

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

RSA No.436 of 2017 (O&M)
Date of decision : 06.03.2019

Barinder Singh Randhawa and another

...Appellants

Versus

Jai Partap Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Ms. G.K. Mann, Advocate for the appellants.

Mr. S.S. Majithia, Advocate for the respondents.

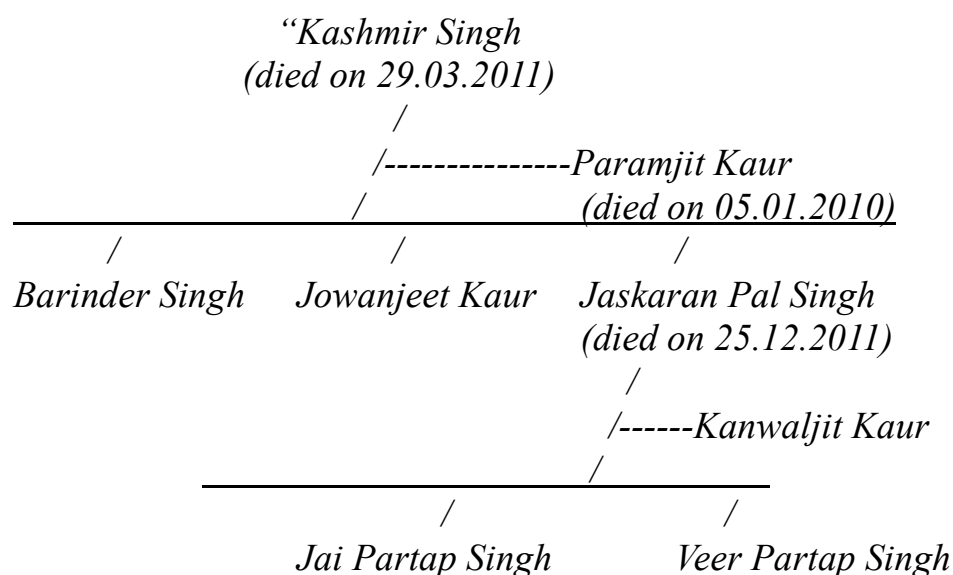
ANIL KSHETARPAL, J.

Defendants-appellants are in the Regular Second Appeal against the judgments passed by both the Courts below.

In the considered view of this Court, following questions of law arise for consideration by this Court:-

- 1) Whether an absolute bequest in favour of a beneficiary can be treated to be a restricted life estate merely on the ground that the testator had also regulated the bequest after the death of first beneficiary?
- 2) Whether the issues are to be framed by the trial Court on the basis of various prayer made in the suit or the issues are required to be framed in accordance with Order XIV Rule 1 of Code of Civil Procedure i.e. material propositions of fact or law affirmed by one party and denied by other party and each material proposition has to be the subject matter of separate and distinct issue?

A short pedigree table would be convenient to understand the inter se relationship between the parties:-



Dispute in the present case is with respect to the estate of Smt. Paramjit Kaur who died on 05.01.2010. Her husband Kashmir Singh Advocate died on 29.03.2011 whereas Jaskaran Pal Singh died on 25.12.2011. Kashmir Singh also allegedly executed a registered Will in favour of his son Barinder Singh, appellant on 09.09.2010.

Plaintiffs Jai Partap Singh and Veer Partap Singh, minor sons of late Jaskaran Pal Singh through their mother Kanwaljit Kaur, widow of late Jaskaran Pal Singh filed this suit for declaration claiming that they are owners of the property to the extent of half share jointly.

Defendants namely Barinder Singh and his son Manpartap Singh contested the suit by pleading that on the death of Paramjit Kaur, Kashmir Singh became absolute owner of the property and Kashmir Singh during his lifetime bequeathed the property exclusively in favour of Barinder Singh vide registered Will dated 09.09.2010.

Learned trial Court framed the issues based upon the relief

claimed. This is not the mandate of Order XIV of the Code of Civil Procedure. The issues are not to be framed on the basis of relief claimed. Each material proposition of fact and law has to be the subject matter of separate and distinct issue. This Court has noticed that a wrong practice has developed in the trial Courts to frame the issues on the basis of the relief claimed. Attention of the Courts is drawn towards mandate of Order XIV Rule 1 of the Code of Civil Procedure which should be followed by the Courts in letter and spirit. The issues framed by the trial Court are extracted as under:-

- “1. Whether the plaintiffs are entitled to relief of declaration, as prayed for in the head note of the plaint? OPP.*
- 2. Whether the plaintiffs are entitled to relief of permanent injunction, as prayed for in the head note of the plaint? OPP.*
- 3. Whether the present suit is not legally maintainable? OPD.*
- 4. Whether plaintiffs have no right, title and interest in the suit property? OPD.*
- 5. Relief.”*

Order XIV Rule 1 CPC is extracted as under:-

“ORDER XIV-

**SETTLEMENT OF ISSUES AND DETERMINATION OF
SUIT ON ISSUES OF LAW OR ON ISSUES AGREED
UPON**

1. Framing of issues— (1) *Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.*

(2) *Material propositions are those propositions of law or*

fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party denied by the other shall form the subject of distinct issue.

(4) Issues are of two kinds :

(a) issues of fact,

(b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and [after examination under rule 2 of Order X and after hearing the parties or their pleaders], ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.”

In the present case, this Court on account of wrong framing of the issues would be now required to remand the case as the Courts have not given any finding on correctness of the registered Will dated 09.09.2010 executed by Kashmir Singh. Although, from para 7 of the judgment passed by the trial Court, it is apparent that Yudhvir Singh, DW1 attesting witness of the registered Will executed by Kashmir Singh has been examined apart from the Scribe, DW2.

Hence, this Court is compelled to focus only on the correctness of the interpretation given by the Courts below with respect to the Will dated 05.01.2010 executed by late Smt. Paramjit Kaur. Both the Courts have

found that the registered Will dated 09.12.2009 has been proved in accordance with law and the correctness of the finding has not been challenged by both the parties.

Both the Courts have held that the Will dated 09.12.2009 had only given life interest to Kashmir Singh and, therefore, after the death of Kashmir Singh, property would stand bequeathed equally in favour of Barinder Singh and Jaskaran Pal Singh and hence, the property cannot be claimed by Barinder Singh alone. Since, the interpretation of the Will dated 09.12.2009 is in dispute, therefore, the Will has been got translated in english. The complete translated version of the Will is extracted as under:-

“I, Paramjit Kaur aged 74 years daughter of Lt. S. Gurcharan Singh @ Raj Bahadur Singh and wife of Advocate Kashmir Singh Randhawa, am resident of Village Dhapai, Tehsil & District Amritsar. I am owner in possession of my moveable and immovable property, house and household articles situated in Urban/Sub-Urban Estate, Amritsar, Tehsil & District Amritsar. Now I intend to make proper arrangement regarding my aforesaid property because it is generally seen that in case, a person who does not make any proper arrangement during his/her lifetime then the property is ruined due litigation etc. I have two sons i) Bir Inder Singh ii) Jaskaran Pal Singh and one daughter namely Jovanjit Kaur. My husband advocate Kashmir Singh Randhawa is alive, I have solemnized the marriage of my daughter Jovanjit Kaur and have already given her a lot in the shape of dowry at the time of her marriage. My daughter is living happily in her matrimonial house. The divorce case of my younger son Jaskaran Pal Singh with his wife Kamaljit Kaur is pending in the court. I have been living with my entire family and my family

members are looking after me properly and I am happy with their service. Hence, I, while enjoying my rights, in senses, without any pressure, coercion and with my own consent make this will that during my lifetime, I shall remain absolute owner in possession of my entire property and shall utilize the same as per my discretion. After my death, my husband advocate Kashmir Singh Randhawa son of S. Kartar Singh shall be sole owner in possession of my entire moveable and immovable property, house and household articles situated in Urban/Sub-Urban Estate, Amritsar, Tehsil & District Amritsar, or any property situated within the Punjab, India or any property which I acquire in future anywhere in India or any property which is likely to devolve upon me in succession from my grandmother Rani Harnam Kaur, bank balance, cash, jewellery etc.. He shall have sole rights in respect of property received in succession. He shall have right to get sanctioned any type of mutation or utilize the same as per his free will. In case of death of my husband before or after my death then my both the sons i) Bir Inder Singh ii) Jaskaran Pal Singh shall be owner in possession of my property in equal shares. Apart from them no other close relative including my daughter-in-law Kamaljit Kaur wife of my younger son Jaskaran Pal Singh whose divorce case is pending in the Court or her any legal heir shall have any concern whatsoever with my moveable or immovable property. In case, any person files any claim against my 'will' then by way of my this 'will' that claim shall prove false because in any case this 'will' shall remain in force. This is my first and last 'will'. I have got scribed the 'will' so that it may serve as evidence at the time of need.

Dated: 09.12.2009.

Sd/- Paramjit Kaur

With her LTI

Witnesses:

- 1. Smt. Devinder Kaur wife of late S. Sardul Singh resident of Village Dhapai, Tehsil & District Amritsar. Sd/- In English.*
- 2. Sh. Vishwamitar son of Sh. Jhanda Ram resident of Partap Steel Chheharta, Amrtisar.(Retd. Patwari). Sd/o In English.”*

On careful reading of the Will (testament), it is apparent that the testator Paramjit Kaur bequeathed her entire property to her husband Advocate Kashmir Singh Randhawa. Testator has clearly recited in the testament that after her death, her husband Kashmir Singh would be sole owner in possession of her entire property including the property which testator is likely to acquire or succeed from her grand mother. No doubt, in the next sentence it has been written that in case of death of her husband before or after her death, then both the sons would get the property in equal share. The Will nowhere restricts the estate of her husband to be a life estate. There is no restriction on the rights of Kashmir Singh (first beneficiary) her husband to use or deal with the property in any manner. The Courts below have interpreted the Will in favour of Kashmir Singh to be restricted life estate on the premises that she had also regulated bequeath after the death of her husband (first beneficiary) and, therefore, Kashmir Singh was having life estate.

In the considered view of this Court, the interpretation by the Courts below is erroneous. From the reading of the entire testament, it is apparent that there was no occasion for the Courts below to interpret the Will in favour of Kashmir Singh restricting it to life estate. Once she has

specifically got recited in the testament explicitly that her husband shall be sole owner in possession of the property, there was no occasion to hold that Paramjit Kaur only bequeathed life interest to her husband. It is possible for the testator to regulate the bequest even after the death of first beneficiary, however, the life estate cannot be inferred only on the ground that the testator has regulated the bequest after the death of first beneficiary. Life interest or limited estate can only be inferred in favour of first beneficiary by explicitly using the word “specifically”. From the reading of the Will, it is apparent that the testator did not impose any restrictions on the rights of late Sh. Kashmir Singh, first beneficiary. She did not prohibit the alienation to be made by Kashmir Singh. Testator never got recited in the Will that Kashmir Singh would not be entitled to deal with the property received by him under the bequest. In such circumstances, the interpretation of the Courts below is clearly erroneous.

A testament is regulated by the provision of Indian Succession Act, 1925. Section 82 of the Indian Succession Act, 1925 provide that meaning of any clause in a Will is to be collected from the entire instrument and its various Clauses are to be construed with reference to each other. Section 85 provide that no part of the testament shall be rejected as destitute of meaning if it is possible to put a reasonable construction upon it. Section 87 of the Indian Succession Act, 1925 provide that the intention of the testator shall not be set aside.

In view of the aforesaid discussions, the interpretation of the Courts below with respect to Kashmir Singh having limited estate and, therefore, no right to execute further testament is clearly erroneous.

Examining this aspect from another angle, the testator had specifically recited in the testament that her property would not be bequeathed in favour of her estranged daughter-in-law and her heirs. She specifically got recited this fact in the Will. The intention of the testator was clear to disinherit her estranged daughter-in-law with whom litigation was pending and her heirs. The interpretation by the Courts below results in bequeathing the half share of the property in favour of estranged daughter-in-law and her heirs as Jaskaran Pal Singh died on 25.12.2011. While interpreting the Will, it is mandatory for the Courts to read the Will carefully and thereupon deduce the conclusion after examining each and every sentence or clause of the Will.

In view of the aforesaid, the questions of law framed earlier are answered in favour of the appellants. Since, no finding has been returned on the correctness and validity of the testament executed by Kashmir Singh during his lifetime on 09.09.2010, therefore, the case is remitted back to the learned trial Court to frame issue on the validity of the Will dated 09.09.2010 and thereafter proceed to decide.

Parties through their counsel are directed to appear before the trial Court on 29.03.2019.

In view of the aforesaid, the present Regular Second Appeal is allowed.

06.03.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No