

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

101

XOBS-9-2019 and RSA-3226-2017 (O&M)

Date of decision: 24.11.2021

DARBARA SINGH DECEASED THR HIS LR

..Appellant

Versus

RAJINDER SINGH & ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present- Mr. GL Bajaj, Advocate for the appellant.

Mr. KB Raheja, Advocate
for respondent No.1 to 3/cross objectors.

Mr. Puneet K. Bansal, Advocate for respondent No.4.

ANIL KSHETARPAL, J (Oral)

The appellant is defendant No.3 in a suit filed by the plaintiffs for declaration that they are owners to the extent of 1/4th share in the land measuring 378 kanals and 13 marlas. He assails the concurrent findings of fact arrived at by the Courts below. The plaintiffs have also filed cross objections which are not maintainable. The plaintiffs never filed any appeal or cross objections before the First Appellate Court. Learned trial Court had partly decreed the suit in favour of the plaintiffs. Once they did not file any appeal or cross objections before the First Appellate Court, the plaintiffs are precluded from maintaining their cross objections, in the regular second

decree of the trial Court, for the first time, in a regular second appeal which is not permitted by law.

Some facts are required to be noticed.

Late Sh. Gujjar Singh, was the common ancestor of majority of the parties to this litigation. He was blessed with four children namely Sh. Darbara Singh, Sh. Hazura Singh, Smt. Parsin Kaur and Smt. Gurdeep Kaur. He died on 11.07.1989. The plaintiffs claim that late Sh. Gujjar Singh had bequeathed all his property in their favour vide a registered sale deed dated 26.05.1988. The plaintiffs are late Sh. Gujjar Singh's grandsons and Sh. Hazura Singh's sons. Both the Courts have concurrently observed that the execution of the Will has been proved by Sh. Ajaib Singh who appeared as PW1. He has proved that the Will was executed in accordance with the requirements of Section 63 of the Indian Succession Act, 1925. He also proved the execution of the Will in accordance with Section 68 of the Indian Evidence Act, 1872. He has deposed that the Will was executed and thumb marked by late Sh. Gujjar Singh, in his presence as well as in the presence of the other attesting witness. Both the attesting witnesses thumb marked/singed the Will in the presence of the executant-testator. In other words, both the attesting witnesses and the executant had thumb marked/signed the registered Will in the presence of each other.

mutated the land in favour of Darbara Singh. After sometime, the revenue authorities mutated the land in favour of the class I heirs. Sh. Hazura Singh sold the land measuring 18 kanals and 13 marlas in favour of defendant No.1. The learned trial Court has held that defendant No.1 is a bona fide purchaser, therefore, his rights are protected.

Heard the learned counsel for the parties at length and with their able assistance perused the paper book as also the record of the lower Court which was requisitioned.

Learned counsel representing the appellant contends that late Sh. Gujjar Singh died immediately after the execution of the Will and he was 90 years of age at the time of his death, therefore, he was not in a sound mental health. It is further submitted that late Sh. Gujjar Singh has ignored the natural legal heirs, therefore, the Will is surrounded by suspicious circumstances. He further contends that there is a delay of 19 years in filing the suit.

Per contra, learned counsel representing the plaintiffs has contended that there was a litigation pending in the Courts and on account of that reason, the suit was filed after the other litigation came to an end. The Will is a registered document and it has been proved by examining the attesting witnesses as well as the handwriting and fingerprint expert who has

further submitted that in the Will, late Sh. Gujjar Singh has recited that he has four children, however, he has explained the reasons for disinheriting his class I heirs. He further submits that there is no evidence to prove that late Sh. Gujjar Singh was not in a sound disposing mind while executing the Will. He further states that Sh. Darbara Singh did not even step into the witness box to prove his case and therefore, adverse inference should be drawn against him.

This Bench has analysed the arguments of the learned counsel for the parties and now, proceeds to decide the case. Learned counsel for the appellant has read over the deposition of PW1-Sh.Ajaib Singh. Sh. Ajaib Singh has proved that the Will was executed and attested in accordance with the requirements of Section 63 of the India Succession Act, 1925. Sh. Ajaib Singh has also proved that the Will was duly executed in accordance with the provisions of Section 68 of the Indian Evidence Act, 1872. In fact, the learned counsel representing the appellant has not challenged the findings of the Court, on this aspect.

It may be noted here that Sh. Ajaib Singh (the attesting witness) has thoroughly been subjected to cross examination with searching questions. Despite that, he has successfully proved the Will. From the reading of the cross examination of Sh. Ajaib Singh, it is apparent that the learned counsel

the thumb impressions of late Sh. Gujjar Singh have been proved by examining PW1-Ajaib Singh as well as a handwriting and fingerprint expert as PW3.

As regards the first argument of learned counsel representing the appellant that late Sh. Gujjar Singh was 90 years old, it may be noted that there is no credible evidence to prove that late Sh. Gujjar Singh was not in a sound disposing mind while executing the Will. Late Sh. Gujjar Singh has thumb marked the Will on the first page as well as on the second page. He has also appeared before the Registrar at the time of registration of the Will. He has thumb marked the Will, twice, at the time of its registration. There is an endorsement by the Sub-Registrar to the effect that the particulars of the Will have been read over and explained to late Sh. Gujjar Singh, who has put his thumb impressions while admitting them to be correct. Hence, there is no substance in the first argument of the learned counsel representing the appellant.

The next argument of the learned counsel representing the appellant is that the natural legal heirs have been wrongly surpassed. It may be noted here that the plaintiffs are not strangers but rather the grandsons of late Sh. Gujjar Singh. On a careful reading of the Will, it is apparent that late Sh. Gujjar Singh has stated that his two daughters are married and he does

reason, he has executed the registered Will in favour of his grand children. Hence, learned counsel representing the appellant is not correct in asserting that the natural heirs have been ignored and therefore, the Will is surrounded by suspicious circumstances.

The next argument of learned counsel for the appellant is with regard to delay of 19 years in filing the suit. First of all, it is a registered Will. Secondly, there was a litigation pending between the various heirs of late Sh. Gujjar Singh and Sh. Gurdev Singh, who is a purchaser from Sh. Gujjar Singh. Sh. Gurdev Singh had filed a suit for declaration which was decreed in the year 2003. The first appeal, against the judgment and decree against the same, was decided on 24.12.2003. Thereafter, the mutation proceedings continued upto the year 2008. The present suit was filed in the year 2008 itself. Hence, the delay in filing the suit stands explained sufficiently. The last argument of the learned counsel representing the appellant is with respect to the immediate death of late Sh. Gujjar Singh as a ground to cast suspicion on the circumstances surrounding the execution of Will. This argument is factually incorrect as late Sh. Gujjar Singh died after a period of 14 months from the date of execution of the registered Will.

Keeping in view the aforesaid discussion, this Bench does not find any merit in the present case. Hence, the appeal as well as the cross

All the pending miscellaneous application(s), if any, are also disposed of.

24.11.2021

ashok

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE