

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

1. RSA No.5108 of 2014 (O&M)

Lt. Col. Retd. Manpartap Singh
... Appellant

Versus

Manvirinder Singh
... Respondent

2. RSA No.5109 of 2014 (O&M)

Lt. Col. Retd. Manpartap Singh
... Appellant

Versus

Manvirinder Singh & another
... Respondents

Date of decision: 5th June, 2020

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Mr. Puneet Bali, Senior Advocate with
Mr. Ranjit Saini, Advocate; Mr. Arun Gupta, Advocate and
Mr. Sachin Jain, Advocate for the appellants.

Mr. Rakesh Gupta, Advocate and Mr. Karan Gupta, Advocate
for the respondents.

FATEH DEEP SINGH, J.

Both these regular second appeals between the same set of parties and bordering over family feud primarily between two brothers though arising out of two different suits (i.e. Suit No.251-T of 22.12.2009; and Suit No.255-T of 07.03.2009, hereinafter referred to as 'the first suit' and 'the second suit' respectively) on account of consanguinity of facts, law points and both these suits having been

subsequently consolidated on the statements of the parties vide orders dated 25.07.2012; are being taken up and decided together by way of this common judgment.

The Court of then Civil Judge (Junior Division), Patiala vide judgment and decree dated 14.10.2013 dismissed the first suit of plaintiff Lt. Col. Retd. Manpartap Singh and decreed with costs the second suit of Manvirinder Singh. Aggrieved over these findings, the unsuccessful brother Lt. Col. Retd. Manpartap Singh filed two appeals, one bearing No.127-T of 24.12.2013 titled 'Lt. Col. Retd. Manpartap Singh vs. Manvirinder Singh & others' and the other No.106 of 18.11.2013 titled 'Lt. Col. Retd. Manpartap Singh vs. Manvirinder Singh' and both the said appeals stood dismissed vide impugned judgment and decree dated 25.08.2014 by the Court of learned Additional District Judge, Patiala. That is how these two regular second appeals have come about.

Learned counsel for the two sides have been heard at length and with their invaluable assistance had the opportunity to go through the records. Before setting up on the relative merits of the case of the parties in these two appeals, it is essential to highlight the very genesis of this *lis*. One Major Pritam Singh Virk (date of death 29.05.1985) out of his wedlock with Apar Kaur (date of death 05.12.2008) gave birth to two sons and three daughters namely, Lt. Col. Retd. Manpartap Singh (plaintiff in suit No.251-T of 22.12.2009, now appellant and married to

Damanjit Kaur); Dr. Manvirinder Singh (plaintiff in suit No.255-T of 09.03.2009); Kanwaljit Kaur defendant No.2; Jasbir Kaur defendant No.3 and Harinder Kaur defendant No.4. It is during the course of time prior to the institution of the present suits and initiation of disputes between the family members, Apar Kaur had filed against her husband Major Pritam Singh Virk a suit for declaration etc. and which was decreed by the Court of then Sub Judge (First Class), Patiala on 25.01.1984 and admittedly the same has put to rest the status of the property, subject matter of dispute qua the then parties wife and her husband. It is worthwhile to refer here that Apar Kaur and her sister were owners of certain agricultural lands situated in Sanour in District Patiala. It is claimed by one of the sides that prior to his death Major Pritam Singh Virk bequeathed his estate through his Will dated 20.04.1985 in favour of his wife Apar Kaur and son Dr. Manvirinder Singh and by virtue of which Apar Kaur claims to have become owner of 1/3 share of the property in the suit land. Furthermore, it is claimed that Apar Kaur on 13.05.1985 disinherited her son Lt. Col. Retd. Manpartap Singh and his wife Damanjit Kaur on account of certain civil and criminal disputes between them and that through a registered Will dated 19.09.2005 she bequeathed her estate in favour of Dr. Manvirinder Singh.

It is in the light of this background, Lt. Col. Retd. Manpartap Singh in suit No. 251-T of 22.12.2009 had sought a decree for declaration

that he was owner in possession of 1/2 share of 1/3 share of Apar Kaur on the basis of agreement dated 12.06.1995 and 1/2 share in the share of Apar Kaur in agricultural land and that the Will dated 19.09.2005 was illegal, inoperative and did not bequeath anything to the beneficiary. In the second suit i.e. suit No. 255-T of 09.03.2009, Dr. Manvirinder Singh had sought declaration that he is the absolute owner in possession of the estate left behind by late Apar Kaur and his right to inheritance on the basis of the Will dated 19.09.2005. It is worthwhile to refer here that in his pleadings, Lt. Col. Retd. Manpartap Singh has taken a plea that in a previous suit between him and his mother deceased Apar Kaur, a compromise was effected on 12.06.1995 by virtue of which right of this son in the estate of Apar Kaur deceased stood crystallized and therefore, the Will could not override the same. From the pleadings, the trial Court framed the following issues in the first suit:-

1. Whether the plaintiff is entitled to relief of declaration as prayed for? OPP
2. Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP
3. Whether the suit is not maintainable in the present form?
OPD
4. Whether the suit is barred by limitation? OPD

5. Whether the suit is bad for non-joinder of necessary parties?

OPD

6. Whether the suit is barred u/o 2 Rule 2 CPC? OPD

7. Relief.

Whereas in the second suit titled 'Manvirinder Singh vs. Manpartap Singh', following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to relief of declaration as prayed for? OPP
2. Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP
3. Whether the plaintiff is entitled to relief of mandatory injunction as prayed for? OPP
4. Whether the suit is not maintainable in the present form?
OPD
5. Whether the suit is barred under Section 11 and Order 23 CPC? OPD
6. Relief.

After consolidation of the two suits, the second suit became the lead suit in which the entire evidence was recorded.

The plaintiff in the second suit Dr. Manvirinder Singh examined PW1 Dr. Sarbrinder Kaur attesting witness to the Will of Apar Kaur, who proved the same by way of original Ex.P1; followed by the

testimony of PW2 Pawan Kumar Deed Writer who scribed the Will and proved the same to be Ex.P1. PW3 Indresh Khanna (draftsman) through his affidavit Ex.PW3/A proved site plan of the dwelling unit situated in Model Town Ex.PW3/B and thereafter, the plaintiff Dr.Manvirinder Singh testified as PW4 by means of his affidavit Ex.PW4.A proving documents Ex.P2 to Ex.P34 and in his cross-examination was confronted with compromise dated 12.06.1995 Ex.D1 and judgment and decree dated 22.03.2012 Ex.DX and Ex.DY. Thereafter, Harmail Singh Clerk PW5 from the office of Sub Registrar proved endorsement on the Will as Ex.PW1/A and lastly PW6 Nirmal Jot, Junior Assistant from the office of The Tribune proved the public notice of disinheritance as Ex.PW6/A. In rebuttal, the plaintiff tendered documents Ex.P53 to Ex.P59 and a note was given by the trial Court that there were no documents exhibited as Ex.P35 to Ex.P49 and that Ex.P10 to Ex.P13 were the contents of the passport.

The defendant in that suit, Lt. Col. Retd. Manpartap Singh stepped into the witness box as DW1 and through his affidavit Ex.DW1/A proved documents Ex.D1 to Ex.D14 and documents Mark D16, Mark D17 and Mark D10 (however, there is no document Ex.D15). It is consequent upon this evidence, the trial Court passed the judgment followed by the findings of learned first appellate Court and hence these two appeals before this Court.

In view of the recent pronouncement in '**Kirodi (since deceased) through his LR vs. Ram Parkash & others**' Civil appeal No.4988 of 2019; SLP(C) No.11527 of 2019 decided on 10.05.2019, the Hon'ble Supreme Court has clearly held under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and Haryana, that there is no necessity of framing substantial question of law for disposal of an appeal.

From the submissions of the two sides, it trickles and narrows down that the subject matter of dispute between the two brothers hinges upon a house detailed in the suit, situated in Ranbir Marg, Model Town, Patiala and the agricultural land situated in village Sanour, Tehsil and District Patiala; and thirdly over the Will dated 19.09.2005 of deceased Apar Kaur.

The first and the foremost rallying point revolves around the very legality and validity of the Will as any finding thereon would have its consequential effect on the other points of dispute and over the property owned by Apar Kaur.

It is well settled proposition of law, reference of which can be taken from **1997 (1) CC 483 P&H, 'Biru Ram v/s Barkha Ram'** that a registered Will is prima facie evidence that the deceased was in a sound disposing mind and that it is not essential to examine all the attesting witnesses of the Will and one attesting witness is sufficient. More so, it is

not in any manner displaced by the counsel for the two sides that it is for the propounder of the Will to show that the Will was signed by the testator, that he at the relevant time was in a sound disposing state of mind, that he understood the nature and effect of the disposition, that he put his signatures to the testament of his own free will and that he signed it in the presence of two witnesses who attested it in his presence and in the presence of each other, and once these elements are established the onus which rests on the propounder stands discharged. Reliance placed on **AIR 1974 SC 1999 ‘Surendra Pal and others v/s Dr. (Mrs.) Saraswati Arora and another’**. Thus, in the light of this settled ratio, the arguments that have been sought to be raised by learned counsel for the appellant that the Will so propounded Ex.P1 does not fulfill the obligations of Section 63(a) of Indian Succession Act, pales into insignificance.

Though with much fanfare it is sought to be displaced and create a suspicion in the mind of the Court that signatures of Dr.Sarbinder Kaur attesting witness are not there on the deed writer’s register, but that is not at all a mandate of law and the attesting witness is to attest the Will and therefore, her signatures on the original Will brought on the record as Ex.P1 and her testimony as PW1 together with the fact that in her cross-examination she reiterates that her signatures are evident on the original Will and she does not remember if she signed on the deed writer’s

registered or not, shows her truthfulness and which is also lend credence and support by none other than the deed writer as PW2 Pawan Kumar, and therefore, it was incumbent upon the other side to have led tangible evidence to disprove the legality and validity of the Will that it was not executed in a sound disposing mind by deceased Apar Kaur.

More so, it is not in any manner displaced that Apar Kaur before her death was thrown into civil and criminal litigation by Damanjit Kaur and Lt. Col. Retd. Manpartap Singh, and therefore is another supportive evidence as to reason why the mother would disinherit her son and it is quite natural that after a mother is ill-treated and dragged into litigation by the offspring, such a strong retaliation is but natural. Moreover, Lt. Col. Retd. Manpartap Singh except his sole testimony did not bring any document to undo the effects of this Will. So the findings on this by Courts below are upheld.

The second most agitated point is over the very claim of Lt. Col. Retd. Manpartap Singh that as a consequence of a compromise between him and his mother, a compromise decree was passed and therefore, mutations having been sanctioned on the basis of the same can never be reopened. It is not anybody's case in the light of what has been forcibly submitted before this Court that the agricultural property of Apar Kaur to the extent of half share of 43 Kanals 1 Marla of agricultural land in the revenue estate of village Buta Singh Wala, Sanour, Tehsil and

District Patiala was her self-acquired property and other share was of her sister. Though reliance is sought to be placed on **‘Mohammade Yusuf v. Rajkumar’ 2020 SCC OnLine SC 125** and **‘Bhoop Singh v. Ram Singh Major’ (1995) 5 SCC 709**, to hammer home the point as to whether such a decree on the basis of compromise which creates right for the first time, needs to be registered or not. The controversy that had erupted out of **Bhoop Singh’s case (ibid)** and in **‘K.Raghunandan v. Ali Hussain Sabir’ 2008(3) RCR (Civil) 699**, was considered by the Supreme Court in **‘Phool Patti and another vs. Ram Singh (Dead) through LRs and another’ 2009 (13) SCC 22** and it was held by the Supreme Court in a reference made in the same very case titled **‘Phool Patti and another vs. Ram Singh (Dead) through LRs and another’ 2015(2) SCC (Civil) 312** that there was no controversy or contradiction in the findings of **Bhoop Singh’s case and K.Raghunandan’s case (ibid)**. Since it was a self-acquired property to Apar Kaur and therefore none of the sons had any pre-existing right in the same and it is the own sweet will of the mother to dispose off her self-acquired property as she may do so and which she opted to bequeath by way of registered Will in favour of her son Dr. Manvirinder Singh. The claim of Lt. Col. Retd. Manpartap Singh is that by virtue of this compromise decree he has come to be the owner in part of this agricultural land in the light of well laid principle of law by virtue of Section 17 of the Registration Act. In **Bhoop**

Singh's case and K.Raghunandan's case (ibid), such a compromise decree bestowing right of an immovable property for the first time certainly needs compulsory registration. It is fairly conceded by Mr.Puneet Bali, Senior Advocate assisted by Mr. Ranjit Saini, Advocate Mr. Arun Gupta, Advocate and Mr. Sachin Jain, Advocate representing the appellant that this compromise decree was never got registered; therefore is certainly a distressing feature for the case of the appellant Lt. Col. Retd. Manpartap Singh.

The plea that mutation has been sanctioned on the basis of this compromise decree, does not cuts much ice for the beneficiary, since it is a decree void ab-initio. More so, to the specific query of the Court, by what means final effect was given to this compromise decree, none of the counsel could highlight the same on the basis of the records. More so, it has been rightly observed in the impugned findings by the learned first appellate Court that it is nowhere mentioned in the compromise dated 13.06.1995 that Apar Kaur has transferred the ownership of her share in the dwelling unit at Patiala or the agricultural land in favour of both the sons and therefore, appellant Lt. Col. Retd. Manpartap Singh cannot seek any benefit arising out of such a stand and thus the judgment and decree of compromise dated 13.06.1995 out of the compromise dated 12.06.1995 proved as Ex.P7 does not confer ownership rights in favour of any of the children and it was a notional partition got effected by Apar

Kaur between her two sons and which would have taken effect after her death. The Will Ex.P1 being a registered document and duly proved to be a legal and valid Will overruns the entire gamut of settlement between the parties recorded earlier thereto.

No other point was raised by any of the sides and after due consideration of the impugned findings this Court does not feel that there is any perversity or illegality in the impugned findings, which accordingly need to be upheld. Thus, both the appeals being without any merit stand dismissed.

(FATEH DEEP SINGH)
JUDGE

June 5, 2020
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No