

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2044 of 2013 (O&M)
Date of decision: 14.01.2020

Gurmail Kaur @ Marri & Anr.

... Appellants

versus

Naseeb Kaur @ Seebo @ Balwinder Kaur

... Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. J.S. Brar, Advocate,
for the appellants.

Mr. S.C. Arora, Advocate
for the respondent.

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ARUN MONGA, J.

1. This is defendants' regular second appeal challenging the judgments and decrees passed by the Courts below dated 10.10.2011 and 02.04.2013 by virtue of which suit filed by the plaintiff-respondent has been partly decreed and the first appeal filed by the appellants-defendants has been dismissed respectively.

2. Plaintiff Naseeb Kaur filed a suit and questioned the legality of will dated 06.06.2003 propounded by Jaggar Singh @ Ujjagar Singh and consequent mutation No. 2519 dated 18.04.2006, by virtue of which the estates of deceased Jaggar Singh (fully detailed in the head note of plaint) were bequeathed in favour of his two daughters i.e. defendants-appellants

herein and widow Mukhtiar Kaur, ignoring her legitimate right being widow of Jarnail Singh(pre-deceased son of Jaggar Singh). Mukhtiar Kaur later died and her 1/3rd share was apportioned amongst the defendants being her daughters. Declaration was sought that the aforesaid will and consequent mutation are *non est* and the plaintiff is entitled to inherit 1/4rd share in the estates left by the deceased along with possession thereof.

3. The defendants resisted the claim of the plaintiff. They denied any relationship with the plaintiff. It was claimed that their brother Jarnail Singh was married to one Gurmail Kaur, who by virtue of compromise dated 04.10.2000 had already relinquished her rights. The defendants inherited the properties of their father as per the last wish of the testator recited in will dated 06.06.2003, which is a valid document and plaintiff being stranger to the family is not entitled to any share in the properties of deceased Jaggar Sigh, as claimed.

4. Both the parties adduced their respective evidence in support of their case.

5. On appreciation of evidence on record, the trial Court came to the conclusion that plaintiff has been able to prove that she is the first legally wedded wife of deceased Jarnail Singh son of Jaggar Singh. Will dated 06.06.2003 was found to be surrounded with suspicious circumstances as it was found lacking any particulars about the widow of testator's deceased son i.e. plaintiff. It was not scribed by a regular scribe. The tenor of and manner in which the will was scribed was also found not free from doubts. It was held that for no valid reason, plaintiff has been deprived of her legally admissible share in the estate of Jaggar Singh, being the widow of Jarnail Singh, predeceased son of Jaggar Singh. It was held

that plaintiff was entitled to 1/4th share after the death of Jaggar Singh along with defendants No.1 and 2 and mother-in-law Mukhtiar Kaur and after the death of Mukhtiar Kaur, her share devolved amongst plaintiff and defendants equally. Consequently, it was held that she would be entitled to 1/3rd share each along with defendants. Resultantly, the Will dated 06.06.2003 was set aside and the plaintiff was held entitled to 1/3rd share in the estates of deceased Jaggar Singh, being widow of Jarnail Singh pre-deceased son of Jaggar Singh. The defendants were restrained from alienating more than 1/3rd share on the basis mutation entered in their favour. The plaintiff was also given liberty to seek possession by way of partition.

6. Appeal filed by the defendants was dismissed by the first Appellate Court, leading to the filing of the instant regular second appeal.

7. I have heard learned counsel for the parties and have gone through the paper-book with their able assistance.

8. Learned counsel for the appellants argued that the plaintiff has to stand on her own legs. According to him, the onus to prove that the will is forged and fabricated document was on the plaintiff, but she failed to lead any evidence. Both the Courts below have erred in concluding that will dated 06.06.2003 is not a genuine document. He further argued that evidence produced on record has been misinterpreted by Courts below and plaintiff who is stranger to the family has wrongly been given 1/3rd share in the estates of Jaggar Singh and that at best she could have been held entitled to 1/4th share in the estate of Jaggar Singh and cannot be entitled to get any share out of the estates of Mukhtiar Kaur, deceased mother-in-law as per Section 15 of the Hindu Succession Act. Only the appellants being the

Class-I heirs of Mukhtiar Kaur are entitled to inherit the share of the deceased.

9. Per contra, learned counsel for respondent has resisted the plea of the appellants. He contended that cogent and convincing reasons have been assigned by the Courts below in returning a finding that will dated 06.06.2003 is not a valid document and is liable to be set aside along with consequent mutation and that the plaintiff is entitled to 1/3rd share in the suit property being widow of pre-deceased son of Jaggar Singh.

10. I am of the opinion that the oral testimony of plaintiff and other witnesses of marriage coupled with the documentary evidence produced on record by the plaintiff leaves no manner of doubt that she was the legally wedded wife of Jarnail Singh pre-deceased son of Jaggar Singh. DW1 Kewal Krishan who scribed the will was not a regular deed writer, rather he was running a grocery shop. He admitted that he never attended the marriage of children of Jaggar Singh. It was not brought to record as to under what situation Jaggar Singh had reposed confidence in DW1 Kewal Krishan to reduce his last wish in writing by way of will dated 06.06.2003. The plaintiff, who was a natural heirs of Jaggar Singh being the widow of his pre-deceased son. She had been excluded from inheritance without any reason. Admittedly, in the will set up by the defendants, there was no reference of plaintiff or her husband Jarnail Singh. All these suspicious circumstances were rightly found sufficient by the Courts below to set aside the will dated 06.06.2003 as also the mutation entered on its basis. To this extent, there is no reason to interfere with the concurrent findings of fact returned by the Courts below as per record which are neither illegal nor perverse. The same are affirmed.

11. Defendants being propounders of the Will were required to prove its due and valid execution and also to discharge the onus of removing/explaining all suspicions surrounding the same to the satisfaction of the judicial conscience of the Court. On appraisal of the record and circumstances of the case, both the Courts below found that the Will did not pass that test and returned cogent findings of fact against the defendants. Those findings are plausible and reasonable. On that ground as well, there, thus, seems no reason to interfere with the said findings in the present appeal.

12. Further, there is substance in the contention of learned counsel for the appellants that the share of deceased Mukhtiar Kaur widow of Jaggar Singh devolved only on the appellants who happened to be the daughters of the deceased and they excluded the plaintiff from the inheritance of Mukhtiar Kaur.

13. Mukhtiar Kaur died on 19.03.2004 after Jaggar Singh. Therefore, inheritance of Mukhtiar Kaur was governed by provisions of Section 15 of Hindu Succession Act, which provides for general rules of succession in the case of female Hindus. As per Section 15(1)(a) of the Act *ibid*, property of Mukhtiar Kaur devolved upon sons and daughters (including the children of any predeceased son or daughter) and the husband. Her pre-deceased son Jarnail Singh died issueless. Therefore, her daughter-in-law Naseeb Kaur being not the heir of her mother-in-law Mukhtiar Kaur falling with Section 15(1)(a) *ibid*, did not inherit her property. Thus, property of Mukhtiar Kaur devolved only upon her daughters i.e. appellants herein and not upon her daughter-in-law Naseeb

Kaur. In the premise, the findings returned by the Courts below that plaintiff had 1/3rd share in the suit property are not in consonance with and spirit of Section 15 of the Act *ibid*. The plaintiff became owner to the extent of 1/4th share along with the appellants and plaintiff's mother-in-law Mukhtiar Kaur, after the death of her father-in-law Jaggar Singh as per Section 8 of the Act *ibid*. Both the Courts below, thus, erred in holding that plaintiff had 1/3rd share in suit property.

14. In view of my discussion above and the reasons recorded therein, the appeal is partly allowed. The judgments and decrees passed by the Courts below are modified to the extent that the plaintiff is held entitled to 1/4th share in the estate of Jaggar Singh deceased and not 1/3rd share, as held by the Courts below.

15. Pending applications stand disposed of.

16. No order as to costs.

(ARUN MONGA)
JUDGE

January 14, 2020

Jiten

Whether speaking/reasoned :

Yes/No

Whether reportable :

Yes/No