defendant No.1 propounded a Will alleged to have been executed by Sohan Singh in her

favour and obtained mutation No.4804 and 3439. The aforementioned Will was challenged .

Defendants No.1, 2, 5 and 6 admitted the plaintiff to be wife of Harjinder Singh but denied that she had right in the face of Will left behind by Sohan Singh in favour of Gurmej Kaur, defendant No.1.

Since the parties were at variance, the trial Court framed following issues:-

“1. Whether the plaintiff was married with Harjinder Singh?

OPP

2. Whether Sohan Singh executed a valid Will in favour of Gurmej Kaur? OPD

3. Whether the mutation is illegal and void? OPD

4. Whether the plaintiff is estopped by his act and conduct to file this suit? OPD

5. Whether the suit is not maintainable? OPD

6. Relief.?

Plaintiff examined herself and brought on evidence to show that she was married to Harjinder Singh and denied execution of the Will in favour of defendant No.1. On the other hand, defendants examined four witnesses including the scribe.

The trial Court by holding the Will to be genuine dismissed the suit. In appeal, lower Appellate Court reversed the finding of the trial Court qua the Will and held that succession of Harjinder Singh in equal shares amongst plaintiff and Gurmej Kaur, mother of Harjinder Singh.

Mr. Sanjay Majithia, learned Senior Counsel assisted by Mr. Inderjeet Singh, learned counsel appearing on behalf of the appellants-

defendants submitted, that judgment and decree of the lower Appellate Court is not sustainable for the simple reason that in proceedings for return of Shtridhana, plaintiff on 31.10.1986 suffered a statement of having performed 1 ½ years back second marriage. The aforementioned statement has been allowed by way of additional evidence in C.M. No.2193-C of 1987. Though the Will was registered document, there was no such material before the lower Appellate Court to form a different opinion for discarding the Will as provisions of Section 68 of the Indian Evidence Act had been complied with. Registered Will Ex.D1 dated 18.02.1979 was proved through the testimony of DW4 Baldev Singh, Sarpanch of the village and attested by Pritam Singh and Pakhar Ram, Member Panchayat. The lower Appellate Court has erroneously relied upon the opinion of the expert Ex.P13, given in mutation proceedings before the revenue officials, which was totally a summary enquiry in nature. The defendant No.1 was the absolute owner as per sub-section (1) of Section 14 of the Hindu Succession Act, thus, urges this Court for setting aside the judgment and decree under challenge.

Per contra, Mr. Nimanyu Gautam, learned counsel appearing on behalf of the respondent-plaintiff supported judgment of the lower Appellate Court and submitted that Harjinder Singh died in the year 1980 and the marriage by the plaintiff was performed only in 1984, therefore, that cannot be a ground for depriving her claim in the share of Harjinder Singh. The deed writer belonged to Noormehal and not to the village where the testator was residing. He studied only upto 9th standard. Petition writers were available at Nurmehal. The Will was scribed at Uppal Khalsa. The testimony of Teja Singh, Sapranch/attesting witness to the Will in

cross-examination stated that Sohan Singh died 4-5 days after the execution of the Will. Testimony of other witnesses was also not consistent. Mr. K.S. Puri, expert examined in the mutation proceedings affirmed that signatures mark Q1 on the photograph did not tally with the specimen signatures S1 to SS. Defendants failed to controvert the aforementioned report by any direct and cogent evidence.

I have heard learned counsel for the parties, appraised the paper book, records of the Courts below and of the view that following Substantial Question of Law arises for determination by this Court;

“Whether judgment and decree of the lower Appellate Court is result of misreading of the evidence brought on record, resulting into perversity?

No doubt, defendants attempted to prove the Will by examination of scribe and attesting witnesses. The Will was scribed by Baldev Singh, as per evidence belonged to Nurmehal and not to the village where the testator was residing. Original Will did not come on record as according to the beneficiary it was lost. Teja Singh spilled the beans qua suspicious circumstance surrounding the Will by stating that Sohan Singh died 4-5 days after the execution of the Will. Section 145 of the Indian Evidence Act enables the parties to cross-examine regarding previous statements made in writing. If at all, there was some truthfulness in the stand of defendant No.1 propounding the Will, she could have taken assistance of the expert.

In view of such circumstances, the finding of fact and law arrived at by the lower Appellate Court being the last court of fact and law is perfectly legal and justified. The substantial question of law is answered

against the appellants-defendants and in favour of the respondent-plaintiff.

No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 02, 2019
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No