

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2529 of 2017 (O&M)

Date of Decision: February 11, 2019

Kuldeep Singh

...Appellant

Versus

Balbir Kaur & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Harsh Bunker, Advocate,
for the appellant.

Mr. D.S.Gurna, Advocate,
for the caveator-respondent.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff has not been successful in claiming declaration to be exclusive owner in possession of the land/estate of deceased Avtar Singh @ Kartar Singh son of Jagir Singh on the basis of the Will dated 08.07.2006 with consequential relief of permanent injunction seeking restraint against the respondent-defendants, who are none else but Balbir Kaur being sister of Karnail Singh and Hardeep Kaur sister of the plaintiff.

It was alleged that Jagir Singh had two sons, namely, Avtar Singh @ Kartar Singh and Karnail Singh and one daughter Balbir Kaur. Karnail Singh expired in 1993 and Avtar Singh @ Kartar Singh, during his life time, executed a Will dated 08.07.2006 bequeathing his estate/share in favour of the plaintiff, which was witnessed by Dilbagh Singh, Lambardar, Sharanpal Sarpanch and scribed by Ashok Kumar.

Defendant No.1 opposed the suit and claimed to be the collateral. It was asserted that Avtar Singh @ Kartar Singh neither executed the Will dated 08.07.2006 or propounded the Will dated 16.09.2005 by defendant No.2, which was stated to be false, fictitious and fabricated. Defendant No.2 propounded the Will dated 16.09.2005, whereby Avtar Singh @ Kartar Singh had bequeathed half share each in respect of his share in favour of the plaintiff and defendant No.2.

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

- “1) Whether Avtar Singh deceased executed a registered will in favour of plaintiff? OPP*
- 2) If issue no.1 is proved, then whether plaintiff is entitled to declaration as prayed for? OPP*
- 3) Whether the plaintiff is entitled to permanent injunction as prayed for? OPD*
- 4) Whether plaintiff has got no locus standi to file present suit? OPD*
- 5) Whether suit is not maintainable in the present form? OPD*
- 6) Relief.”*

Plaintiff, in order to prove his case, examined PW-1 Dilbagh Singh attesting witness, PW-2 Ashok Kumar Deed Writer and other witnesses, whereas defendant No.1 examined her general attorney Gurbachan Singh as DW-1, whereas defendant No.2 did not lead any evidence.

Mr. Harsh Bunker, learned counsel appearing on behalf of the appellant-plaintiff submitted that the findings of both the courts below are totally erroneous as the testimony of PW-1 Dilbagh Singh and PW-2 Ashok Kumar had gone un rebutted. Requirement of Section 68 of the Indian

Evidence Act has been complied with. Defendant No.1 did not lead any evidence to belie the Will. It was immaterial whether Kuldeep Singh was present in India or not as Ashok Kumar's testimony with regard to the fact that Kuldeep Singh accompanied Avtar Singh @ Kartar Singh was also immaterial. Appellant had been in possession of the suit property along with the share inherited from his father Karnail Singh. The will was not surrounded by any suspicious circumstances.

I have heard the learned counsel for the appellant and appraised the paper book.

During the course of hearing, examination-in-chief of one of the attesting witnesses, namely, Dilbagh Singh was handed over to this Court. The same reads thus:-

“PW-2 I, Dilbagh Singh son of Hukma Singh, r/o village Bhangali, Tehsil Phillaur, Distt.Jalandhar, do hereby solemnly decree and affirm on oath as under:-

I know Avtar Singh @ Kartar Singh son of Jagir Singh who died in the year 2006 issueless and widowless. He had only one brother Karnail Singh and one sister Balbir Kaur defendant. Karnail Singh has since expired leaving behind only one son Kuldip Singh and 4 daughters. Avtar Singh was residing with Karnail Singh and his family members in the same house and was being looked after by Karnail Singh and after the death Karnail Singh, he was being looked after by Kuldip Singh. During the life time of Kuldip Singh, he executed the will Dt.8.7.2006 in favour of his nephew Kuldip Singh in his sound disposing mind. The said will was scribed by the deed writer Ashok Kumar Monga on 8.7.2006 at the instance of Avtar Singh and after writing the same, he read over its contents to Avtar Singh and after admitting the contents of the will correct, he signed the same. I along with Sharan Pal attested the will as marginal witness. The deed writer also

entered the same in his register where Avtar Singh also signed. The other witness Sharan Pal has gone to UK permanently. The will was executed out of love and affection and services rendered by Kuldeep Singh to the deceased. Apart from this, he was the only male member of the family. Avtar Singh never resided abroad and was residing in India with Karnail Singh. Even the last ceremony of Karnail Singh was also performed by Kuldeep Singh by coming from Canada immediately on the death of Avtar Singh. I have seen the original will and the photocopy of the same is Ex.P2. Entry of deed writer is Ex.P3. I also recognize the signature of Avtar Singh on the will and I also identify the photograph of Avtar Singh on Ex.P2 as well as on the voter card Ex.P-5. The said Avtar Singh never executed any other will except Ex.P2.”

On perusal of the same, it does not reveal the compliance of provisions of Section 63(c) of the Indian Succession Act. There is no assertion with regard to the fact that the aforementioned witness appended his signatures on the direction of the testator and during his presence. The law on the aforementioned point is no longer *res integra*. If at all, the plaintiff was sure about the execution of the Will, nothing prevented to examine the disputed thumb impression/signature of the testator with that of the admitted ones. The cat would have been out of the bag if the plaintiff had taken the aforementioned fact.

The Deed Writer in cross-examination admitted that Kuldeep Singh plaintiff accompanied Avtar Singh @ Kartar Singh for execution of the Will. It was emphatically denied, but since he was a resident of foreign country, did not bring the passport. By drawing adverse inference, element of active participation cannot be ruled out. Balbir Kaur defendant No.1, as per the Scheduled attached to Section 8 of the Hindu Succession Act, was a

Class-II heir vis-a-vis the plaintiff being brother's son.

As regards the possession, no positive and direct evidence has been led to establish the exclusive possession. In such circumstances, the status of the plaintiff with that of defendant No.1 would be of a co-sharer.

All these factors have been examined and weighed in the mind of the courts below. The argument of the learned counsel for the appellant, thus, is not able to bring the judgments and decrees of the courts below within the realm of perversity to form a different opinion. No ground for interference is made out out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

February 11, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No