

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

**RSA-979-2020 (O&M)
Decided on : 17.03.2022**

Parsin Kaur (deceased) through LRs . . . Appellant(s)

Versus

Amrinder Singh and others . . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. KBS Mann, Advocate
for the appellant(s).

MANJARI NEHRU KAUL, J. (Oral)

Appellant-defendant–Parsin Kaur through her legal representatives has filed the present appeal having lost in both the Courts below.

Respondent-plaintiff Amrinder Singh through his mother filed a civil suit bearing No.CS/114/2016 against Parsin Kaur for joint possession by way of declaration, and permanent injunction with respect to the land in dispute measuring 14 Kanals, as detailed below, on the basis of Will dated 01.08.2010, executed by his father Malagar Singh in his favour:

- (A) Land measuring 7 Kanals 1/18 share out of total land 125 Kanals 19 marlas bearing Khewat No. 119/104 Khatoni No. 169 to 172 Rect. No. 14 Killa No. 7/3 (2-4) 8 (5-2) Rect. No. 10 Killa No. 10/1 min (0-13) 19 min (1-9) 21(8-0), Rect No. 11 Killa No. 23 ((2-2) 24/1 (7-2) 24/2 (8-0) Khasra No. 90 (13-10) Rect No. 10 Killa No. 19 min (6-11) 20/1 min (2-19) Rect. No. 15 Killa No. 1(9-0) 2(8-0) 9(8-2) 10(6-2) Khasra No. 92 min (4-8).
- (B) Land measuring 0 Kanals 1 Marlas 1/6 share out of total 6 marlas bearing Khewat No. 172/158 Khatoni No. 225 Rect

No. 11 Killa No. 14/8 (0-1) 37 (0-5).

- (C) Land measuring 0 Kanals 14 Marlas 1/6 share out of total 10 Kanals 8 Marlas bearing Khewat No. 049 Khatoni Rect No. 72 Rect No. 27 Killa No. 9/2 (4-17) and 10(5-11).
- (D) Land measuring 0 Kanals 13 Marlas 1/6 share out of total land 4 Kanals 1 Marlas bearing Khewat No. 49 Khatoni No. 73 Rect No. 27 Killa No. 8/3 (4-1)
- (E) Land measuring 0 Kanals 17 marlas bearing Khewat No. 49 Khatoni No. 74 Rect No. 27 Killa No. 8/1 (2-11).
- (F) Land measuring 0 Kanals 7 Marlas 1/6 share out of total land measuring 2 Kanals 4 Marlas bearing Khewat No.49 Khatoni No. 75 Killa No. 8/2 (0-11) and 9/1 (1-14) situated in the revenue area of village Malwala, Tehsil Malout, District Sri Muktsar Sahib.
- (G) Land measuring 3 kanals 8 marlas 1/6 share out of total land measuring 20 Kanals 8 Marlas comprised in Khewat No. 177/178 Khatoni No. 292 Rect No. 27 Killa No. 14/2 (2-9) 15 (7-11) 16 (8-0) 24/2 (0-5) and 25/1 (2-3) situated in the revenue area of village Katorewala Tehsil Malout, District Sri Muktsar Sahib as per Jamabandi for the year 2011-12.

Parties hereinafter shall be referred to on the basis of their original positions in the suit.

In brief, the case set out by the plaintiff was that his father Malagar Singh, who died on 08.02.2011, during his lifetime, executed a Will in his favour out of love and affection. Defendant – Parsin Kaur, is the mother of Malagar Singh. After the death of Malagar Singh, mutation of inheritance was sanctioned on the basis of natural succession to the extent of 1/3rd share each, in the name of plaintiff, his mother Sarabjit Kaur and mother of Malagar Singh i.e. defendant – Parsin Kaur, by the Assistant

Collector Grade-I, Malout. The appeal preferred by the plaintiff against the mutation of inheritance was dismissed by the Collector, however, the appeal against the order of the Collector was still pending before the Divisional Commissioner concerned. Defendant taking advantage of the illegal mutation was trying to alienate the suit property. Even though the defendant was requested not to do so and admit the claim of possession of the plaintiff to the suit land, however, she refused to do so. Hence, the civil suit in question was instituted by the plaintiff.

Defendant on the other hand, submitted that the unregistered Will dated 01st August, 2010, alleged to have been executed by Malagar Singh was a forged and fabricated document shrouded with suspicion and hence not binding upon the rights of the defendant. It was submitted that the name of the village of the witnesses was not mentioned on the Will coupled with the fact that the Will was brought to light only after two years of the death of Malagar Singh. It was also submitted that after the mutation with respect to the property in question had been rightly sanctioned on the basis of natural succession in the name of the legal heirs. The plaintiff's mother Sarabjit Kaur while filing an application on 30th January, 2013, to the Tehsildar, Malout did not make any mention of the Will in question, which left no manner of doubt that it was a suspicious document prepared in collusion with the attesting witnesses.

The plaintiff controverted the submissions made by the defendant by way of his replication.

On the basis of the pleadings of the parties, issues were framed by the trial Court and thereafter, evidence led by both the parties. In

support of his case, plaintiff examined PW-1 Dar Singh, Kanungo, who proved the Will in question, PW-2 Lakhbir Singh, PW-3 Santokh Singh, PW-4 Sarabjit Kaur, PW-5 Amrinder Singh (plaintiff) besides tendering other relevant documents (Ex.P1 to Ex.P10).

In defense, defendant examined DW-1 Shamsheer Singh, who besides tendering his evidence by way of a duly sworn-in affidavit Ex.DA, as per the version of the written statement, further tendered into evidence Special Power of Attorney (Ex.D3) and other documents, DW-2 Kapur Chand (Ration Depot Holder), DW-3 Varun Gagneja (handwriting and fingerprint expert).

Learned counsel while impugning the judgment and decree passed by the Courts below reiterated that the Will in question was a forged and fabricated document shrouded with suspicion. He vehemently argued that both the Courts below failed to take into account that the Revenue Court had discarded the Will and had sanctioned the mutation on the basis of natural succession.

I have heard learned counsel for the appellant(s) and perused the material on record.

Upon consideration of the matter and the evidence on record, the Courts below concurrently concluded that the execution of the Will in question stood duly proved during the evidence of marginal witness i.e. PW-2 Lakhbir Singh and PW-1 Dar Singh, who proved the signature of the other marginal witness Labh Singh, since he had expired on 29.11.2016. In addition, it was also concluded that Labh Singh was the most natural

witness, as he had been cultivating the land of Malagar Singh, which fact went un-rebutted during trial. To dispute the genuineness of the Will in question, the defendant got the signatures of Malagar Singh on the Will, compared by a handwriting expert. No doubt, the hand writing expert opined that the signatures did not match with the specimen signatures given, however, the disputed signatures were compared with the alleged signatures of Malagar Singh from a privately maintained ration depot register. Since, it was admitted by DW-2 Kapur Chand (Ration Depot holder) that the ration depot register was neither provided nor prescribed by the Food & Supply Department, the Courts below rightly discarded the handwriting expert's report. It would also be relevant to observe that comparison of the signatures of Malagar Singh from Form 'D' of the Food & Supply Department with the signatures on the Will in question would have been a clincher with respect to the genuineness or otherwise of the Will. However, in the absence of any such comparison made with the admitted signatures of Malagar Singh, coupled with the deposition of the material witnesses including PW-2 Lakhbir Singh and PW-1 Dar Singh, the Courts below rightly arrived at the only and inevitable conclusion that the execution of the Will dated 01.08.2010 stood duly proved.

The contention of the learned counsel for the appellant that the Revenue Court had rightly discarded the Will and sanctioned the mutation on the basis of natural inheritance, is devoid of any merit. It would be apposite to clarify and reiterate that mutation entries in respect of any land do not in any manner confer or extinguish any title as they are entered into

only for fiscal purposes to update the revenue records and for determining the revenue payable.

On a pointed query put to the learned counsel for the appellant, he was unable to refer to anything on record to show that the conclusions arrived at by the Courts below were contrary to the record.

Thus, no ground is made out to interfere with the concurrent findings recorded by both the Courts below. The appeal being devoid of any merit is dismissed accordingly.

(MANJARI NEHRU KAUL)
JUDGE

March 17, 2022
J.Ram/sonia

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>