

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

**RSA No.6158 of 2018 (O&M)
Date of Decision:11.02.2019**

Inderjit Kaur

.....Appellant

Versus

Roop Singh and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.I.S.Brar, Advocate
for the applicant-appellant.

LISA GILL, J.

Appellant-plaintiff is aggrieved of judgment and decree dated 15.09.2016, passed by the learned Additional Civil Judge (Sr. Division), Jaitu, as well as judgment and decree dated 23.12.2016, passed by the learned District Judge, Faridkot, whereby suit for declaration filed by the plaintiff-appellant has been dismissed.

Brief facts necessary for the adjudication of the case are that appellant-plaintiff filed a suit seeking declaration to the effect that she is the owner in joint possession of 1/ 3rd of 38K-8M as detailed in the plaint and that she is entitled to get her share separated in due course of law from the defendants. It was further pleaded that originally Gian Kaur wife of Malkit Singh son of Arjan Singh was the owner of the suit property. Gian Kaur died on 09.11.2011 leaving behind the plaintiff and both the defendants (her brothers) as her legal heirs. Gian Kaur died intestate and after her death, plaintiff and the defendants became owners in joint possession of the suit land. Being daughter of Gian Kaur, plaintiff claimed to be the owner in joint

possession of 1/ 3rd share. She requested the defendants to admit her claim, but in futility. Hence the suit was filed.

Defendants resisted the suit. Joint written statement was filed. Various preliminary objections were taken in the written statement. Averments on merits were controverted. Defendants claimed to be owners in possession of the property in question on the basis of will dated 15.05.2011 executed by Gian Kaur. It was stated that the plaintiff was living with her husband at Chhattisgarh and was happily married. Sufficient money was spent on her marriage as per the status of the family. She was not entitled to any share in the ancestral property. Defendants and their family used to look after and serve Gian Kaur during her lifetime. It was out of love, affection and services rendered by the defendants that Gian Kaur executed will dated 15.05.2011 in her sound disposing mind. Will was claimed to be attested by Ajaib Singh and Jagsir Singh and scribe Balkaur Singh, Panch of Village Sarawan. Defendants, it is stated came to know about the will after Gian Kaur's death. As the will was an unregistered one, they applied for its registration. Will was registered on 02.08.2012 by order of the Joint Sub-Registrar, Jaitu. It was further stated that Gian Kaur had three sons namely Roop Singh, Basant Singh and Nachhattar Singh. Nachhattar Singh predeceased Gian Kaur. He died unmarried and issue-less. Mutation of inheritance of Nachhattar Singh was entered in favour of Gian Kaur. Dismissal of the suit was prayed for.

Replication was filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled for decree of declaration, as prayed for?OPP

2. Whether suit of plaintiff is not maintainable?OPD
3. Whether plaintiff has no locus standi to file the present suit?OPD
- 3.A. Whether Gian Kaur executed a will dated 15.05.2011 in favour of the defendants in her sound disposing mind? OPD
4. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the facts and circumstances as well as the evidence on record concluded that will dated 15.05.2011 was duly proved on record. Moreover, the plaintiff admitted execution of the will by her mother in favour of the defendants. It was further concluded that a mere suit for declaration without seeking the relief of possession was not maintainable. Accordingly, suit filed by the appellant-plaintiff was dismissed by the learned trial Court.

Appeal filed by the appellant-plaintiff was dismissed by the learned District Judge, Faridkot, vide impugned judgment and decree dated 23.12.2016.

Aggrieved therefrom, present appeal has been filed by the appellant-plaintiff.

Learned counsel for the appellant vehemently argues that both the learned Courts below have erred in dismissing the suit filed by the appellant. Plaintiff, it is submitted being the daughter of Gian Kaur is entitled to 1/ 3rd share of the suit property. Gian Kaur died intestate on 09.11.2011. Will dated 15.05.2011 is not proved as per the evidence on record. Said will, it is urged is shrouded in suspicious circumstance, which the defendants have failed to dispel. Learned Courts below have wrongly

banked upon the so called admission on the part of the appellant-plaintiff in respect to the will in question. The will is a forged and fabricated document prepared by the defendants after the death of Gian Kaur in connivance with the witnesses. In the declaration form submitted before the Punjab & Sind Bank, Sarawan, defendants with a *mala fide* intention stated that they had no sister and there was no mention of any will. No reason has been assigned in the will for exclusion of the plaintiff, who is the real sister of the defendants. Learned Courts below, it is contended have wrongly ignored the evidence of PW-2-Sanjeev Sharma, Handwriting Expert. It is thus prayed that this appeal be allowed and both the impugned judgments and decrees passed by the learned Courts below be set aside. Consequently, suit filed by the plaintiff-appellant be decreed throughout.

I have heard learned counsel for the appellant and have gone through the file with his assistance.

Relationship between the plaintiff and the defendants is not in dispute. They are admittedly siblings and children of Gian Kaur, who was the owner of the property in question. Plaintiff has claimed her share in the proeprty being the legal heir of Gian Kaur. It is pleaded that Gian Kaur died intestate. Per contra, defendants have propounded will dated 15.05.2011, Ex.D-1. Defendants, in order to prove the said will have examined DW-1-Ajaib Singh and DW-3-Jagsir Singh, the attesting witnesses of the will, besides DW-2-Balkaur Singh, scribe of the will. All the three witnesses have categorically deposed about the execution of the will, Ex.D-1 by deceased Gian Kaur in her sound disposing mind in favour of the defendants. Plaintiff has claimed the will to be a forged and fabricated document. PW-2-Sanjeev

Sharma, Handwriting Expert, was examined by the plaintiff. However, there is no question of reliance upon the testimony of PW-2 as he has categorically opined that thumb impression of Gian Kaur on the will Ex.D-1 is not fit for comparison and no opinion can be formed regarding the identity of the thumb impression. Merely because spacing of the last lines of the writing of the will may be narrow, cannot be a reason by itself, to discard the said will.

At this stage, it is pertinent to note that Inderjit Kaur, in her cross-examination has admitted the execution of the will by her mother Gian Kaur in favour of her brothers. She admitted that her brothers used to serve Gian Kaur. They had also admitted Gian Kaur in the hospital for her treatment when she was unwell. It is further stated by Gian Kaur that she filed objections at the time of registration of the will, though the said objections were dismissed. PW-1-Inderjit Kaur, further admitted in her cross-examination that both the marginal witnesses and the scribe who are the residents of village Sarawan (her parental village) are known to her and they have no dispute or ill-will with her. There is thus no reason for them to have deposed incorrectly. Furthermore, exclusion of one of the legal heirs in the will cannot be a suspicious circumstance to invalidate the will in question in the facts and circumstances of the case.

Factum of the defendants not mentioning the will in their favour while claiming the cash amount belonging to Gian Kaur from the Bank, is not a circumstance sufficient enough to prove that will dated 15.05.2011 is a forged and fabricated document. It is yet again reiterated that the plaintiff-PW-1 has herself admitted the execution of the will in favour of the

defendants. In such a situation, it is rightly held by both the learned Courts below that the plaintiff has failed to prove her case.

Learned counsel for the appellant-plaintiff is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decrees dated 15.09.2016 and 23.12.2016 passed by the learned Additional Civil Judge (Sr. Division) Jaitu and learned District Judge, Faridkot, respectively, are upheld.

There is a delay of 421 days in re-filing of this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in re-filing this appeal has been rendered academic. Application is accordingly disposed of.

Present appeal is, consequently, dismissed with no order as to cost.

11.02.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.