

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

Date of decision: 25.9.2019

1. **RSA No.5812 of 2014(O&M)**

Amritpal Singh and anotherAppellants

VERSUS

Gurdial Kaur (since deceased) through LR's and othersRespondents

Present: Mr. Pankaj Jain, Advocate for the appellants.

Mr. Som Nath Saini, Advocate for the respondents.

2. **RFA No.10712 of 2014(O&M)**

Amritpal Singh and anotherAppellants

VERSUS

Amrik Singh and othersRespondents

Present: Mr. Pankaj Jain, Advocate for the appellants.

Mr. Som Nath Saini, Advocate for respondents No.1 to 3.

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

This order will dispose of RSA No.5812 and RFA No.10712 of 2014 as identical questions of law and facts are involved for adjudication. For facility of reference, facts are taken from RSA No.5812 of 2014.

The present litigation pertains to inheritance to estate left behind by Ram Singh (since deceased) who died on 09.12.1991. Sh. Ram Singh left behind five sons namely Amrit Pal Singh, Devender Singh (appellants herein), Amrik Singh, Jagbir Singh and Balbir Singh – respondents/defendants No.2 to 4. Gurdial Kaur, widow of the deceased, died during pendency of the suit on 02.07.2006 and is represented by the plaintiffs and defendants being sons of said Gurdial Kaur. Land comprised in khasra No.2311, 2312, 2316, 2334 and all rights appurtenant thereto and share of Ram Singh in the shamlat land at village Mullanpur Garibdas is the subject matter of dispute in the present litigation. The appellants/plaintiffs have claimed their joint ownership in joint possession to the extent of half share each in the aforesaid land on the basis of Will dated 08.06.1989 purported to be executed by deceased Ram Singh. They have also challenged Will dated 16.08.1991 set up by defendants No.1 and 2 being illegal, null and void, forged and fictitious having no affect qua rights of plaintiffs regarding suit property.

Defendant No.1 – Gurdial Kaur filed the written statement and raised preliminary objections in respect of maintainability, plaintiffs are estopped by their act and conduct to file the suit and they have not approached the Court with clean hands. On merits, it is averred that suit land is Joint Hindu Family property of Ram Singh in which the plaintiffs and defendants No.2 to 4 have got interest by way of their birth. The answering defendant is also entitle to share in the property particularly comprised in khasra Nos.2311, 2312 and 2316, acquired with Joint Hindu Family funds and as such Joint Hindu Family property, khasra No.2334 is

land of all the co-sharers. She denied that Ram Singh executed Will dated 08.06.1989, as alleged by the plaintiffs and the Will is nothing but a forged and fictitious document prepared by plaintiffs in active connivance of witnesses. The plaintiffs and defendants being class-I heirs of Ram Singh are entitle to succeed to the suit property. The answering defendant had good relations with Ram Singh but in order to save the suit property, she filed a suit for maintenance with a limited purpose of saving suit land from alienation. After death of Ram Singh, the plaintiffs and defendants No.3 and 4 put up Will dated 08.06.1989 before the Revenue Authorities for sanction of mutation. Defendant No.2 also propounded Will dated 16.08.1991 before the Revenue Authorities and the said Will is also a forged and fictitious document prepared by defendant No.2 in active connivance of witnesses.

Defendant No.2 filed separate written statement controverting the allegations with regard to entitlement of the plaintiffs to suit land on the basis of Will dated 08.06.1989 propounded by them. He has submitted that land comprised in khasra No.2311, 2312, 2316 is Joint Hindu Family property in which plaintiffs and defendants are co-sharers. The plaintiffs and defendants No.3 and 4 tried to persuade Ram Singh to alienate the suit property in order to deprive the answering defendant and defendant No.1 of their legal right to which Ram Singh did not agree. Defendant No.1 filed a suit for maintenance against Ram Singh to save the ancestral property. It is further averred that answering defendant used to serve Ram Singh and defendant No.1 and accordingly Ram Singh executed Will dated 16.08.1991 in his favour and other co-sharers and according to the same,

defendant No.2 got 1/6th share in the entire co-parcenary property and khasra No.2312 was exclusively given to him as he had constructed his residential house in that khasra number during lifetime of Ram Singh. Will dated 16.08.1991 is the last Will of deceased Ram Singh which was executed by him as per free will in sound disposing mind.

Defendant No.3 and 4 admitted Will dated 08.06.1989 with the averments that Ram Singh separated the property and gave to each beneficiary as per his free will. He was not having good relations with his wife and there was litigation between them. Gurdial Kaur filed a suit for maintenance against Ram Singh in 1989. In the year 1991, she filed complaint under Section 323 IPC. Amrik Singh – defendant filed a suit for permanent injunction against Ram Singh and Ram Singh disinherited Amrik Singh in the year 1990 and due to this reason, nothing was given to Gurdial Kaur in the Will.

The appellants/plaintiffs filed replications wherein they reiterated the averments contained in the plaint and controverted the allegations of written statement filed by defendants No.1 and 2.

The trial Court framed the following issues for determination:-

1. Whether the plaintiffs are entitled for declaration as prayed for? OPP
2. Whether the plaintiffs are the joint owners and in joint possession of ½ share of the land, fully detailed and described in the heading of the plaint? OPP

3. Whether the Will executed by Ram Singh dated 8.6.1989 is a legal and valid Will? OPP
4. Whether the Will dated 16.8.1991 executed by Ram Singh is illegal, null and void? OPP
5. Whether the suit properties are Joint Hindu Family properties and the plaintiffs and defendants are the co-sharers? OPD
6. Whether the suit is not maintainable? OPD
7. Whether the plaintiffs are estopped by their act and conduct from filing the present suit? OPD
8. Whether the plaintiffs have no locus standi to file the present suit? OPD
9. Whether the suit is within limitation? OPP
10. Relief.

The plaintiffs adduced evidence, referred to in para 6 of judgment of the trial Court whereas evidence adduced by contesting defendants has been noted in para 7 thereof.

Having heard counsel for the parties in the light of materials on record, the trial Court negated plea of the appellants/plaintiffs that Will dated 08.06.1989 is either proved in accordance with law or the appellants are entitle to inherit to the property in question on the basis of Will dated 08.06.1989, to the exclusion of other legal heirs of deceased Ram Singh. The trial Court in para 13 of the judgment has also noticed that the plaintiffs have failed to produce the original Will dated 08.06.1989 and the same had not seen the light of day till date. As has been noticed

hereinbefore, the Court in appeal affirmed findings of the trial Court and appeal was dismissed with costs.

The entire controversy in the present appeal revolves around Will dated 08.06.1989 propounded by the appellants/plaintiffs. The issues that fall for consideration are:-

1. Whether original Will dated 08.06.1989 was produced and is part of records of mutation proceedings that remained pending before revenue authorities?
2. If the original Will is neither produced before the revenue authorities nor in the civil proceedings, whether photocopy of the Will can be taken into consideration being secondary evidence of the original, in the light of provisions of Section 65 of the Indian Evidence Act, 1872 (in short 'the Act')?
3. If photocopy of the Will can be read into evidence being secondary evidence of the original, whether the appellants have been successful in proving the Will in question in accordance with the provisions of Section 68/69 of the Act and dispel suspicious circumstances, if any, shrouding the Will?

Counsel for the appellants has fairly conceded that original Will is not a part of records of mutation proceedings summoned before the trial Court and available with this Court. He has also not disputed that original Will has not been produced in the present proceedings and only attested copy of copy of Will marked as Ex.R1 in the mutation proceedings

is marked as Ex.P8 before the Civil Court. He has also not disputed that application for proving the Will by way of secondary evidence was filed before the trial Court with the averments that original Will was produced in mutation proceedings, therefore, the appellants be permitted to prove the Will in question by way of secondary evidence and the same was dismissed by the trial Court vide order (Annexure A-1). Since the original Will has not been produced in the mutation proceedings, he has not advanced any arguments to challenge the order passed by the trial Court dismissing application seeking permission to prove the Will by way of secondary evidence. However, counsel for the appellants has made a vain attempt to argue that since in the Will dated 16.08.1991 propounded by the contesting defendants, there is reference to Will dated 08.06.1989 set up by the plaintiffs/appellants, there remained no dispute about existence of Will dated 08.06.1989 and as such case of the appellants that Will can be proved by way of secondary evidence by producing its copy is covered within the ambit and purview of clause (b) of Section 65 of the Act. It is further argued that there is no provision in the Act that requires permission of the Court to prove a document by way of secondary evidence. It is further argued that since existence of the Will in question stands admitted in view of contents of the will dated 16.08.1991 set up by the contesting defendants, order passed by the trial Court rejecting application to prove the Will by way of secondary evidence is of no consequence. He would further argue that the appellants/plaintiffs have successfully proved execution of the Will in consonance with the provisions of Section 68 of the Act by examining Surinder Kumar PW-2, an attesting witness of the

Will who tendered into evidence his duly sworn affidavit Ex.PW2/A. It is further argued that Nasib Singh, scribe of the Will was examined in the mutation proceedings. As Nasib Singh passed away, Jaswant Kaur, his widow, PW-3 was examined and she produced the summoned record i.e. register from 17.04.1989 to 15.11.1989 containing relevant entry in respect of the disputed Will and the said entry is marked as Ex.PW3/A. It is further argued that since Smt. Gurdial Kaur had initiated civil as well as criminal proceedings against Sh. Ram Singh, there is nothing unnatural that the deceased excluded her from inheritance to his estate. It is further argued that purpose of executing a Will is to divert from natural line of succession.

Counsel representing the contesting respondents, on the contrary, has supported concurrent findings recorded by the Courts whereby claim of the appellants/plaintiffs with regard to their entitlement to disputed land on the basis of Will dated 08.06.1989 has been rejected. It is argued with vehemence that since the original Will purported to be executed by Sh. Ram Singh has not seen the light of day in the present case nor the same was produced in mutation proceedings, the Courts have rightly refused to give weightage to copy of the Will marked as Ex.P8 which was prepared from photocopy marked as an exhibit in mutation proceedings in the testimony of Nasib Singh, alleged scribe of the disputed Will. It is further argued that application filed by the appellants for proving the Will by way of secondary evidence was dismissed by the trial Court and the order has attained finality. It is argued that once the appellants had filed an application seeking permission to prove the Will by

way of secondary evidence, it is not open for them to contend in second appeal that since the application was filed on a ground other than now sought to be pressed into service, the photocopy can be read into evidence as secondary evidence of the original by invoking clause (b) of Section 65 of the Act. Counsel would clarify that even contention of the appellants to cover their case under clause (b) of Section 65 of the Act is fallacious for the reason that defendant No.1 in reply to para 2 of the plaint has specifically denied that Ram Singh executed any Will dated 08.06.1989 as alleged with further averments that this Will is nothing but a forged and fictitious document prepared by the plaintiffs with active connivance of its witnesses. She even denied that she had put up any Will dated 16.08.1991 before the Revenue Authorities for sanction of mutation with the allegations that Will dated 16.08.1991 has been put-forth by defendant No.2 but the same is also forged and fictitious document prepared by defendant No.2 with active connivance of its witnesses. It is vehemently argued that since defendant No.1 never propounded Will dated 16.08.1991, it is not open for the appellants to argue that in view of recital in Will dated 16.08.1991 pertaining to Will dated 08.06.1989, it can be construed as admission by defendant No.1 either in respect of existence much less condition or contents of the original Will. It is further argued that even original Will dated 16.08.1991 stated to be propounded by defendant No.2 has not seen the light of day much less proved in accordance with law and only a photocopy of the copy of said Will is available on the records of civil suit. Counsel would further argue that as the appellants have neither produced the original Will nor the attested copy of a copy of the Will

produced in mutation proceedings can be treated as secondary evidence of the original, the appellants/plaintiffs cannot derive any advantage to their claim by examining the witnesses namely Surinder Kumar and Jaswant Kaur. Counsel would further argue that even testimony of Surinder Kumar is not free from lacunae and doubts. Jaswant Kaur wife of Nasib Singh has no personal knowledge about the Will in question and she was examined to produce the records left by her husband. She has even stated that document Ex.P8 is the original Will but the same is not so because it is attested copy prepared from photocopy of the Will marked as exhibit in mutation proceedings.

I have heard counsel for the parties, perused the paper-book and records.

As has been noticed hereinbefore, counsel for the appellants has conceded that neither the original Will was produced in mutation proceedings nor in the present case. The plea in application for proving the Will by way of secondary evidence that original Will is available in the records of mutation proceedings is patently false. Counsel for the appellants has sought to argue that as no permission is required for proving a document by way of secondary evidence, the appellants can seek aid of clause (b) of Section 65 of the Act to say that copy of the Will can be read as secondary evidence of the original, therefore, cannot be ignored for want of producing the original document. Counsel for the appellants may be right in his submission that no such permission of the Court is required to prove a document by way of secondary evidence, however, if a litigant is able to satisfy the requirements of Section 65 of the Act, he may prove

A relevant extract from Section 65, germane to the present controversy, reads as follows:-

(a) $\mathbf{xx}$ $\mathbf{xx}$ $\mathbf{xx}$

As has been rightly pointed out by counsel for the respondents
urdial Kaur in written statement has altogether denied the Will
.1989 with additional averments that the same is forged and
ocument. She has also denied Will dated 16.08.1991 alleged to
by defendant No.2 in mutation proceedings. Taking into
n, plea raised in written statement filed by defendant No.1, it is
ner impossible to accept that existence, condition or contents of

the original Will have been admitted in writing by Smt. Gurdial Kaur, one of the contesting defendants in the case. In this view of the matter, the appellants cannot derive any advantage to their contention by invoking clause (b) of Section 65 of the Act.

Defendant No.2 who propounded the Will dated 16.08.1991 neither produced the original Will before the Civil Court nor proved the document by leading any evidence. Merely because photocopy of the said Will is available on the records of trial Court, by no stretch of imagination, can be construed as an admission in writing even by defendant No.2 with regard to existence, condition or contents of the original Will dated 08.06.1989.

Counsel for the appellants, in response to a query, has fairly informed that Amrik Singh - defendant No.2 appeared in the witness box but he was not confronted with document Ex.P8 much less his having admitted the same to be photocopy of the original Will to which reference has been made in the Will dated 16.08.1991 propounded by him. That being so, it can safely be concluded that the appellants cannot be heard to say that Ex.P8 can be treated as secondary evidence of original, thus, admissible in evidence. No sooner, the appellants failed to prove the Will either by producing the original or by way of secondary evidence, advertent to evidence adduced by the appellants to prove the Will in question would be an exercise in futility. In this view of the matter, I do not find an error much less perversity in consistent findings recorded by the Courts.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed with costs. As a natural corollary, estate of Sh. Ram Singh shall be inherited by his class-I heirs in accordance with provisions of the Hindu Succession Act, 1956. RFA No.10712 of 2014 also stands disposed of in the same terms.

SEPTEMBER 25, 2019
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no