

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 3036 of 2016 (O&M)

Date of decision : 5.7.2019

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Ishar Singh

.....Appellant

vs.

Kulwant Kaur and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Atul Lakhanpal, Senior Advocate with
Mr. R.S. Chahal, Advocate for the appellant.

Mr. G.S. Sandhu, Advocate for respondent No. 1.

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H. S. Madaan, J.

Briefly stated, facts of the case are that plaintiff – Kulwant Kaur widow of Jaswant Singh, resident of Mandi Gobindgarh, District Fatehgarh Sahib, had brought a suit against the defendants – Ishar Singh, brother, Mohinder Kaur, Harbans Kaur (since deceased through her legal representatives) and Harnam Kaur, married sisters of her deceased husband, seeking a declaration that alleged Will dated 6.2.2009, allegedly executed by late Jaswant Singh in favour of Ishar Singh - defendant No.1, regarding his movable and immovable

properties, is illegal, null and void and not binding upon the rights of the plaintiff, rather is a forged and fabricated document, liable to be set aside and that the plaintiff is owner in possession of one half share standing in the name of her deceased husband Jaswant Singh, in the suit land detailed in head note of the plaint, besides craving for grant of permanent injunction, restraining the defendants from interfering in her peaceful possession over the suit land and forcibly dispossessing her therefrom.

As per version of the plaintiff, she was married with Jaswant Singh and the couple cohabited together, however, they were not blessed with any child; that Jaswant Singh was owner in possession of the suit property in addition to other movable and immovable properties situated at Mandi Gobindgarh and at village Kukar Majra, District Fatehgarh; that Jaswant Singh was not keeping good health and he used to remain under depression; that he committed suicide with his own licenced gun; that during his life time Jaswant Singh had been living with the plaintiff; that he had 1/6th share in the land situated at village Fatehpur, District Yamuna Nagar, whereas defendants No. 2 to 4 i.e. sisters of Jaswant Singh also had 1/6th share each in the land situated at village Fatehpur, but they had relinquished their shares in the land in favour of Jaswant Singh. Resultantly, Jaswant Singh became owner in possession to the extent of one half share in that land. Mutations No. 669 and 670 were sanctioned by the revenue authorities in that regard; that after the death of Jaswant Singh, mutation No. 703 was sanctioned in favour of the plaintiff being widow and as such his legal heir; that defendant

No. 1 Ishar Singh propounded impugned Will dated 6.2.2009; that the mutation was disputed and was contested by the parties. The plaintiff came to know about the alleged Will on 8.4.2009 when Ishar Singh had staked his claim during mutation proceedings. According to the plaintiff, the suit land involved was joint with defendants No. 1 to 4 and it was proposed to file a petition for partition; that for that purpose Ishar Singh had obtained signatures of Jaswant Singh on certain papers. However, the petition could not be filed; that the alleged Will bears signatures of Rajesh Kumar, Lumberdar of village Bhagwan Pur and Balbir Singh as attesting witnesses. However, no respectable person was joined for attesting the alleged Will; that Balbir Singh is a cousin brother of defendant No.1, who has joined hands with the latter to forge the Will, which as a matter of fact is surrounded by suspicious circumstances; that the alleged Will is not registered with Sub Registrar of the area and is purportedly attested by a Notary Public; that no photograph(s) of the executant or of the witnesses have been affixed on the alleged Will; that the Will is typed in single space on a green paper of legal size, when it could have been typed in double space; that all the circumstances show that signatures of Jaswant Singh were already on the paper and it was typed in single space so as to adjust the signatures of the deceased; that Jaswant Singh was not keeping well for the last 1-1/2 years prior to his death and remained under depression and ultimately committed suicide. The Will set up by defendant No.1 is dated 6.2.2009, whereas Jaswant Singh died on 5.3.2009, i.e. after about one month of execution of the alleged Will. Therefore, Jaswant Singh was not in a

fit state of mind to execute any Will. It is mentioned in the alleged Will that Jaswant Singh was not keeping good health; that since defendant No.1 had an evil eye on the property of his brother Jaswant Singh therefore, after death of Jaswant Singh, due to suicide, defendant No.1 filed a writ petition in the High Court levelling allegations that Jaswant Singh had been murdered by the plaintiff alongwith another girl; that it was done by Ishar Singh to deprive the plaintiff of her right to inherit the properties of her deceased husband. Defendants No. 2 to 4, who had relinquished their rights in the land situated at village Fatehpur in favour of Jaswant Singh also colluded with Ishar Singh and had challenged mutation No. 669 and 670 by filing a civil suit; that defendants refused to treat the Will in question as wrong and illegal and to get the same set aside. Feeling aggrieved, the plaintiff had brought the suit in question.

On notice, defendant No.1 put in appearance and filed written statement, contesting the suit, coming up with a plea that the plaintiff was involved in murder of Jaswant Singh and in terms of Section 25 of the Hindu Succession Act, she was debarred from inheriting any property of Jaswant Singh. Therefore, the answering defendant is owner in possession of the entire suit property left by Jaswant Singh. According to the answering defendant, on account of ill attitude of Kulwant Kaur, Jaswant Singh was compelled to spend most of his time with the answering defendant and the latter served him in all manner during his life time and in lieu of those services rendered, Jaswant Singh executed a notarized Will dated 6.2.2009 in favour of the answering defendant, while being in sound and

disposing mind He did so in presence of the witnesses. Therefore, after death of Jaswant Singh, defendant No.1 became owner in possession of entire property except the house situated at Kukkar Majra. In the end defendant No.1 prayed for dismissal of the suit.

In the separate written statements filed by defendants No. 2 and 4, they pleaded that about two years before his death, Jaswant Singh was neglected by the plaintiff and he started spending most of his time with his brother Ishar Singh defendant No.1; that Jaswant Singh was an able bodied person and remained fit till his death; that in the last two years of his life he suffered a disc problem and his wife started neglecting him.

In the separate written statement filed by defendant No.3, she submitted that plaintiff was wife of Jaswant Singh and she resided with Jaswant Singh. Such defendant contended that she had no intention to interfere in possession of the plaintiff or in the suit property.

From the pleadings of the parties, following issues were framed:-

- (i) Whether the plaintiff is entitled for the relief of declaration as prayed for ? OPP
- (ii) Whether the plaintiff is entitled for the relief of permanent injunction as prayed for ? OPP
- (iii) Whether the suit is not maintainable ? OPD
- (iv) Whether the plaintiff has no locus standi and cause of action to file the present suit ? OPD
- (v) Relief.

Parties led evidence in support of their respective claims.

In order to prove her case, plaintiff examined Amarprit Kaur as PW-1, Jograj Garg, as PW-2, plaintiff got her own statement recorded as PW-3 and thereafter the plaintiff closed the evidence after tendering following documents:-

1. Mutation No. 13433 - Exhibit P-1;
2. Jamabandi for the year 2006-07 Exhibit P-2;
3. Jamabandi for the year 2005-06 - Exhibit P-3;
4. Jamabandi for the year 2002-03 - Exhibit P-4;
5. Cancellation report - Exhibits P-5 to P-8;
6. Treatment Card - Exhibit P-9;
7. Copy of judgment - Exhibit P-10 and
8. Copy of decree sheet - Exhibit P-11

On the other hand, contesting defendants examined Pardeep Kumar, Clerk, FCR Office, Chandigarh as DW-1, Dr. B.R. Sharma, former Director, Central Forensic Science Laboratory, Chandigarh, Rajesh Kumar, Nambardar, as DW-3, Karnail Singh as DW-4, Ishar Singh – defendant No.1 got his statement recorded as DW-5 and thereafter closed their evidence after tendering following documents:-

1. Copy of Will - Exhibits D-1 and D-2;
2. Copy of writ petition - Exhibit D-3
3. Supplementary report - Exhibit DW2/B
4. Forensic Report - Exhibit DW2/A

After hearing the arguments, the trial Court decided issues No. 1 and 2 in favour of the plaintiff, issues No. 3 and 4 were decided being un-pressed.

In view of the findings returned on the issues, the trial court vide judgment and decree dated 11.8.2014, decreed the suit of the plaintiff, granting her a declaration to the effect that Will dated 6.2.2009 is wrong, illegal, null and void and not binding upon the rights of plaintiff as such liable to be set aside and that the plaintiff is owner in possession in respect of half share of late Jaswant Singh in the suit property and further a decree for permanent injunction restraining the defendants from interfering in the peaceful possession of the plaintiff over the suit property by forcibly dispossessing her in any manner was passed in favour of the plaintiff and against the defendants

Defendant No.1 was aggrieved by the said judgment and decree and he had approached the court of District Judge, Yamuna Nagar at Jagadhri by way of filing an appeal, which was assigned to Additional District Judge, Yamuna Nagar at Jagadhri. However, the said appeal was also dismissed vide judgment and decree dated 18.5.2016.

Still feeling dissatisfied, defendant Ishar Singh has knocked at the door of this Court, by filing the present Regular Second Appeal, notice of which was given to the plaintiff-respondent, who has put in appearance.

I have heard learned counsel for the parties, besides going through the record.

Certain facts in this case are undisputed i.e. Kulwant Kaur being wife of Jaswant Singh deceased and defendant No.1 Ishar

Singh being his brother, whereas defendants Mohinder Kaur, Harbans Kaur and Harnam Kaur being real married sisters of Jaswant Singh. It is also not disputed that Jaswant Singh had expired as a result of suffering gun shot injury. As per version of the plaintiff, the deceased who was not keeping good health and was under depression for quite some time, before his death, had committed suicide by using his licenced gun, whereas according to version of defendant-appellant, it was a case of murder, in which plaintiff Kulwant Kaur wife of Jaswant Singh deceased was actively involved, as such she is debarred from inheriting his properties under Section 25 of the Hindu Succession Act.

Now the question arises as to which of the version is correct. As it transpires from the record, the version that Jaswant Singh had committed suicide appears to be much more plausible and convincing than the version set up by defendant No.1 - appellant that Jaswant Singh had been murdered by his wife Kulwant Kaur plaintiff. An FIR bearing No.95 dated 5.5.2010 was registered with regard to un-natural death of Kulwant Singh, with Police station Mandi Gobindgarh. Report in that regard was called for and Inspector General of Police, Rupnagar Range, Rupnagar, had submitted an affidavit, intimating that from perusal of the office record it has been found that SIT headed by S. Gursharan Singh Sandhu, IPS, the then Deputy Inspector General of Police, Rupnagar Range, Rupnagar, has already prepared its report and submitted that same through the DIG, Rupnagar Range, Rupnagar, before the Director, Bureau of

Investigation, Punjab, Chandigarh, vide communication dated 8.11.2016, pertaining to FIR No. 95, dated 5.5.2010 for offences under Sections 302/34 IPC, Police Station Mandi Gobindgarh. Copy of that report has been attached with the affidavit as Annexure A-1. A perusal of the said report goes to show that after registration of the FIR, brother of deceased Jaswant Singh, namely, Ishar Singh, i.e. present appellant had filed CWP No. 7491 of 2009, in this Court praying for holding of fair and impartial enquiry into the alleged murder of Jaswant Singh. However, the Court while disposing of the writ petition on 20.10.2009, sent the case file to Illaqa Magistrate, for conducting an enquiry/investigation; that the concerned Illaqa Magistrate had directed the local police of Police Station Mandi Gobindgarh to register an FIR under Section 302 IPC. It was done accordingly. That direction of Illaqa Magistrate for registration of FIR under Section 302 IPC was partially based on the report of a private Forensic Science Expert, Dr. B.R. Sharma, who in his capacity as private Forensic Science Expert had opined in his report that the distance of the end point of the barrel of the weapon used for firing the shot that caused death of deceased Jaswant Singh from in entry point of the bullet was 1-2 feet; that the said Forensic Science Expert has given his opinion hypothetically after a considerable time lapse from the date of the actual occurrence of the incident without visiting the actual scene of crime even at a later date. In the report, it is further mentioned that a team of Doctors of Medical and Forensic Science Laboratory, Patiala, analyzed the post mortem report by FSL Punjab,

FSL Gujrat and FSL NIFS and had made observations given reasoning that it was a case of suicide; that after investigation of the case from different angles a cancellation report was prepared, which was submitted before the Illaqa Magistrate. However, Ishar Singh, brother of the deceased had contested the cancellation report. Ultimately, the Illaqa Magistrate directed holding of re-investigation. Re-investigation was accordingly carried out, which was statedly based upon 'scientific and forensic evidence'. Since such re-investigation could not be completed within stipulated time frame of two months, Ishar Singh initiated contempt of Court proceedings in this Court. Ishar Singh has filed another petition asking for handing over the investigation of the case to Central Bureau of Investigation or the Crime Branch. A special Investigation Team was constituted for the purpose which after visiting the spot tried to gather the clues. Polygraph test was also conducted on two suspect ladies including the plaintiff and it was found that there was nothing to suggest that they had committed murder of the deceased. Ultimately, it was concluded that it was not a case of murder and conduct of Ishar Singh was dubious as he had got a Will of his brother fabricated in his favour on a date prior to the date of his death.

Section 25 of the Hindu Succession Act, 1956, provides that a person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder.

Kulwant Kaur, wife of the deceased is certainly not debarred from succeeding to his estate in inheriting his property on the basis of natural succession for the reason that there is nothing on record as yet to show that Jaswant Singh had been murdered, much less by his wife Kulwant Kaur, as such it cannot be said that Kulwant Kaur has committed murder of her husband or abetted commission of murder, therefore, she is disqualified from inheriting the estate of her deceased husband. The contentions in that regard put forward on behalf of the appellant are hereby rejected.

Now adverting to the other aspect of the matter, in the present case, the plaintiff, a legally wedded wife of the deceased is basing her claim on natural succession, whereas, Ishar Singh, brother of the deceased has staked his claim on the basis of testamentary succession. Natural succession is a rule whereas testamentary succession is an exception. Nobody can doubt and challenge the right of a person holding property to bequeath his property in any manner he feels like i.e. to his natural successors or some other person(s). but allowing passing of property by natural succession is normal behaviour and if a person deviates from the said behaviour and bequeaths his property to some other person, then adequate explanation for the same must come from the beneficiary and the beneficiary is expected to clear all the suspicious circumstances surrounding the Will.

As it comes out from the record, deceased and his wife Kulwant Kaur were not blessed with any child. However, they had

raised Amandeep Kaur as their daughter, though she was not formally adopted by them. Further they had married of Amandeep Kaur, though unfortunately her husband had expired. As the things come out, relations between deceased and Amandeep Kaur were normal.

In the present case, the Courts below have found several material suspicious circumstances which Ishar Singh – beneficiary has failed to explain. The trial Court in particular has pointed out such circumstances, in the judgment, which are enumerated as under. Firstly the contradiction between deposition of various witnesses examined by the propounder of the Will i.e. defendant Ishar Singh.-

1. DW-3 Rajesh had stated in his cross examination that the typist had entered the Will in his register and had obtained his signatures there. In that way, according to him, he had signed the Will as well as in the register of the Typist. However, DW-4 Karnail Singh, typist had stated in his cross examination that he did not make any entry in the register and he does not maintain any register.
2. DW-3 Rajesh Kumar, Numberdar, in his cross examination stated that firstly he had signed the Will on the left side, thereafter Balbir Singh signed in the middle and then Jaswant Singh signed on the right side. Whereas DW-4 Karnail Singh stated that Jaswant Singh signed the Will in the middle and the witnesses signed at the left and right side of the Will. However, on Will Exhibit D1, signatures of Rajesh Kumar- attesting witness appear on the left hand

side, those of Balbir Singh in the middle and Jaswant Singh on the right side.

Suspicious circumstances surrounding the Will

1. Disinheritance of his wife by the testator without any plausible or convincing explanation;
2. Absence of signatures of DW-4 on the Will to show he had scribed/typed the Will.
3. Will finds endorsement Exhibit D-2 attested by Sh. Shamsher Singh Kamboj, Notary, who was not examined as a witness by defendant No.1, as such record regarding proof of endorsement was not got produced. DW-3 had stated that Will was entered in the register of Notary. Non-examination of Sh. Shamsher Singh Kamboj, Notary, without any plausible explanation creates a doubt whether he had any such entry in his register.
4. Claim of defendant Ishar Singh, while appearing as DW in the examination-in-chief, that about 2 years prior to his death Jaswant Singh had suffered injury in spine, thereafter his wife Kulwant Kaur started neglecting him and she did not serve him, therefore, Jaswant Singh started living with him i.e. Ishar Singh – defendant No.1; he used to serve and give medicines etc. to Jaswant Singh. Such contention being contrary to the record show that Jaswant Singh lived and stayed with his wife Kulwant Kaur till his end. Jaswant Singh was under treatment in different hospitals in Chandigarh. Defendant No.1 has been residing in

Chandigarh and as per his version sometimes Kulwant Kaur went with Jaswant Singh for his treatment and sometimes he accompanied him for that purpose. All the medical record of the deceased had been placed on record by Kulwant Kaur plaintiff and none of the bill/medical record was produced by the defendant.

5. There being no evidence to show that relations between Jaswant Singh and his wife Kulwant Kaur were strained.
6. There being no evidence to show that relations between Amandeep Kaur and deceased were strained.
7. There being no verdict by any competent Court to show that Kulwant Kaur or Amandeep Kaur were responsible for death of Jaswant Singh.

Learned Additional District Judge, Yamuna Nagar at Jagadhri, has noticed all these circumstances while agreeing with the observations of the trial Court, discarding the Will set up by defendant No.1 and finding Kulwant Kaur entitled to succeed to the estate of her husband. Both the Courts below by proper appraisal of evidence and correct interpretation of law have rejected the claim of the appellant-defendant.

Learned counsel for the appellant had referred to various judgments, the first being **Gopal Swaroop vs. Krishna Murari Mangal and others 2011 (1) RCR (Civil) 249.** This judgment basically deals with essential requirements to prove the Will, which are as under:-

- (i) That the Testator has signed or affixed his mark to

the Will or the Will has been signed by some other person in the presence and under the direction of the Testator.

(ii) The signature or mark of the Testator or the signature of the persons signing for him is so placed has to appear that the same was intended thereby to give effect to the writing as a Will.

(iii) That the Will has been attested by two or more witnesses each one of whom has signed or affixed his mark to the Will or has been seen by some other person signing the Will in the presence and by the direction of the Testator or has received from Testator a personal acknowledgment of the signature or mark or the signature of each other person.

(iv) That each of the witnesses has signed the Will in the presence of the Testator.

However, this authority is not much helpful to the case of the appellant since as discussed in detail above, the due execution of the Will is not proved and the Will is surrounded by suspicious circumstances, which the propounder/testator has failed to explain.

As regards the next authority, **Ramabai Padamakar Patil (D) through LRs and others vs. Rukminibai Vishnu Vekhande 2003 (4) RCR (Civil) 92**, the same is distinguishable since it basically dealt with mental status of the executant and it was held that mere being hard of hearing or unable to walk of the testator will in itself

not lead to an interference that mental faculties of the testator had been impaired and could not understand the contents of the document especially when he appeared before the Registrar and executed with Will. In this case, the Will is not a registered document and testator had not appeared before the Sub-Registrar admitting having executed the Will. There are several circumstances enumerated above, which put question mark over the genuineness of the Will. In this very authority, it was observed that ignoring actual heirs by execution of a Will does not in itself amount to a suspicious circumstance. There cannot be any dispute with such legal position. But some reason must be there for the testator to disinherit actual heirs, which in this case does not come out to be there.

With regard to remaining judgments i.e. *Jaswinder Kaur and others vs. Malkiat Singh and others 2013 (2) RCR (Civil) 40, Rur Singh (D) Th. LRs & others vs. Bachan Kaur 2009(2) RCR (Civil) 511, Gurdeep Kaur vs. Kulwinder Singh and others 2011 (3) PLR 381, Savithri and others vs. Karthyayani Amma and others 2007 (4) RCR (Civil) 749, Mohinder Singh and others vs. Lachhman Singh and others 2014 (1) CivCC 296; Tara Chand vs. Bharat Singh and others 2016 (2) RCR (Civil) 415 and Daya Ram vs. Kanwar Pal 2010 (3) RCR (Civil) 40*, pressed into service by learned counsel for the appellant, those are not helpful to the appellant due to different facts and circumstances and the context in which such observations had been made.

No substantial question of law comes out to be there.

The judgments and decrees passed by the Courts below

allowing the claim of the plaintiff Kulwant Kaur on the basis of natural succession and rejecting case of defendant Ishar Singh of having inherited estate of the deceased on the basis of testamentary succession are quite detailed, well reasoned and not suffering from any illegality or infirmity, rather based upon proper appraisal and appreciation of evidence and correct interpretation of law. The concurrent findings recorded by Courts below in favour of the plaintiff and against the defendants, do not call for being reversed. No ground to interfere with such judgments and decrees is made out. Accordingly, those judgments and decrees are affirmed.

The appeal is found to be without any merit and the same stands dismissed.

5.7.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No