

RSA-2996-1987 (O&M)

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

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Date of decision : 31.01.2019

Inder Singh (deceased) through LRs and others

... Appellants

Versus

Indro Bai (deceased) through LRs and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. P.N. Aggarwal, Advocate for the appellants.

Mr. Sandeep Khunger, Advocate for the respondents.

AMIT RAWAL, J.

The present regular second appeal, at the instance of the appellants-defendant Nos.2 to 6 is directed against the concurrent findings of fact, whereby the suit of the respondent No.1/plaintiff for declaring her to be owner of land measuring 31 kanals 7 marlas to the extent of 1/7th share out of land measuring 219 kanals 15 marals situated in two villages Saidoke Hithar and Lolla, Tehsil Fazilka and with consequential relief of permanent injunction restraining the appellants-defendant Nos.2 to 6 from alienating her share, has been decreed by the trial Court and affirmed in appeal.

It was alleged that Labh Singh, her father, was owner of the aforementioned land, situated in two villages Saidoke Hithar and Lolla, Tehsil Fazilka. He died leaving behind two daughters and five sons, therefore, was entitled 1/7th share. The defendants on the basis of the forged Will, managed to obtain mutation regarding inheritance in their favour.

Defendant Nos.2 to 4 and 6 opposed the suit by propounding the unregistered Will dated 26.10.1983 (Ex.D1), whereby Labh Singh had bequeathed the entire property in favour of five sons as both the daughters

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i.e. plaintiff and defendant No.1, were married.

On the basis of the pleadings, the following issues were framed:-

- 1. Whether the plaintiff is estopped by her own act and conduct from filing of this suit? OPD*
- 2. Whether Labh Singh deceased had executed a valid Will in favour of defendant Nos.2 to 6? OPD*
- 3. Whether the plaintiff is entitled to the relief of declaration as prayed? OPP*
- 4. Whether the plaintiff is entitled to the relief of permanent injunction as prayed? OPP*
- 5. Relief.*

Since the onus to prove the Will is always upon the propounder i.e. appellants-defendant Nos.2 to 6, they examined Kamaljit Singh Ahlamad of the Court of Commissioner, Ferozepur Division as DW1, Harmit Singh, scribe, as DW2, Om Pranath, Office Kanungo as DW3, Munsha Singh as DW4, Inder Singh as DW5 and Milkha Singh as DW6 and brought on record various documents. On the other hand, the respondent-plaintiff examined as many as six witnesses and tendered in evidence various documents.

On the basis of the evidence both oral and documentary, the trial Court decreed the suit and the appeal laid by the appellants-defendant Nos.2 to 6, was also dismissed.

Mr. P.N. Aggarwal, learned counsel for the appellants-defendant Nos.2 to 6 submitted that the execution of the Will dated 26.10.1983 of the Labh Singh, had been proved through the testimony of DW-4, Munsha Singh, Sarpanch of the Village and DW-2, Harmit Singh,

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scribe. Both the Courts below abdicated in discarding the Will on the ground that Labh Singh used to append his signatures, whereas the Will, in question, was thumb-marked, in fact, he was not keeping well and his hands were shaken, which had been proved on record through the testimony of the scribe. Both Indro Bai and Piaro Bai, were daughters of the testator and very well married in life. It was not necessary to make a specific mention in the Will about Piaro Bai, who allegedly have been living with her father as her husband had performed second marriage. Harmit Singh, document writer, knew the parties. Labh Singh was, for the last 12 ½ months, confined to bed and there is overwhelming evidence through the testimony of PW1-Jodh Singh and PW5-Tehal Singh. There is no evidence that he was ever taken to Fazilka for medical treatment. The Will was registered at Sr. No.216, on 26.10.1983 in the register of the deed writer. Non-production of the register as it was taken by the police in some connection, cannot be fatal. Sohan Lal, the other witness, was summoned, but did not appear. Labh Singh practically was illiterate and used to append his signatures in Punjabi, but owing to injuries to his hands, which had been proved through evidence, had been appending thumb-impressions on the document. This fact had been proved by bringing on record sale deed (Ex.D8), wherein as Lambardar, attested the same. Piaro Bai was very well looked after by her brothers i.e. appellants. In support of his contentions, reliance has been laid to the following judgments:-

1. **“Surjit Kaur V/s Harchand Singh and others” 2008 (2) Civil Court Cases 477 (P&H)** that it is not necessary for the testator, who had been signing to append the thumb-impressions in view of the special circumstances.
2. **“Smt. Sushila Devi V/s Pandit Krishna Kumar Missir and**

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others” AIR 1971 Supreme Court 2236, that non-bequest of property to children of a testator does not make the Will invalid, in case, the execution of the Will has satisfactorily been proved.

3. “Rur Singh (D) through LRs and others V/s Bachan Kaur” 2009 (2) Civil Court Cases 770 (S.C.), that the Will excluding the daughters, in fact, was an intention of the testator not to allow agricultural land to go to out of the family.

Per contra, Mr. Sandeep Khunger, learned counsel for the respondents supported the judgments and decrees, under challenge, on the premise that Labh Singh died 15-20 days after execution of the Will. He was about 90 years age. Piaro Bai was living with her father and was not being looked after by brothers as alleged. Exclusion of her was, in such circumstances, not warranted. The Will was surrounded by the suspicious circumstances as DW4-Munsha Singh, admitted that Piaro Bai was living with her father for the last 10-11 (ten-eleven) years, rather she was at his mercy. Fazilka was only at a distance of four miles of Village Saidoke Hithar, whereas Jalalabad was 19 (Nineteen) miles. Harmit Singh, was called by Milkha Singh. It has come on record that Labh Singh was lying on bed and Harmit Singh knew about his sons and daughters. There was an active participation of the sons, thus, urges this Court for dismissal of the present regular second appeal.

I have heard learned counsel for the parties, appraised the paper book as well as the records of the Courts below and of the view that the following substantial questions of law arises for determination:-

1. *Whether there is misinterpretation of the contents of the Will dated 26.10.1983 (Ex.D1), resulting into perversity.*

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2. Whether the defendants have been able to prove the authenticity and validity of the Will, in the absence of the registration.

Much emphasis was laid by Mr. Aggarwal to the testimony of PW-1 Jodh Singh, wherein it has surfaced that Labh Singh was not admitted or obtained any treatment from any hospital. Though, it has come on record that he remained sick for about one and half month as he suffered from fever and also for some kidney disease. In this regard, testimony of Tehal Singh-PW2 was also referred to. DW2-Harmit Singh though stated that testator was, when the Will was scribed, in full senses, but in cross-examination, he stated that it was scribed at Village Saidoke Hithar as he was called by Milkha Singh for this purpose. The register of the deed writer had not been produced nor any evidence has been led to summon the record from the police with regard to its confiscation. He was none-else, but the brother-in-law of Labh Singh, therefore, definitely, he would have known the entire family. The Will did not contain any provisions for maintenance for second daughter Piaro Bai/defendant No.1, who had been living with her father for the last 10-11 years.

There is no dispute to the judgments cited supra, but the facts and circumstances of each case have to be examined and in that context, the *ratio decidendi* is culled out.

Both the Courts below, particularly, the lower Appellate Court being the last Court of fact and law examined the testimony of all the witnesses and it has surfaced that witnesses of the Will were called by sons of the deceased. No doubt at some stage, they can be called by sons, but in the absence of any evidence contrary, the element of having active

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participation cannot be ruled out.

It is a matter of record that the deceased was none-else, but Lambardar and he was aware of the ground realities of the life. The defendants have not taken the assistance of any expert to compare the thumb-impressions of Labh Singh with that of the sale deed (Ex.D8), therefore, it cannot be believed that he had been in habit of appending the thumb-impressions as he alleged to have broken his hand and was frail and feeble. I cannot remain unmindful of the order dated 04.12.2017, where it is evident that the appellants-defendant Nos.2 to 6 had taken many adjournments to offer some reasonable amount to the respondent-plaintiff. No doubt the execution of the Will is deviation from the line of succession, but the fact that Piaro Bai/defendant No.1 had been living with her father Labh Singh for the last 10-11 years, cannot be ignored. Even otherwise, all the parties to the *lis* have been conferred 1/7th share as Labh Singh, on his demise, had left five sons and two daughters, even if he died, rule of succession would continue to devolve upon legal representatives.

Keeping in view the aforementioned facts and circumstances, the substantial questions of law as noticed above are answered against the appellants-defendant Nos.2 to 6 and in favour of respondents-plaintiff. I do not find any illegality and perversity in the judgments and decrees, under challenge, much less, no ground is made out for interference. Accordingly, the present regular second appeal is dismissed.

31.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**