

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1910 of 1988 (O&M)

Date of Decision: March 07, 2019

Pritam Singh

...Appellant

Versus

Smt.Narinder Kaur & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Jagdeep Virk, Advocate,
for the appellant.

Mr. H.S.Bhullar, Advocate,
for the respondents.

AMIT RAWAL, J.

The present Regular Second Appeal is directed against the judgment and decree of the Lower Appellate Court, whereby the suit of the appellant-plaintiff decreed by the trial Court, has been dismissed.

Plaintiff Pritam Singh, in the year 1983, sought possession of the land measuring 26 kanals 1 marla by giving description of share and particulars on the basis of the title being real brother of Makhan Singh by setting-aside the order dated 17.02.1982, mutation entry qua the estate of Makhan Singh on the basis of the alleged Will and further claimed right of possession being legal heir of Makhan Singh or in the alternative for possession of land measuring 25 kanals comprised in Rect.No.35, Killa No.7min (4-0), 8min (4-0), Rect.No.42, Killa No.3 min (4-0), 7(8-0), 15(4-0), total 24 kanals situated in Village Talliwali, Tehsil and District Ferozepore on the basis of the agreement dated 12.03.1976 entered between

Makhan Singh and the plaintiff.

One Lehna Singh had five sons and three daughters, namely, Pritam Singh (plaintiff), Kartar Singh, Makhan Singh, Sohan Singh and Avtar Singh. Kartar Singh, Avtar Singh and Sohan Singh died during the life time of Makhan Singh. Banto, Kulwanto and Santo were the daughters, out of which Santo and Kulwanto also died during his life time. On demise of Makhan Singh on 04.11.1976, Pritam Singh and Banto, brother and sister were left. Narinder Kaur wife of Natha Singh son of Kartar Singh was arrayed as defendant No.1. The documents relied upon by the Collector for the purpose of sanctioning of mutation were alleged to be forged documents. Challenge was also laid to the orders of the Collector.

It was alleged that Makhan Singh, during his life time, executed an agreement, *ibid*, in respect of the land for a consideration of ₹ 18,000/-. A sum of ₹ 14,000/- was paid as earnest money at the time of execution and Rs.4,000/- was to be paid at the time of execution and registration of the sale deed, which was to be executed on or before 31.03.1977. Since Makhan Singh died before the stipulated date for execution and registration of the sale deed, specific performance, as noticed above, was sought by pleading readiness and willingness or in the alternative refund of ₹ 18,000/-.

Defendant No.2 was proceeded ex-parte, whereas defendant No.1 contested the suit and alleged that after the death of Makhan Singh, mutation, on the basis of the Will, *ibid*, was entered in the name of the defendants and appeal against the order of mutation was dismissed by the Collector. Agreement was said to be fabricated document. Cultivating possession of Makhan Singh was also denied. Deceased was living separately from the plaintiff but resided with defendant No.1 and out of the

services rendered, the aforementioned Will was executed. Even the funeral expenses were also borne by the answering defendant.

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

- “1. Whether the plaintiff and defendant No.2 Smt.Banto were to inherit the property of Makhan Singh deceased in equal shares? OPP*
- 2. Whether the deceased Makhan Singh executed a legal and valid Will dated 27.2.76 in favour of the defendant No.1? OPP*
- 3. Whether deceased Makhan Singh executed a legal and valid agreement of sale of land measuring 25 kanals as mentioned in para No.5 of the plaint in favour of the plaintiff and also received a sum of Rs.14,000/- as earnest money? If so to what effect? OPP*
- 4) In case issue No.3 is proved in affirmative as to whether the plaintiff has always been ready and willing to perform his part of the contract and even now he is so? OPP*
- 5) Whether the suit is not maintainable as framed? OPD*
- 6) Whether the plaintiff is entitled to the possession of the suit land? OPP*
- 7) Whether the plaintiff is entitled to the recovery of a sum of Rs.18,000/- if so from which of the defendant? OPP*
- 8) Relief.”*

Plaintiff, in support of the aforementioned pleadings, examined four witnesses, i.e., himself as PW-1, Santa Singh PW-2, Narinder Nath PW-3 and Khushal Singh as PW-4 and relied upon application Ex.P1, agreement Ex.P2, copy of register Ex.P3, jamabandi Ex.P4, khasra girdawaries Ex.P5 and Ex.P6, death certificate Ex.PX.

On the other hand, the defendant examined DW-1 Ashwani Kumar, DW-2 Ashok Kumar, DW-3 Chemba Ram and herself appeared as

DW-4 and brought on record the Will Ex.D1.

The trial Court, on the basis of the evidence, while deciding issue No.1 in favour of the defendants regarding genuineness of the Will, decreed the suit for specific performance directing defendant No.1 to execute the sale deed in favour of the plaintiff within two months by making payment and in case of default, liberty was granted to the plaintiff to seek the same in accordance with law.

Two appeals were filed, one by Pritam Singh and other by Narinder Kaur. Appeal of Narinder Singh was assigned number as 269 of 1985 and of Pritam Singh as 321 of 1987.

After examining the evidence brought on record, the Lower Appellate Court allowed the appeal of Narinder Kaur and dismissed, that of Pritam Singh.

This Court, on 13.03.1989, admitted the appeal without any interim order.

Mr. Jagdeep Virk, learned counsel for the appellant-plaintiff submitted that the findings of the Lower Appellate Court with regard to the validity of the Will in favour of the defendant are not based upon the facts of the case as it was surrounded by suspicious circumstances. The Will did not disclose any reason of changing the line of succession. Major Singh, one of the attesting witnesses of the Will, was not examined, rather examined by the appellant-plaintiff, who did not support the Will. The finding of the Court below that the Sub Registrar became one of the witnesses is against the law laid down by Hon'ble the Supreme Court. Will was not registered on the date it was scribed as registration of the same was after 2-3 days. DW-3 Chamba Ram, attesting witness of the Will, did not

connect the family of Makhan Singh nor he knew the details of the family. Entry, with regard to the Will by the Deed Writer, was also not brought on record. There was no occasion for the Lower Appellate Court to treat the agreement as a Will. On the contrary, the witness proved on record the intention of the parties. Agreement bore the thumb impression of Makhan Singh, but he also used to sign. Court below, in such circumstances, ought not to have repelled the contentions of the appellant by discarding the agreement and held that Makhan Singh did not append his signatures on any proceedings.

Mr. H.S.Bhullar, learned counsel appearing on behalf of the respondents, supported the judgment and decree under challenge on the premise that the agreement had not been proved on record, on account of the admission of PW-2, who stated that Pritam Singh, proved the fact that Makhan Singh was sitting nearby when the agreement was drafted. In other words, the agreement was not executed at the instance of Makhan Singh but on the dictation of Pritam Singh. Copy of the register of the Scribe showed that the agreement was executed on the non-judicial stamp paper of Rs.2.25 paise, whereas agreement Ex.P2 reflected to have been typed on non-judicial stamp paper of Rs.2.40 paise. There was material tempering as on the figures 18000/-, 9000/- and 4000/- by overwriting, 4000/- was made as 14000/-. Ingredients of Section 68 of the Indian Evidence Act were complied with as one of the attesting witnesses was coherent and consistent. There was no suspicious circumstance. The witness stated that he signed the Will in the presence of the testator and the Sub Registrar, Pritam Singh as PW-1 admitted that Makhan Singh used to thumb mark the documents occasionally and also sign them, but stated that he was not in possession of

any other document carrying thumb impression. Except that, no other document has been placed on record to establish that Makhan Singh was in the habit of appending thumb impression and, thus, prayed for dismissal of the appeal as no substantial question of law arises for determination.

I have heard the learned counsel for the parties, appraised the paper book and of the view that following substantial question of law arise for determination:-

“Whether the judgment and decree of the Lower Appellate Court suffers from perversity and tantamounts to misreading of the documents?”

From the evidence and the pleadings, it is proved on record that the death ceremony of Makhan Singh was performed by the husband of defendant No.1 and plaintiff did not incur any expenses. Will Ex.D1 propounded by the defendants has been proved on record through the testimony of DW-3 Chamba Ram, attesting witness. He categorically stated that the testator executed the Will which was written by Ashok Kumar Documents Writer. The Will was read over to Makhan Singh and to the witness, who after admitting the same to be correct, signed in Urdu. He and Major Singh also signed and after 2-3 days of scribe, appeared before the Sub Registrar for registration. Original Will was seen by him and photocopy was exhibited as Ex.D1. The plaintiff failed to place on record any material to dispel the suspicious circumstances as sought to be projected.

Now coming to the question whether Makhan Singh, during his life time, had entered into an agreement and, therefore, his act would have a binding effect upon the beneficiaries of the Will. Pritam Singh, in cross-examination, admitted that Makhan Singh died at the age of 60-65 years and was not in possession of any document carrying thumb impression of

Makhan Singh. He also admitted that Makhan Singh never thumb marked any other document at any time in his presence. For the sake of brevity, the relevant portion of the cross-examination reads as under:-

“.....I am not in a possession of any other document carrying the thumb impression of Makhan Singh. Makhan Singh also never thumb-marked any other document at any time in my presence.....”

He admitted that he did not file any suit for specific performance of the agreement or for return of the money nor had purchased the stamp paper. PW-2 Santa Singh, attesting witness of the agreement, admitted that it was scribed on the dictation of Pritam Singh and not by Makhan Singh.

PW-3 Narinder Nath stated that since 1970 he was working as a Documents Writer and had seen the agreement Ex.P2, which was scribed at the instance of Makhan Singh in favour of Pritam Singh, but in cross-examination, he admitted that he never enquired from Makhan Singh whether he was illiterate or not, nor gave any note in the register regarding the identify of Makhan Singh before him by the attesting witnesses. He did not know the person who had thumb marked as Makhan Singh or was a genuine person. The Will Ex.D1 bore the signatures of Makhan Singh. If at all, Makhan Singh had thumb marked the agreement, which was emphatically denied by the defendants, it was obligatory to get the assistance of the expert as none of the documents bearing the thumb impression of Makhan Singh brought on record.

I cannot remain oblivious of the fact that from the relief sought in the plaint, it is evident that the plaintiff has sought the possession of 26 kanals 1 marlas by way of inheritance and in the alternative, 25 kanals by

way of specific performance. Had it been so, Pritam Singh would have claimed 25 kanals by way of specific performance of the agreement and half of the remaining.

For the reasons mentioned above, I do not find any illegality or perversity in the judgment and decree of the Lower Appellate Court, which is based on appreciation of oral and documentary evidence. No ground for interference is made out. The substantial question of law is answered in favour of the respondent-defendants and against the appellant-plaintiff. Resultantly, the appeal is dismissed.

March 07, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No