

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

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**RSA-3431-2019 (O&M)
Decided on : 17.05.2022**

Jagdish Raj and others

... Appellant(s)

Versus

Rattan Chand and others

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. S.K. Choudhary, Advocate
for the appellant(s).

MANJARI NEHRU KAUL, J. (Oral)

CM-9282-C-2019

There is delay of 49 days in filing the appeal.

In view of the averments made in the application, which is supported by an affidavit, same is allowed and the delay of 49 days in filing the appeal is hereby condoned.

RSA-3431-2019 (O&M)

The appellants/plaintiffs are assailing the correctness of the concurrent findings of fact arrived at by both the Courts below.

Parties to the *lis*, hereinafter shall be referred to by their original positions in the suit.

The plaintiffs filed a suit for declaration to the effect that they were the sole legal heirs of late Sh. Sardari Lal on the basis of his Will dated 11.06.2006 in respect of the following land:

- (a) bearing khewat No.45, khatauni No.116, khasra No.19R/9/1(5-0), 12(8-0), 19(3-10), 64/4 red (0-5), 79 red (0-4) and khewat No.22, khatauni No.57, khasra No.19R/9/2(3-0), 10/1 (1-0) measuring 20 kanals 19

marlas in both khewats except the land bearing khasra Nos. 19R/19(3-10) and 12 min Dakhan total measuring 3 kanals 19 marlas which had been bequeathed in favour of Sh. Sat Pal, respondent/defendant No.2 out of the above said land, situated in village Gatora, hadbast No.204, Tehsil Pathankot, as entered into the copy of the jamabandi for the years 2005-06.

- b) bearing khewat No.71, khatauni No.96, khasra No.18R/9/2/1/3 (3-12), 9/2/1/2 (0-7), 11/1 (8-0), 12/1/1 (1-15), 20/2 (8-0), 21 (8-0), 2R/1(S-3), 2(1-7) measuring 31 kanals 4 marlas, situated at village Panjore, hadbast No.206, Tehsil Pathankot and as entered into the copy of the jamabandi for the years 2007-08.
- c) residential house comprising of shop, six rooms, two kitchens, open yard, cattle shed bounded as:
 North: House of Lal Chand,
 South: Phirni,
 East : Open plot and house of plaintiffs,
 West : House of Kamal Bhalwant Raj and gali
 situated at village Gatora, Tehsil Pathankot,
 And the mutation Nos.440 of village Gatora and mutation No.652 of village Panjore, Tehsil Pathankot, which have been sanctioned by ignoring the said Will dated 11.06.2006, on the basis of natural succession are null, void and liable to be set aside and cancelled.

Besides this, consequential relief of permanent injunction was also sought to restrain the defendants from interfering in the peaceful possession of the plaintiffs over their respective lands detailed above except the land measuring 3 kanals 19 marlas bequeathed in favour of Sat Pal defendant No.2, and from selling or alienating the suit land or changing the nature of the suit land in any manner.

And in the alternative suit for possession thereof in case the

plaintiffs are not proved to be in possession of the suit properties, had also been sought.

It was pleaded by the plaintiffs that Sardari Lal, who was their as well as the defendants's father was the original owner of the suit properties. Sardari Lal died on 09.07.2006, leaving behind his six sons and two daughters. The pedigree table is as under:-

Sardari Lal								
I								
I								
I	I	I	I	I	I	I	I	I
Sham	Jagdish	Parkash	Balkar		Rattan	Satpal	Soma	Pushpa
Lal	Raj	Chand	Singh		Chand	(son)	Devi	Devi
(son)	(son)	(son)	(son)		(son)		(daughter)	(daughter)
-----Plaintiffs-----					-----Defendants-----			

Plaintiffs brother, Rattan Chand (defendant No.1) was a retired Subedar from the Army and had been living separately from Sardari Lal for the last more than 35 years, prior to his death. It was the plaintiffs, who were taking care of and assisting Sardari Lal in looking after his lands. From the income derived out of his lands, Sardari Lal had purchased the suit properties in phases. Satpal was also earlier residing with Sardari Lal, but he too separated quite some time back and it was the plaintiffs, who thereafter had been looking after Sardari Lal and serving him. Sardari Lal being happy and pleased with the services rendered by plaintiffs, executed a Will dated 11.06.2006 bequeathing his property situated at Village Gatora and Panjore along with movable properties in favour of the plaintiffs except land bearing Khasra No. 19R/19, 19R/12 measuring 3 kanals 19 marlas situated in village Gatora, which he bequeathed in favour of Sat Pal, respondent/defendant No.2, in a sound disposing mind without any pressure

or influence and in the presence of witnesses. Since, Sardari Lal was an old patient of Asthma and he was unable to get the Will registered, he chose to get it scribed in his house. The entire suit land had been purchased by Sardari Lal with his own funds after his separation from defendant Rattan Chand. Even the tractor-trolley was purchased by the plaintiffs in their names after raising loans from a Bank. Defendant Rattan Chand constructed a separate house in village Gatora and never cared for Sardari Lal. Defendant Nos.3 & 4 i.e. daughters of Sardari Lal, had been married during the lifetime of Sardari Lal and were living happily in their respective matrimonial homes. Except Balkar Singh all other plaintiffs were dependent on agriculture. The defendant No.1, being a rich man had tried to influence the revenue authority in order to get mutation sanctioned in his favour by ignoring the Will. Even though, the plaintiffs setup the Will before the revenue authorities concerned, however, they refused to sanction the mutation on the ground that it was an unregistered Will.

Defendant No.1, Rattan Chand had earlier filed a suit claiming that the properties on the basis of natural succession, wherein, the plaintiffs had setup the Will to substantiate their case. However, the said suit was dismissed in default under Order 9 Rule 8 CPC. In the circumstances, the plaintiffs were left that no other option but to institute the suit in question.

Upon notice, defendant No.1 put in appearance and filed his written statement, wherein, he submitted that the Will had been rightly rejected by the revenue authorities and even the appeal preferred against the order of the revenue Court concerned stood dismissed. He, however, denied the execution of the Will by alleging that it was a forged and fabricated document. All other allegations and averments made in the complaint were

also denied by defendant No.1.

Defendant No.3 filed her separate written statement, wherein, she admitted the relationship between the parties as well as the execution of the Will, as claimed by the plaintiffs. Thereafter, she did not participate in the proceedings before the trial Court, as a result of which, she was proceeded against *ex-parte* vide order dated 30.07.2012.

Defendants No.2 & 4 did not appear before the trial Court and consequently they too were proceeded against *ex-parte*.

On the basis of the pleadings and evidence led, trial Court dismissed the suit instituted by the plaintiffs. The appeal preferred to impugn the dismissal of their suit by the trial Court was also dismissed by the lower First Appellate Court. Hence, this appeal.

Learned counsel for the appellants/plaintiffs submits that both the Courts below had erroneously dismissed the suit of the appellants/plaintiffs by ignoring the relevant evidence, which was led during trial. He further submits that though the Courts below accepted the existence of the Will, however, they erred in taking it to be a suspicious document. He submits that mere non-registration of Will would not by itself be a ground to assume that the Will was shrouded in suspicious circumstances, more so, when it had been duly executed as per the provisions of Section 63 of the Indian Succession Act.

I have heard learned counsel for the appellants and perused the material on record.

The dispute in the present case is *inter se* between the children of late Sh. Sardari Lal. Jagdish Raj, Prakash Chand, Balkar Singh and Sham Lal (plaintiffs) on the one hand, who are claiming themselves to be the

beneficiary of the estate left behind by Sardari Lal on the basis of an un-registered Will dated 11.06.2006, whereas, the defendants Rattan Chand, Satpal, Soma Devi and Pushpa Devi are claiming that the suit properties be mutated on the basis of natural succession, on the ground that the un-registered Will of Sardari Lal is shrouded in suspicion. Admittedly, in the case in hand, the plaintiffs failed to produce the original Will during trial. While stepping into the witness-box, plaintiff No.2 – Prakash Raj, admitted that no record of the SDM's office had been summoned with respect to the original Will of their father. Not only this, he feigned total ignorance as to whether the original Will was even part of the record maintained in the SDM office. Nothing prevented the plaintiffs to prove the Will through secondary evidence in case the original Will was not available with them. Still further, though it was pleaded that the original Will in question was lost, however, strangely no complaint was ever admittedly made by the plaintiffs in the said regard, as conceded by plaintiff – Prakash Chand, when he appeared in the witness-box as PW-1.

Still further, no doubt, one witness to the Will in question namely Karam Chand, did step into the witness-box during trial, however, thereafter, he chose not to show his face and failed to put in appearance for his cross-examination. Another suspicious circumstance, which raises a big question mark is to the effect that the scribe of the Will namely Pritam Singh, though, did step into the witness-box as PW-3, however, the affidavit, submitted by him did not even bear his signatures. Hence, the affidavit tendered was rightly not relied upon. Furthermore, it also would not be out of context to observe that though the alleged Will was stated to have been scribed by PW-3/Pritam Singh, however, he is not even a regular

deed writer. PW-3/Pritam Singh conceded during his cross-examination that he was an agriculturist by profession and he had close ties with one Dhyan Singh, who, in turn, was not on good terms with defendant – Rattan Chand. The factum of Rattan Chand not being on good terms with Dhyan Singh stands reflected even in his affidavit (Ex.DW1/A). All these circumstances when seen in totality do create a big question mark about the authenticity of the Will in question.

In the circumstances, the evidence (Ex.PW3/A) of the scribe of the Will in question i.e. PW-3/Pritam Singh, cannot be relied upon being an unsigned affidavit. The story does not end there. Sham Lal, though was arrayed as plaintiff No.4, however, PW-1/ Prakash Chand, in his cross-examination admitted that Sham Lal was of unsound mind. This yet again creates a dent in the case of the plaintiffs, as in the original plaint Sham Lal had been impleaded directly by concealing this fact. It may be noticed that during the pendency of the suit, Sham Lal died and thereafter, an amended plaint was filed by the plaintiffs, wherein, Sham Lal was sought to be impleaded through the following legal heirs:-

- (i) Balwinder Kumar,
- (ii) Nek Ram, sons of Jagdish Raj son of Sardari Lal,
- (iii) Rakesh Kumar son of Parkash Chand son of Sardari Lal.
residents of village Gatora, Post Office Panjore via
Sujanpur, Tehsil and District Pathankot.

Strangely, Sham Lal died as a bachelor, which fact was admitted by the plaintiff – Parkash Chand, while appearing in the witness-box as PW-1. However, the aforementioned, three persons were impleaded as his legal heirs. It is evident that they had been impleaded only to grab the share of the Sham Lal.

A perusal of the affidavit (Ex.DW1/A) – Rattan Chand, reveals that through a publication in a newspaper i.e. Dainik Uttam Hindu, dated 16.04.2003 (Ex.D-2/A), Sardari Lal had disinherited plaintiff - Jagdish Raj, herein. In the circumstances, this Court finds it very strange as to how the Will in question could have been executed in favour of the plaintiff - Jagdish Raj by Sardari Lal. Therefore, this Court finds no reason to differ with the findings recorded by both the Courts below that the Will in question is shrouded in suspicion.

Further more, upon being pointedly asked, learned counsel for the appellant/defendant failed to refer to anything on record to show that the conclusions arrived at by the Courts below were either contrary to the record or suffered from any material illegality. The appeal, being devoid of merit, is accordingly dismissed. The judgments and decrees of the Courts below are affirmed.

(MANJARI NEHRU KAUL)
JUDGE

May 17, 2022

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*