

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

RSA No.5138 of 2017 (O&M)

Date of Decision: November 21, 2019

Manmohan Singh Bains

...Appellant

Versus

Pritpal Singh Ahuja

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Vijay Kr. Jindal, Senior Advocate with
Mr. Gopal Soni, Advocate
for the appellant.

Mr. Sunil Chadha, Senior Advocate with
Mr. Saurav Kanojia, Advocate
for the respondent.

JAISHREE THAKUR, J.

1. This appeal has been filed seeking to challenge the judgment and decree dated 29.11.2014 passed by the lower court, dismissing the suit of the appellant-plaintiff (henceforth called as 'the appellant') as well as judgment and decree dated 19.08.2017 passed by the first Appellate Court whereby, the appeal filed by the appellant was also dismissed.

2. Briefly, the facts of the case are that Air Vice Marshal Harjinder Singh was married to Mrs. Beant Kaur. From this wedlock, no child was born and they adopted appellant as their son. It was stated that Harjinder Singh died on 06.09.1971 and he was survived by the appellant and Beant Kaur. Air Vice Marshal Harjinder Singh acquired two immovable

properties , i.e House No.27, Sector 3A, Chandigarh and Industrial Plot No.30, Phase-I, Chandigarh. It was submitted that House No.27 (supra) being ancestral house was managed by Karta i.e. AVM Harjinder Singh. However in the Industrial plot, apart from Air Vice Marshal Harjinder Singh and Mrs Beant Kaur, Smt. Satwant Kaur has been shown as owner in the Industrial Plot to the extent of 30%, even though she had not contributed a single penny towards acquiring the same. Real sister of his mother, Satwant Kaur being destitute and abandoned had sought protection and help, who was allowed to stay in the house. Proper care was taken of her by giving her proper food etc. Satwant Kaur was aged about 86 years and with the passage of time, she suffered from various ailments including allergy, eczema, osteoporosis, breast cancer. It was averred that Satwant Kaur had four brothers and six sisters and 30 nephews and nieces. It was alleged that land grabbers took her away when she was sick and old with an ulterior motive to take advantage of her ill health. On 08.11.2004, cousin of the respondent-defendant (henceforth called as 'the respondent') took away Satwant Kaur forcibly from the house of the appellant and a complaint in this regard was given by the appellant to the police officials. On 07.03.2006, Satwant Kaur died allegedly after executing Will dated 16.09.2005, in which she left her share in the Industrial Plot to her nephew, the respondent. It was claimed that this Will was forged and fabricated in connivance with Vidyasagar and Satpal Singh (witnesses to Will). It was further averred that the appellant was looking after Satwant Kaur and there was no occasion for her to execute Will in favour of the respondent, who had been residing in Canada since 30 years. On the basis of these facts, the appellant had prayed for the

relief of declaration and permanent injunction.

3. In his written statement, the contesting respondent took preliminary objections as to maintainability of the suit, cause of action, concealment of facts. While replying on merits, the respondent has denied that the appellant is adopted son of Beant Kaur (*sic.*) and Harjinder Singh. It was alleged that the appellant committed atrocities upon Beant Kaur and Satwant Kaur, who were forced to leave their residential house in Sector 3-A Chandigarh . The respondent got an FIR registered against the appellant. Rest of the averments of the plaint were controverted.

4. In written statement filed by defendant No.2 the Chandigarh Administration , it has been submitted that as per their record, the appellant is owner of Industrial plot qua 1/6th share and Beant Kaur is owner qua 1/3rd share. With regard to the house, it has been stated that 50% share lies in the name of Satwant Kaur and Beant Kaur vide transfer letter dated 31.03.1976.

5. Replication was filed. From the pleadings of the parties, issues were framed and evidence was led by both the parties. On appreciating the evidence, the lower court dismissed the suit of the appellant, against which the appellant filed an appeal, which too dismissed by the first Appellate Court. Now the judgments and decrees passed by both the courts below have been challenged in this regular second appeal.

6. Mr. Vijay Kr. Jindal, learned Senior counsel, assisted by Mr. Gopal Soni, Advocate appearing on behalf of the appellant argues that in paras 27 and 30, the lower court has wrongly shifted the onus of proof on the appellant by observing; that it is the appellant, who has failed to prove

that Satwant Kaur was not capable to execute and register a Will in favour of the respondent; that he failed to prove that at the time of execution of Will, Smt. Satwant Kaur was insane and was suffering from mental disorder, which made her incapable of executing a Will in favour of the respondent; and that mere placing of medical record of Satwant Kaur does not suffice to hold that she was not capable of executing a Will on 16.09.2005. Learned Senior counsel contends that the findings recorded by the lower court are completely erroneous and against the settled proposition of law that it is propounder of the Will, who has to discharge the onus that the Will was executed by a person, who was capable of understanding or that he/she was in a sound disposing state of mind at the relevant time etc. While reading para (viii) of the grounds of appeal, it is also argued that the suspicious circumstances, such as genuineness of the signatures of the testator, the condition of the testator's mind, the deposition made in the Will being unnatural and that the respondent is a resident of Canada have not been removed and the courts below have not appreciated the fact that the testator was suffering from so many diseases. Regarding the mental illness of Smt. Satwant Kaur, learned Senior counsel placed reliance upon the medical record, as available on the record.

7. Learned Senior counsel for the appellant, after reading the Will, further contends that it is highly improbable that the testator, who was seriously ill and suffering from many diseases including brain disease at the age of 86-87 years, could draft the Will at her own and could read and understand the terms of the Will. It is also pointed out that no explanation has been put forth by the propounder of the Will as to the reason for

executing a fresh Will in favour of respondent-Pritpal Singh, whereas the last Will is dated 09.05.2005. It is also submitted that all the signatures of the testator are different from each other. It is also contended that from the statement of DW2-Vidya Sagar, it is clear that he is a procured witness, who was not known to the testator. It is further submitted that the Will in question does not satisfy the provisions of Sections 59 and 63 of the Indian Succession Act and Section 67 of Evidence Act. In support of his arguments, learned Senior counsel relied upon judgments rendered in *Vrindavanibai Sambhaji Mane vs. Ramchandra Vithal Ganeshkar, 1995 (5) SCC 215, Pushpavati and others vs. Chandraja Kadamba and others, 1973(3) SCC 291, Beni Chand (since dead) now by LRs vs. Kamla Kunwar and others, 1976(4) SCC 554, Rani Purnima Debi and another vs. Kumar Khagendra Narayan Deb and another, 1962 AIR (SC) 567, H. Venkatachala Iyengar vs. B.N. Thimmajamma and others, 1959 AIR (SC) 443, Madhukar D. Shende vs. Tarabai Aba Shedage, 2002(1) RCR (Civil) 724, B. Venkatamuni vs. C.J. Ayodhya Ram Singh and others, 2007(1) RCR (Civil) 277, Jagdish Chand Sharma vs. Narain Singh Saini (dead) through his LRs and others, 2015(3) RCR (Civil) 139 and Rangammal vs. Kuppuswami and another, 2011(4) RCR (Civil) 251.*

8. Per contra, Mr. Sunil Chadha, learned Senior counsel, assisted by Mr. Saurav Kanojia, Advocate appearing on behalf of the respondent vehemently opposes the arguments addressed by learned Senior counsel for the appellant, while contending that all these arguments were duly raised by the appellant before the courts below, which have been dealt with in detail by them in their well reasoned judgments. While placing reliance upon the

medical history of Smt. Satwant Kaur, as available on the record, it is argued that whenever Smt. Satwant Kaur was discharged from the hospital, she was discharged in a stable condition, which fact shows that she executed the Will in question at the time when she was conscious and mentally fit. It is argued that her medical record does not show that she was mentally unfit. It is submitted that the onus to prove that the Will was duly executed had been duly discharged as he had proved it by examining the attesting witness. It is submitted that once the onus to prove the will had been discharged by the respondent, the lower court has rightly shifted the onus on the appellant to prove the suspicious circumstances. It is further contended in view of the concurrent findings given by the courts below, no interference is called for and the arguments advanced by learned Counsel for the appellant are not tenable. In support of his arguments, learned Senior counsel relied upon judgments rendered in *Pentakota Satyanarayana & Ors. vs. Pentakota Seetharatnam & Ors.*, 2005(4) RCR (Civil) 615, *Madhukar D. Shende vs. Tarabai Aba Shedage*, 2002(1) RCR (Civil) 724, *Rur Singh (D) Th. LRS and others vs. Bachan Kaur*, 2009(2) RCR (Civil) 511 and *Shingara Singh vs. Nasib Kaur through LRs Karamjit Kaur and others*, 2016(3) RCR (Civil) 10.

9. I have heard both the learned Senior counsel for the parties and with their valuable assistance, have gone through the record of the case.

10. The lower court, while dismissing the suit of the appellant, has observed that the appellant has failed to prove his case that Satwant Kaur was not capable of executing the Registered Will in favour of the respondent and that the Will was got executed by exerting undue influence

upon Satwant Kaur. The findings given by the lower court were affirmed in appeal by the first Appellate Court.

11. In the present case, the stand of the appellant herein is that late Mrs. Satwant Kaur was not mentally and physically fit before the execution of the Will dated 16.09.2005 (Ex.D1) while placing reliance upon her medical record. It is also the stand of the appellant that the Will Ex.D1 was got executed by putting undue pressure and influence upon late Smt. Satwant Kaur and that the Will in question is a forged and fabricated document. On these basis, the appellant has alleged that the Will Ex.D1 is shrouded with suspicious circumstances and as such, the same cannot be relied upon.

12. Since, the propounder of the Will is the respondent, as such, initial onus was upon him to prove the execution of the Will Ex.D1, in order to establish that the same is genuine one. Pritpal Singh, respondent stepped into the witness box as DW3 and reiterated the averments made in the written statement. DW4 Charanjit Singh produced the record pertaining to Will Ex.D1, which was presented for registration. DW5 Kuldeep Verma brought the sale deed Ex.DW5/A and transfer letter Ex.DW5/B on the record. Will Ex.D1 is a registered document, which the respondent has proved by examining DW2 Vidya Sagar, who was one of the attesting witness to the Will. DW2 Vidya Sagar deposed that Smt. Satwant Kaur came to him on her own for execution of the said Will and that the respondent is the real nephew of Smt. Satwant Kaur. She walked to him. In this way, DW2 Vidya Sagar, who was an attesting witness to the registered Will Ex.D1, has proved on record its due execution. In such a manner, the

provisions of Sections 59 and 63 of Indian Succession Act as well as Section 67 of Evidence Act are satisfied. Now, it was for the appellant to prove his case by standing on his own legs.

13. The appellant-Manmohan Singh Bains has stepped into the witness box as PW1 and during his cross-examination, he admitted that he filed a case against Satwant Kaur for declaration that the property is HUF and that gift deed executed by AVM Harjinder Singh in favour of Satwant Kaur is null and void, which suit was dismissed. He also admitted that gift deed executed by AVM Harjinder Singh in favour of Satwant Kaur was never cancelled. The appellant relied upon medical record of Satwant Kaur Ex.PW2/1 to Ex.PW2/5, which was produced on record by PW2 Amit Dhawan to contend that she was not mentally and physically capable to execute the Will, as she died after six months of execution of the Will. However, from the medical record produced on record, it is not made out that Satwant Kaur was incapable to execute the Will on 16.09.2005. In fact, the said medical record shows that her condition at the time of discharge was stable. Admittedly, the appellant herein filed a civil suit and criminal cases against Satwant Kaur during her life time, wherein no such plea of insanity of Satwant Kaur was taken.

14. It is pertinent to mention here that during the pendency of instant appeal before the High Court, by an order dated 14.03.2019, the request of the appellant to lead evidence in rebuttal to prove from the doctors that Mrs. Satwant Kaur was not mentally fit as stated in the application dated 25.08.2014 was allowed. The parties were directed to lead evidence in rebuttal by affording two equal opportunities. Pursuant

thereto, a report has been received from the lower court. The witness namely Dr. Satish Kumar Sharma was examined by the appellant as PW3 in rebuttal evidence. The deposition made by PW3 Dr. Satish Kumar Sharma also does not substantiate the contention of the appellant that Satwant Kaur was incapable to execute the Will on 16.09.2005.

15. Under the facts and circumstances of the present case, once the execution of the Will Ex.D1 has been proved on record and the evidence led by the appellant does not support his contention that Satwant Kaur was not mentally and physically fit on 16.09.2005 i.e. at the time of execution of the Will, there is no occasion to interfere. It is an admitted fact that respondent-Pritpal Singh is the real nephew of Satwant Kaur. The appellant failed to establish that how and in what manner undue pressure was put by the respondent on Satwant Kaur. It is also an admitted fact that civil and criminal cases were filed by the appellant himself against Satwant Kaur during her life time.

16. So far as the plea of forgery set up by the appellant is concerned, he miserably failed to prove the same. It goes without saying that it is very easy to raise a plea of forgery but it is equally difficult to prove the same. It is so said because a plea of forgery is to be proved like a criminal charge. However, since in the case in hand, appellant took the plea of forgery in a casual manner and did not make sincere efforts to prove the said plea of forgery by leading relevant and cogent evidence in this regard, he was bound to fail. That is what has been rightly held by both the courts below. Under these circumstances, the judgments relied upon by learned Senior counsel for the appellant are not applicable to the facts and

circumstances of the present case.

17. In view of the above, this court finds no illegality or perversity in the concurrent findings so recorded by both the courts below. As such, no question of law requiring determination arises in this regular second appeal filed by the appellant-plaintiff, which has no merit.

18. Dismissed.

November 21, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No