

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

RSA-3235-2015 (O&M)

Date of decision : 22.01.2020

Gurbax Singh (since deceased) through his legal heirs

...Appellant(s)

Versus

Onkar Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. K.S. Yadav, Advocate for the appellant(s).

Mr. A.S. Manaise, Advocate for respondent Nos.1 and 2.

ANIL KSHETARPAL, J.

Plaintiff No.1 through his legal heirs has assailed the correctness of judgments and decrees passed by the Courts below dismissing the suit filed by the plaintiffs for possession of 3/5th share of the suit land, in the alternative, decree for possession of 3/9th share.

Dispute in the present case is with respect to inheritance of the property left by late Sh. Amrik Singh, predecessor-in-interest of the plaintiffs and the defendants. Amrik Singh was Lambardar of the village. He was blessed with five sons and five daughters. He executed a registered Will dated 22.08.1997 bequeathing the suit property in favour of his son Onkar Singh and daughter-in-law Balwinder Kaur wife of Onkar Singh.

The plaintiffs have filed the present suit claiming that the aforesaid Will (testamentary disposition) is not binding on their rights as it

is forged and manipulated.

Both the Courts, on appreciation of evidence, have found that the execution and registration of the Will has been proved in accordance with Section 68 of the Evidence Act, 1872 and the plaintiffs have failed to satisfy the suspicious circumstances as alleged, which may give occasion to the Court to doubt the validity of the Will.

At this stage, it must be noticed that originally the suit was filed by six plaintiffs including appellant-Gurbax Singh. Subsequently, remaining plaintiffs withdrew their suit.

This Court has heard learned counsels representing the parties and with their able assistance gone through the judgments passed by the Courts below and the records of the Courts below.

Learned counsel for the appellant(s) has submitted that the signatures of the testator are shaky and, therefore, the Courts have erred in accepting the Will. The Courts have erred in refusing to accept the contention of the plaintiffs that the property is ancestral. The beneficiary had participated in the execution of the Will and, therefore, execution of the Will with free mind is doubtful. The testator had died on 09.10.1997 i.e. after a period of 1½ months from the date of execution of the alleged Will and, therefore, it would not be appropriate to rely thereon.

On the other hand, learned counsel for the respondents has submitted that other children of late Sh. Amrik Singh were not residing with him (the testator) as deposed by Rameshwar Kaur, daughter of late Sh. Amrik Singh. He further submitted that she has admitted that other children did not attend cremation of late Sh. Amrik Singh, although they attended

final rites. He further submitted that the registered Will, bears the photograph, signatures of the testator in Urdu on each page apart from two signatures and thumb impressions on the reverse side of the 1st leaf at the time of registration of the Will. The Will has been proved by examining Darshan Singh (the attesting witness), Scribe Lajpat Rai and Narinder Dev, an official from the office of Sub-Registrar. The reasons for ignoring the remaining children have been specifically got written by the executant in the testament. No evidence has been brought on file to prove that the property is ancestral. He drew attention of the Court to the fact that the thumb impressions of the deceased as are available on the alleged Will have never been got compared and the plaintiffs only got compared the signatures and that also with some document which was quite old.

This Court has analyzed the arguments of learned counsel for the parties. On critical appraisal thereof, this Court is of the view that there is no substance in the appeal filed by the plaintiffs.

It may be noted that late Sh. Amrik Singh had signed each page of the testamentary disposition. He has also signed in Urdu twice at the time of registration of the Will. Thus, in total, the testator has put four signatures. The deceased was approximately 84-85 years old. The signatures, keeping in view the age of the testator, do not appear to be shaky. Still further, deceased was a Lambardar (Headman) of the village. In other words, he was conversant with the rules and procedure of execution of the Will/other documents and registration thereof. In such circumstances, in absence of any concrete evidence, it doesn't appear plausible to hold that the signatures are shaky. The plaintiffs had an opportunity to get the thumb impressions of

late Sh. Amrik Singh compared but no effort was made. The plaintiffs remained contended with getting the signatures compared from private Handwriting and Finger Print Expert. However, both the Courts, for the detailed reasons have stated that such opinion can not be accepted.

As regards argument of learned counsel that the property is ancestral, it may be noted that the plaintiffs have not produced any substantive/reliable evidence to prove that the property is ancestral. Plaintiff Sandeep Singh has only appeared in evidence and apart therefrom no evidence has been produced. An application under Order 41 Rule 27 CPC was filed in the first appeal when the appeal was fixed for final arguments. The First Appellate Court has noticed that the plaintiffs wish to produce copies of jamabandies for the years 1910-11, 1938-39, certified copies of *khatauni paimaish*, *naksha hak darbar* and *khatauni istemal* vide application dated 13.11.2014. The Court noticed that before 13.11.2014, appellants never made any attempt to prove ancestral nature of the suit property, although, their suit is based on the aforesaid fact. Still further, it has been found that only witness examined on behalf of the plaintiffs namely Sandeep Singh has admitted that the property was owned and possessed by Amrik Singh.

Learned counsel for the appellant(s) could not address any significant arguments as to why the application for permission to lead additional evidence should have been allowed or there is any error in the reasons given in the judgment under appeal. In view thereof, the property is not proved to be ancestral.

Next contention of learned counsel for the appellant(s) that the

beneficiary has participated at the time the will was being prepared and, therefore, the Will should be ignored, also does not cut any ice. The plaintiffs failed to prove that the beneficiary had influenced the decision of the testator.

Next contention of learned counsel for the appellant(s) is also without substance because the testamentary disposition in the present case is registered and the testator had died 1½ month after the execution of the Will. Still further, no substantive evidence has been brought on record to prove that the testator was not keeping good health or at the time of execution of the Will, he was not in sound disposing mind.

In view of the aforesaid discussion, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Accordingly, the present Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

22.01.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No