

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

RSA-771-1997 (O&M)

Date of decision: 09.02.2022

Chuhar Singh (deceased) through LRsAppellants

versus

Bagga Singh (deceased) through LRs
and othersRespondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. S.S. Salar, Advocate
for the appellants.

Mr. Sherry K. Singla, Advocate
for appellant No.1(i).

Mr. Harsh Aggarwal, Advocate
for the respondents.

FATEH DEEP SINGH, J.

This appeal by Chuhar Singh is against judgment/decreedated 16.12.1996 passed by the Court of the learned Additional District Judge, Sangrur, whereby, the impugned judgment, two civil appeals bearing Civil Appeal No.20/292 dated 29.04.1992-96 decided on 16.12.1996 titled as 'Bagga Singh and others versus Chuhar Singh' and Civil Appeal No.21/225 dated 05.05.1992-96 decided on 16.12.1996 titled as 'Chuhar Singh versus Bagga Singh and others' stood disposed off whereby, allowing the appeal of plaintiff/appellants-Bagga Singh and others while setting aside the

judgment of the Trial Court of the learned Sub Judge, First Class, Malerkotla, dated 20.02.1992 was set aside and also while decreeing the suit of the original plaintiffs holding them to be owners in possession of land detailed in heading 'A' of the plaint and has also dismissed the appeal of Chuhar Singh that is how the instant appeal by Chuhar Singh is before this Court.

Heard learned counsel for the parties and perused the records.

In view of the recent pronouncement in **'Kirodi (since deceased) through his LR vs. Ram Parkash and 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.

Undisputedly, Bhajan Singh was the owner of land measuring 18 bighas 08 biswas and 15 bighas 04 biswas subject matter of dispute fully detailed and described in the head note of the suit while the contesting parties are his sons, grandsons et cetera and, thus, progenies.

It is there that Bhajan Singh died on 15.06.1988 and

before his death, had executed a valid registered Will dated 12.04.1988, whereby, he is alleged to have bequeathed his Estate in favour of the plaintiff/appellants-Bagga Singh, Sarup Singh, Harbans Singh, Nirmal Singh, Kartar Singh, Cheta Singh, Baldev Singh, Budh Singh. In the suit, it is alleged by the plaintiffs that Bhajan Singh executed the Will voluntarily on his own without any due influence, coercion or pressure while in a sound disposing mind. The A.C. Grade-I did act on the registered Will and sanctioned mutation on the basis of inheritance in favour of his three sons-Bagga Singh, Kartar Singh, and Chuhar Singh and daughter-Nasib Singh by way of natural succession. It is in these circumstances, the beneficiaries of the Will, the plaintiffs, preferred the suit for declaration against the defendants-Chuhar Singh and Nasib Kaur, the brother and sister, respectively. The plaintiffs have claimed that keeping in view the legal validity of the Will, they were entitled to inherit the Estate as per the same and, thus, claimed their entitlement to this property. The defendants in their stand taken the written statement though did not deny the ownership of the property of Bhajan Singh but claimed that the same was a joint Hindu Family Coparcenary property in which the parties to the suit had a definite share and termed the Will to be forged, fabricated and unenforceable document and denied the contentions of the

plaintiffs claiming that the A.C. Grade-I has rightly allowed succession by inheritance and denied the claim. The Trial framed the following issues:-

1. Whether Bhajan Singh was owner of the suit land? OPP.
2. Whether Bhajan Singh executed a valid will dated 12.04.1988? If so, its effect? OPP.
3. If issue NO.2 is proved, whether the will dated 12.04.1988 is forged and fictitious.
4. Whether the suit land was coparcenary property as alleged? If so, its effect? OPD
5. Relief.

The plaintiff examined PW-1-Surinder Kumar Sharma, deed writer, PW-2-Dhanna Singh, PW-3-Surjit Singh, PW-4-Kartar Singh and placed on record *jamabandi* for the year 1987-1988 (Ex.P-2), copy of khasra girdawawri for the kharif year 1986-1988 (Ex.P-3). The defendants on the other hand examined DW-1-Nachhatar Singh, DW-2-Ranjit Singh, DW-3-Bhalinder Singh Patwari, DW-4-Raj Kumar, Junior Assistant, DW-5-Jasvir Singh, Steno Typist and DW-6-Chuhar Singh himself testified so and after tendering documents, order of the A.C. Grade-I (Ex.D-1), copy of orders dated 20.08.1986 (Ex.D-2 & Ex.D-3), copy of order dated 12.09.1989 of the Collector (Ex.D-4), copy of *jamabandi* for the year 1987-88 (Ex.D-5), copy of mutation No.1166 Mark A and closed the evidence. In rebuttal, the plaintiff proved documents Ex.P-4 to Ex.P-11.

The learned Sub Judge, First Class, Malerkotla, dismissed the claim of the plaintiff and, hence, the suit by partly decreeing it and partly dismissing it. In these circumstances, the present impugned judgment was delivered upon appeal by Bagga Sinigh and Chuhar Singh separately as detailed above. The very issue of this dispute revolves around the validity of the Will dated 12.04.1988 pertaining to which Issues No.2 and 3 have been framed. The other two issues i.e. Issue No.1 and Issue No.5 pertaining to the very nature of the property whether it was a co-personally or not. The counsel for the appellant, Mr. S.S. Salar, Advocate, squarely accepts that there is no tangible documentary evidence led on record that the property was coparcenary property and in the absence of any evidence as onus of Issue No.4 as to the nature of the property was upon the defendant, this issue certainly stands unproved. In light of the admission in the pleadings of the parties, it is accepted fact that Bhajan Singh happens to be the owner of the suit property and which is also reflected from the copies of the *jamabandi* proved on the record. Thus, the only residual point which is most hotly debated and is otherwise the moot issue involved, is over the very nature of the Will. As has been contended on behalf of the respondents by Mr. Harsh Aggarwal, Advocate, who has cited a judgment of this Court

passed in RSA Nos.962, 963 and 964 of 1997 titled as 'Nachhattar Kaur versus Amarjit Kaur' to hold that a registered Will is a document that piece of the mind of the deceased and adds element of solemnity to it and that execution of Will is in itself suggestive what is in the mind of the executant who certainly wants to deviate from the natural succession in his lineage and, therefore, certainly is in itself suggestive that it was for this Court, the father has disinherited his son-Chuhar Singh-appellant from the bequeath. Furthermore, it is there in the records and the pleadings that Chuhar Singh was living separate from his father for more than 25 years prior to his death and there is a proven history of litigation between the father and the son regarding which the defendants in their rebuttal evidence has proved documents by way of judgment/decreed dated 06.08.1979 of the Court of Sub Judge, 1st Class, Malerkotla, Ex.P-4 and Ex.P-6, copy of judgment/decreed dated 22.10.1981 of the learned Sub Judge, 1st Class, Malerkotla, Ex.P-8, copy of judgment/decreed dated 21.09.1983 of the Court of the learned Additional District Judge, Sangrur, Ex.P-10 and which documents are suggestive of the hostility between the father and the son and Chuhar Singh happened to be beyond his control and was litigating throughout with his father. The scribe of the Will PW - 1-Surinder Kumar Sharma and marginal witnesses, PW-2-

Dhanna Singh along with PW-3-Surjit Singh, PW-4-Kartar Singh have duly established the due execution of the Will and the fact that at the time of execution of the Will, the deceased was in a sound disposing mind and entire act was voluntary one, without any undue pressure, coercion and, therefore, the onus which lay upon the propounders of the Will, stands fully discharged. This Court seeks support from the judgment titled as 'Murthy and others versus C. Saradambal and others' (2022) 3 SCC 209 to hold that the very intention of the testator to make the testamentary bequeath is well established from these un rebutted evidence in terms of Section 63 of the Succession Act, 1925.

In light of the fact that there was no cordial relations between the father-Bhajan Singh and the Son-Chuhar Singh has led to scribing of the Will, whereby, the estranged son has been left out of this bequeath by the father. The Will having been scribed by regular deed writer in the ordinary course of business further led credence to this Will which is a registered document in light of the judgment titled as 'Rattan Singh and others versus Gurmit Singh and others' RSA No.3126 of 1998 (O&M). It is pertinent to mention here that though the Will was executed by Bhajan Singh on 12.04.1988 much prior to his death and was a registered document, how A.C. Grade-I, brushed aside this claim of the

plaintiff certainly is suggestive as to the insolence shown by this revenue official in carrying about his duties.

The arguments that sought to be put forth by the appellants' counsel that it is there in the statements of PW-2-Dhanna Singh and PW-3-Surjit Singh that the witnesses are related to plaintiff-Kartar Singh does not come to the aid of the appellants as merely being related witnesses does not erode their credibility and trustworthiness. More so, it is a matter of common knowledge only acquaintances/relations come forth to witness a document and, therefore, it is not an act which casts its shadow on the Will, in question. Furthermore, in the Will (Ex.P-1) Bhajan Singh had clearly depicted that he had given about 10 bighas of land to his son after purchasing the same and, therefore, ensures that in spite of this sour relationship between the son and the father, the latter has exercised his responsibility in ensuring that the son is adequately looked after in spite of his acts against his father. Counsel for the appellant has tried to highlight minor discrepancies that have come about in the testimony of the witnesses and which are bound to occur with the passage of time is rather reflected that all these witnesses are not tutored and are natural. Much stress has sought to be laid on behalf of the appellants by Mr. S.S. Salar, Advocate that in cross-examination of Dhanna Singh, it is there

that at the time of the execution of the Will, the mental condition of Bhajan Singh was not firm. However, it needs to be detailed here that the examination-in-chief and cross-examination of a witness are to be read as a whole in totality and cannot pick and choose a particular point to attack the Will in such a manner. There is nothing suggestive on the record that Bhajan Singh, at the time of execution of the Will, was not in his senses and there is nothing to prove this fact so sought to be claimed by the appellant's side and there is nothing on the record further to establish that at any point of time, around the execution of the Will, Bhajan Singh was ever medically treated or remained admitted are matters which certainly clear the air to the mind of this Court. More so, the very factum of the registration of the Will which is before a designated authority, further lends support to this enforceability and legality of the Will. The evidence led on the record by these evidences oral as well as document, further establishes the very testamentary capacity of Bhajan Singh who appears to be in a sound disposing mind and had died much subsequently, thereafter. The learned lower Court in the impugned findings has correctly discussed the evidence and validly held the findings on the issues before it. The conclusions drawn by the learned Additional District Judge that the Will was legally valid

and enforceable document cannot be find fault with and has rightly held that the learned Trial Court has wrongly given its findings on this issue and which certainly has been rightly reverse by the First Appellate Court.

In light of what has been detailed and discussed above, this Court cannot come across any perversity or adversity in the findings of the Court below and, thus, the appeal, being hopelessly without merits, stands dismissed.

09.02.2022*Neha***(FATEH DEEP SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No