

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

RSA-2591-2007(O&M)

Date of decision:-27.2.2019

Sh.Gurnam Singh

...Appellant

Versus

Smt.Surjit Kaur and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Akshay Bhan, Sr.Advocate with
Mr.Sushant Kareer, Advocate
for the appellant.

Mr.Harish Khanna, Advocate
for the respondents.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiffs –
Smt.Surjit Kaur – widow, Ms.Tirath Kaur - daughter of Sh.Charan
Singh had brought a suit against defendants i.e. Gurnam Singh – son,
Ms.Kulwinder Kaur - daughter of said Charan Singh, Ajaib Singh,
Smt.Paramjit Kaur, Sh.Tejinder Singh, Sh.Gulzar Singh, Sh.Gurdeep

Singh, Sh.Parkash Singh, Sh.Kuldeep Singh and Sh.Jaswant Singh seeking a declaration that plaintiffs are co-sharers to the extent of 1/2 share out of share of Charan Singh on the basis of inheritance in the land measuring 241 kanals 16 marlas as detailed in head-note of the plaint situated at village Bhinder, Tehsil Baba Bakala, District Amritsar as per jamabandi for the year 1995-96 and that the alleged unregistered Will dated 9.11.2000, if any, in favour of defendant No.1 and mutation sanctioned on the basis thereof are illegal, null and void, result of fraud, misrepresentation and impersonation and not binding upon rights of the plaintiffs, besides craving for grant of relief of permanent injunction restraining the defendant No.1 from selling, alienating, transferring or disposing of any part of the suit land to any body in any manner i.e. by way of sale, mortgage, lease gift etc.

As per the case of the plaintiffs originally Sh.Charan Singh son of Sh.Tara Singh was a co-sharer in possession of the suit land; that Sh.Charan Singh had died on 8.5.2001 leaving behind the plaintiffs and defendants No.1 and 2 as his legal representatives; that Sh.Charan Singh has died intestate and had not executed any Will in favour of anybody, in that way after his death, plaintiffs and defendants No.1 and 2 inherited his estate becoming co-owners in equal shares, however, defendant No.1 started alleging that Sh.Charan Singh had executed an unregistered Will dated 9.11.2000

in his favour and on the basis thereof got the mutation sanctioned in his name. According to the plaintiffs, they had not appeared before revenue authorities and their presence was wrongly marked; that the plaintiffs condemned the Will set up by defendant No.1 – Gurnam Singh as illegal, null and void so also the mutation sanctioned on the basis thereof, adding that they had preferred an appeal against the order sanctioning mutation in favour of Gurnam Singh but the appeal was dismissed; that the plaintiffs had asked such defendant to admit their claim but he refused to do so giving rise to a cause of action to the plaintiffs to bring the suit.

Notice of the suit was given to the defendants. Only defendant No.1 appeared and filed written statement contesting the suit raising preliminary objections to the effect that suit was not maintainable; that the plaintiffs had no locus standi to bring the suit; that the suit was not properly valued for the purpose of court fees and jurisdiction; that the suit was bad for misjoinder and non-joinder of the necessary parties; that the plaintiffs had not come to the Court with clean hands. The answering defendant contended that originally Charan Singh was co-sharer in possession of land measuring 241 kanals 16 marlas; that Sh.Charan Singh during his life time was residing with the answering defendant, who was the only son of Sh.Charan Singh; that pleased with the services rendered by the answering defendant, Sh.Charan Singh while he was in sound

disposing state of mind, executed a Will dated 9.11.2000 in favour of the answering defendant; that at the time of death of Charan Singh, the answering defendant performed all his last rites and ceremonies; that the plaintiffs had appeared before Assistant Collector Ist Grade, Baba Bakala at the time of sanctioning of mutation regarding inheritance of Sh.Charan Singh deceased in favour of answering defendant and had got their statements recorded admitting the execution of Will. On merits, the answering defendant controverted the material assertions in the plaint and reiterated the pleas taken in the preliminary objections, in the end coming up with a prayer for dismissal of the suit.

Defendants No.2 to 10 had not appeared despite service and were proceeded against ex-parte.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiffs are in joint possession of 1/2 share in the suit land? OPP.
2. Whether Charan Singh deceased executed Will dated 9.11.2000 in favour of defendant Gurnam Singh? OPD.
3. Whether the suit is not maintainable in its present form? OPD.
4. Whether the plaintiffs have no locus standi to file the present suit? OPD.
5. Whether the suit is not properly valued for the purposes of

Court fee and jurisdiction? OPD.

6. Relief.

Both the parties led evidence in respect of their claims.

During the course of their evidence, the plaintiffs got their statements recorded as PW1 and PW2 besides examining Sh.Sukhjinder Singh, Handwriting Expert as PW3.

On the other hand, the defendant No.1 had examined DW1 Ranjit Singh, DW2 Jagdish Mitter, Deed Writer, DW3 Hari Singh, DW4 Balwinder Singh, Ex-Sarpanch and defendant No.1 got his statement recorded as DW5 besides examining Sh.Arvind Sood, finger Print Expert as DW6.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 and 2 against the plaintiffs and in favour of the defendants, issue No.3 in favour of the plaintiffs and against the defendants, issue No.4 in favour of the plaintiffs and against the defendants, issue No.5 in favour of the plaintiffs and against the defendants. Resultantly, suit of the plaintiffs was dismissed with costs. This was so done vide judgment and decree dated 29.11.2004.

The plaintiffs were aggrieved by the said judgment and decree and they had filed an appeal before the Court of District Judge, Amritsar, which was assigned to Additional District Judge (Ad hoc), Fast Track Court, Amritsar, who vide judgment and decree dated 20.7.2007 accepted the appeal, set aside the judgment and

decree passed by the trial Court and decreed the suit of the plaintiffs.

Now it was turn of the defendant No.1 to feel dissatisfied and he had filed the present regular second appeal before this Court, notice of which was issued to the respondents/plaintiffs, who appeared through counsel.

I have heard learned counsel for the parties besides going through the record and I find that the impugned judgment and decree passed by the Additional District Judge (Ad hoc), Fast Track Court, Amritsar are not sustainable and are liable to be set aside.

Testamentary succession is deviation from the natural succession. As per the case of the appellant/defendant No.1, testator Sh.Charan Singh had executed a Will qua his properties in his favour, pleased with the services rendered by him and during his life time he had been residing with him. As regards his two daughters Ms.Tirath Kaur and Ms.Kulwinder Kaur, both of them were married and he had already given whatever he wanted to give at the time of their marriages and with respect to his wife Smt.Surjit Kaur, he had made arrangement that she would get produce from three acres of land for meeting her needs. According to the appellant, the Will is a legal and valid document which was duly proved on record and it was rightly given effect too by the trial Court. However, the First Appellate Court wrongly upset that judgment and decree passed by the trial Court disbelieving the Will without there being any reason to

do so.

After examining the Will and going through the pleadings of the parties and evidence adduced on the record by them besides considering the arguments advanced by counsel for the parties, I find that the Will in this case does not suffer from any suspicious circumstances, which might have created a doubt in the mind about its legality and genuineness. Learned Additional District Judge (Ad hoc), Fast Track Court, Amritsar seems to have misappraised the evidence and misinterpreted the law while rejecting the Will. He has not taken into consideration the fact that the parties belonged to an agricultural community and in such communities it is earnest desire of a land holder to ensure that his land remains in the family and it passes on to his male descendant(s). Gurnam Singh being only son of testator, there was nothing unusual for the testator bequeathing his landed property to him to ensure that it remained in the family. In the recital of the Will itself, the testator has mentioned about his wife and three children stating that his two daughters were married and he had already given whatever he wanted to give at the time of their marriages and with respect to his wife he had mentioned that produce of three acres of land would be given to her, obviously for the purpose of meeting her financial needs. This arrangement is adequate and no fault can be found with the same. The Will is certainly not unnatural and unjust one and cannot be said to be

shrouded by suspicious circumstance. Learned Additional District Judge (Ad hoc), Fast Track Court, Amritsar has made much of the fact that in the file summoned from the Market Committee, there was an affidavit attached with it, wherein Sh.Charan Singh had claimed compensation stating that he was a landless person and did not own any landed property when he actually owned about 120 kanals of land, therefore, it is doubtful whether compensation was claimed by Charan Singh or some other person. This observation is without any merit. Merely because some portion of the affidavit seems to be contrary to the factual position does not mean that the affidavit was submitted by some other person. The Court can certainly not take that view more particularly when expert witness Arvind Sood, Handwriting and Fingerprint Expert had stated that thumb impressions of Charan Singh on Ex.D2 and Will Ex.D1 are of one and the same person. Even the expert examined by the plaintiff namely Sh.Sukhjinder Singh had not given opinion that there were any points of difference between the two thumb impressions although he had opined that both the thumb impression were blurred and not fit for comparison. The beneficiary under the Will has been able to prove its execution by leading enough cogent and convincing evidence including examining DW2 Sh.Jagdish Mitter, Deed Writer, who categorically stated that he had scribed the Will at the instance of Charan Singh son of Tara Singh, resident of Bhinder, Tehsil Baba

Bakala on 9.11.2000 and after scribing it had read it over to the testator, who after admitting it to be correct had put his thumb impressions in his presence and that of Jail Singh and Hari Singh, Members Panchayat and at that time Charan Singh was in sound disposing state of mind and was not under pressure. The witness had stated that he had entered the Will in his register at serial No.611. The Will having been scribed by a regular Deed Writer with an entry being there in the register rules out the possibility of any forgery or fabrication later on. DW3 Hari Singh, Ex-Member Panchayat of village Bhinder, a respectable of the village categorically stated that he knew Charan Singh of his village, who had executed the Will in question getting it scribed from Jagdish Mitter, Deed Writer and thumb marked the same after admitting the contents to be correct in his presence and that of other attesting witness Jail Singh and that both of them had signed/thumb marked the Will in presence of Charan Singh; that Charan Singh had executed the Will in favour of his son Gurnam Singh and at that time he was in sound disposing mind. He stated that Jail Singh, the other attesting witness had expired and Charan Singh used to reside with his son Gurnam Singh and due to services rendered by Gurnam Singh, he executed the Will in his favour.

The requirement of Section 68 of the Evidence Act stands duly completed with since DW3 Hari Singh, an attesting

witness of the Will was examined by defendant No.1 beneficiary. The other attesting witness could not be examined on account of his death.

From the statements of these two witnesses, it comes out that Charan Singh, who was residing with his son defendant No.1 – Gurnam Singh and was being served by him had executed the Will in his favour in sound disposing mind. DW6 Arvind Sood, Fingerprint Expert examined by defendant No.1 also corroborates the case of the defendant No.1.

Learned Additional District Judge (Ad hoc), Fast Track Court, Amritsar has made much of the fact that the Will was not got registered. The entire approach of the Court is erroneous and misconceived. The settled law is that a registered and unregistered Will are at par and a Will cannot be viewed with suspicion simply for the reason that it is not registered. Even learned Additional District Judge (Ad hoc), Fast Track Court, Amritsar has himself observed that a duly proved unregistered Will stand on equal footing with a registered Will. Here as discussed in detail above, the beneficiary had duly proved the Will in question.

Another circumstance taken to be suspicious by the said Court was that the testator had disinherited three heirs of Class I and showered bounty upon son alone. The Court had rather made superfluous observations regarding a daughter being equally entitled

to inherit share in estate of her father and Parliament enacting law in that regard. Such type of observations do not made any sense when we see that an owner has got a right to pass on his property to any person he feels like. It has come on record that both the daughters of testator were married and he was residing with his only son, who was looking after and serving him. Pleased with his services and to ensure that the property remained in the family, he bequeathed it to his son and there was nothing unusual in doing so and it can certainly be not taken as a suspicious circumstance. A father bequeathing his agricultural land to his son cannot be taken to be showering of bounty by a father upon his son. As regards his wife, the testator had made adequate arrangement mentioning in the Will that produce of three acres of land would go to his wife during her life time.

Even at the cost of repetition, it may be stated that the Will has been scribed by regular Deed Writer and attested by two respectable persons of the village to which the testator belong. It is a natural disposition and is not shrouded by any suspicious circumstance as learned Additional District Judge (Ad hoc), Fast Track Court, Amritsar has tried to build up and project.

The judgment and decree passed by the trial Court is well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law and it was wrongly upset by learned Additional District Judge (Ad hoc), Fast Track Court, Amritsar. That

wrong is being undone by acceptance of the present appeal.

Resultantly the judgment and decree passed by Additional District Judge (Ad hoc), Fast Track Court, Amritsar are set aside and the judgment and decree passed by the trial Court dismissing the suit of plaintiffs are restored.

The appeal stands allowed accordingly with costs.

27.2.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No