

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

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RSA-43-1990 (O&M)

Reserved on : 18.01.2023

Date of Decision:14.02.2023

Amrik Singh (deceased) through LR's and Another

...Appellants

Versus

Charan Singh (deceased) through LR's & Others

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. K.S.Sidhu, Senior Advocate with
Mr. Praagbir S. Dhindsa, Advocate for the appellants.

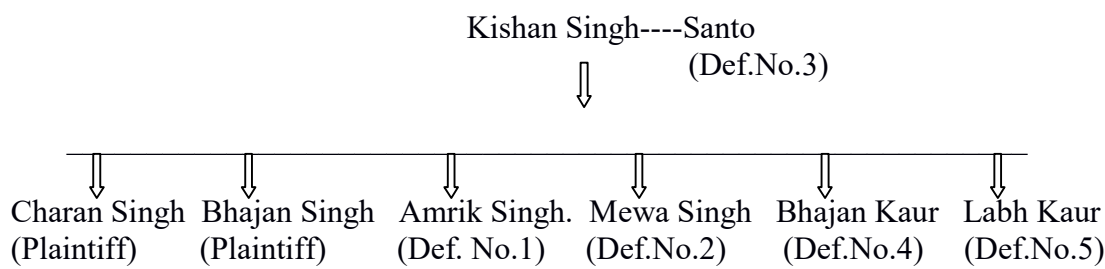
Mr. Neeraj Sharma, Advocate for respondent Nos. 1 and 2.

ALKA SARIN, J.

The present regular second appeal has been preferred by the defendant-appellants against the judgment and decree of the lower Appellate Court whereby the suit of the plaintiff-respondent Nos.1 and 2 has been partly decreed for joint possession to the extent of 1/7th share each in the suit land as well as in the compensation amount. The Trial Court vide judgment and decree dated 02.01.1987 dismissed the suit of the plaintiff-respondent Nos.1 and 2 and while dismissing the suit of the plaintiff-respondent Nos.1 and 2, the Will Ex.D1 dated 18.07.1980 set up by the defendant-appellants was also disbelieved. Aggrieved by the judgment and decree dated 02.01.1987, an appeal was preferred by the plaintiff-appellants and the defendant-appellants herein filed cross-objections challenging the findings of the Trial Court on Issue No.4. The lower Appellate Court vide judgment and decree dated 02.08.1989 partly decreed the suit and rejected the cross-objections filed by the defendant-

appellants. The lower Appellate Court held that the left over property in the hands of Kishan Singh was self acquired property and since both the Wills stood rejected, hence, the property would devolve by way of natural succession on all the heirs and hence each of the heirs would be entitled to 1/7th share. The present appeal was decided by this Court vide judgment dated 10.11.2008. The said judgment was challenged by the plaintiff-respondent Nos.1 and 2 by filing SLP(C)-9438-2009, which was later converted into Civil Appeal No.6495 of 2016. The said civil appeal was decided vide order dated 19.07.2016 and the judgment dated 10.11.2008 passed by this Court was set aside and the matter was remanded for a decision afresh.

The pedigree table of the parties is reproduced herein below :



The brief facts relevant to the present *lis* are that Kishan Singh had four sons and two daughters as depicted in the pedigree table above. Kishan Singh's wife, Santo, was also a party to the *lis* having been impleaded as defendant-respondent No.3. Kishan Singh was the owner of land measuring 91 Kanals and 04 Marlas having inherited the same from his father, Mulla Singh. In 1972 a civil suit was filed by the defendant-appellants - Mewa Singh and Amrik Singh - as well as by the plaintiff-respondent Nos.1 and 2 - Charan Singh and Bhajan Singh - against their father Kishan Singh for declaration to the effect that the plaintiffs therein were jointly owners in possession in equal shares, with shamlat rights, of the land measuring 91 Kanals and 04 Marlas. The said suit was decreed vide judgment and decree dated 22.05.1972 (Ex.D2 and Ex.D3) and

a consent decree was passed. As per the said judgment and decree, the plaintiffs therein that is the four sons of Kishan Singh were declared as owners in possession of the suit property involved therein. After the passing of the consent decree, Kishan Singh was left with some land in Village Kumbra, District Ropar and in Village Nizampur Kumbra, UT Chandigarh. Some portion of the land left by him in Village Nizampur Kumbra, UT Chandigarh was acquired the compensation for which was deposited in the Treasury. Kishan Singh died in the year 1981 and the dispute in the present case is qua his land in Village Kumbra, District Ropar and in Village Nizampur Kumbra, UT Chandigarh and the amount of compensation lying deposited in the Treasury.

The plaintiff-respondent Nos.1 and 2 filed the present suit for declaration to the effect that they were owners of half share in equal shares and in joint possession with the defendants of the suit land and are entitled to receive half of the compensation lying deposited in the Treasury. It was averred in the plaint that in the year 1980 Kishan Singh had executed a Will in favour of the defendants-appellants, Amrik Singh and Mewa Singh, since he was annoyed with the plaintiff-respondent Nos.1 and 2, Charan Singh and Bhajan Singh. However, subsequently the relations became cordial and Kishan Singh executed a Will on 20.02.1981 in favour of the plaintiffs-respondent Nos.1 and 2 i.e. Charan Singh and Bhajan Singh and the defendant-appellants i.e. Amirk Singh and Mewa Singh according to which they became owners in equal shares. The suit was initially filed by Charan Singh and Bhajan Singh, plaintiff-respondent Nos.1 and 2, against Amrik Singh and Mewa Singh, defendant-appellants. Subsequently, Santo wife of Kishan Singh and his daughters, Bhajan Kaur and Labh Kaur, were also impleaded as parties. In the written statement the defendant-appellants set-up a registered Will dated 18.07.1980 (Ex.D1) stated to

have been executed by Kishan Singh in their favour. During the pendency of the suit, the plaint was amended and an additional plea was raised that the property in dispute was ancestral and therefore Kishan Singh could not have deprived the plaintiff-respondent Nos.1 and 2 from it.

On the basis of the pleadings of the parties the following issues were framed by the Trial Court :

- 1) Whether Kishan Singh executed a valid Will in favour of the plaintiffs and defendant Nos.1 to 2 on 20.02.1981, if so its effect ? OPP
- 2) Whether the suit property is ancestral coparcenary property of the parties ? OPP
- 3) Whether the parties and their deceased father Kishan Singh constituted a Hindu Joint Family, if so its effect ? OPP
- 4) Whether Kishan Singh executed a valid Will on 18.07.1980 in favour of the defendant Nos.1 and 2, if so its effect ? OPP
- 5) Whether the plaintiffs have no locus standi to file the present suit ? OPD
- 6) Whether the defendants are entitled for special costs under Section 35-A CPC ? OPD
- 7) Whether the Civil Court has no territorial jurisdiction to entertain the present suit, as alleged ? OPD
- 8) Whether this Court has no jurisdiction to entertain and try the claim for compensation in question of the acquired land as alleged ? OPD

9) Relief.

The Trial Court on issue no.1 returned a finding that the Will dated 20.02.1981 (Ex.P1) set up by the plaintiff-respondent Nos.1 and 2 was not the last Will and testimony of Kishan Singh. On issue no.2 a finding was returned that the property is ancestral coparcenary property. On issue no.3 a finding was returned that the judgment Ex.D2 showed that the status of jointness of the family stood severed. On issue no.4, the Will dated 18.07.1980 (Ex.D1) as set up by the defendant-appellants was also disbelieved. The suit was accordingly dismissed by the Trial Court vide judgment and decree dated 02.01.1987. Aggrieved by the said judgment and decree, an appeal was preferred by the plaintiff-respondent No.1 and 2 as well as by Santo, Bhajan Kaur and Labh Kaur. Cross-objections were also preferred by Amrik Singh and Mewa Singh. Vide judgment and decree dated 02.08.1989 the lower Appellate Court discarded both the Wills and held that property in the hands of Kishan Singh would be treated as self-acquired property and, therefore, the same would devolve by way of natural succession on all the heirs and hence each of the heirs would be entitled to 1/7th share. Hence the present regular second appeal by the defendant-appellants.

Learned senior counsel appearing on behalf of the defendant-appellants has contended that the Will Ex.D1 was duly proved as the attesting witness of the Will had stepped into the witness box as DW-2. It is further the contention that the mere fact that there was no explanation forthcoming in the Will for having disinherited the other natural heirs would not be a reason to discard the Will especially in view of the complaints made by the father (Ex.DW4/A, Ex.DW4/B, Ex.DW4/C) qua the ill-treatment meted to him by the plaintiff-respondent Nos.1 and 2. Learned senior counsel would further contend

that Ex.PW4/A, which is the application purported to have been moved under Section 372 of Indian Succession Act, 1925 for the grant of Succession Certificate in respect of the estate of Kishan Singh on 16.01.1982, was not filed at their instance.

Per contra, learned counsel appearing for the plaintiff-respondent Nos.1 and 2 has contended that before the lower Appellate Court the issue of the Will Ex.P1 was not pressed. It is, however, contended that the Will Ex.D1 in favour of the defendant-appellants has rightly been discarded being shrouded by suspicious circumstances. It is the contention of learned counsel for the plaintiff-respondent Nos.1 and 2 that DW-2, the attesting witness of the Will, was inimical towards the plaintiff-respondent Nos.1 and 2 as is apparent from the cross-examination of the said witness wherein he has admitted that his wife after leaving his house started living with Charan Singh (plaintiff-respondent No.1). It is further the contention that a joint application was filed by all the legal representatives of Kishan Singh being Ex.PW4/A for grant of a succession certificate. PW-4 Sh. S. K. Chhabra, Advocate had stepped into the witness box and had stated that the application for grant of succession certificate was filed on the instructions of Charan Singh, Bhajan Singh, Amrik Singh and Mewa Singh, sons of Kishan Singh. It was thumb marked by Charan Singh, Bhajan Singh and Amrik Singh and signed by Mewa Singh. It has further been stated that all the said persons signed and thumb marked in his presence. It was further the contention that in the said application for grant of succession certificate there was a specific averment that no Will had ever been executed by Kishan Singh and that he died intestate. Learned counsel appearing on behalf of the plaintiff-respondent Nos.1 and 2 would further contend that there is no reason

forthcoming from the Will Ex.D1 as to why all the other natural heirs have been disinherited.

Heard.

In the present case, the following questions of law arise for determination by this Court :

- i) Whether the Will Ex.D1 is shrouded by suspicious circumstances ?
- ii) Whether the judgments and decrees passed by both the Courts below are perverse and are liable to be set aside ?

The first Will executed by Kishan Singh on 18.07.1980 is Ex.D1. This Will is in favour of the defendant-appellants. It is a registered Will. The attesting witness of this Will has stepped into the witness box as DW-2 and proved the same. The second Will allegedly executed by Kishan Singh on 20.02.1981 is Ex.P1. This Will is in favour of all the four sons of Kishan Singh. None of the attesting witnesses of this Will were examined by the plaintiff-respondents to prove the same.

Learned counsel for the defendant-appellants has argued that there is a registered Will Ex.D1 in their favour and as such the suit of the plaintiff-respondents ought to have been dismissed. According to counsel the said Will stands duly proved and it's execution is admitted in the plaint itself. It is contended that the Will Ex.P1 set-up by the plaintiff-respondents was never proved in accordance with the provisions of the Evidence Act, 1872.

Per contra, learned counsel for the plaintiff-respondents has contended that the Will Ex.D1 is not a genuine Will since there is no explanation therein by Kishan Singh to disinherit his other heirs and that no arrangement was made even for the maintenance of his wife. It is also contended

that DW-2, the attesting witness Ishar Singh, was inimical towards the plaintiff-respondent No.1 Charan Singh since his wife, after leaving his house, was residing with the said Charan Singh. Another argument raised is that an application Ex.PW4/A was filed on behalf of Charan Singh, Bhajan Singh, Amrik Singh and Mewa Singh for grant of succession certificate where it was specifically stated that Kishan Singh had died intestate and that had the Will Ex.D1 been genuine there was no reason for the defendant-appellants to state that Kishan Singh had died intestate.

The plaintiff-respondents had set-up a Will dated 20.02.1981 Ex.P1 in the plaint. The said Will was never proved. No attesting witness stepped into the witness box to depose about the execution of the said Will. Another stand taken in the plaint was that the suit land was ancestral in the hands of Kishan Singh. However, a perusal of the judgement dated 22.05.1972 Ex.D2 in the suit filed by all the four sons of Kishan Singh against their father reveals that the stand taken therein was the suit land therein was given to the four sons and some other land was left with Kishan Singh. There was no mention that the land left with Kishan Singh was ancestral. In any event if the entire holding of Kishan Singh was ancestral, as was argued by the counsel for the plaintiff-respondents, then there was a severance when the judgement and decree dated 22.05.1972 (Ex.D2 and Ex.D3) were passed and the land left with Kishan Singh would become his property. Kishan Singh executed a registered Will dated 18.07.1980 Ex.D1 bequeathing his immovable properties to his two sons Amrik Singh and Mewa Singh, the defendant-appellants. This Will has been duly proved by the attesting witness DW-2. Though it has been argued that this witness was inimical towards the plaintiff-respondents, that would not convince this Court to doubt his testimony especially when he appeared before

the Sub-Registrar also. Merely because the wife of the attesting witness was purportedly living with one of the plaintiff-respondents is not sufficient reason to disbelieve his testimony regarding the execution of the Will Ex.D1.

Counsel for the plaintiff-respondents has also contended that the defendant-appellants had themselves admitted that Kishan Singh had left no Will since they were signatories to the joint application Ex.PW4/A which was filed for obtaining a succession certificate and wherein it had been admitted that Kishan Singh had not left any Will. However, this very argument would apply to the Will Ex.P1 which was set-up by the plaintiff-respondents in their plaint. If Kishan Singh had left no Will there was no occasion for the plaintiff-respondents to make averments in the plaint about the execution of the Will dated Ex.P1 by Kishan Singh. Thus, this Court would not rely upon the joint application Ex.PW4/A signed by all the four sons of Kishan Singh wherein they stated that that Kishan Singh had not left any Will. Moreover, the Will Ex.D1 is a registered document whose execution is admitted in the plaint and there is no allegation of fraud and misrepresentation having been made by the plaintiff-respondents.

The contention of the counsel for the plaintiff-respondents that the Will Ex.D1 gives no reason as to why all the other natural heirs have been disinherited and therefore it is a suspicious document is also rejected. The purpose of executing a Will is to deviate from the natural line of succession and merely because two sons of the Testator have been given nothing is no ground to discard the Will Ex.D1. Mere deprivation of some of the natural heirs by itself is not a suspicious circumstance to discard a Will. Divesting of close relations being the purpose of execution of a Will, this is normally not a suspicious circumstance. It may be mentioned here that even in the Will Ex.P1

set-up by the plaintiff-respondents in the plaint, no provisions was made for the wife and daughters of Kishan Singh. In the case of **Uma Devi Nambiar vs. T.C. Sidhan [(2004) 2 SCC 321]** it was inter-alia held that :

“16. A Will is executed to alter the ordinary mode of succession and by the very nature of things, it is bound to result in either reducing or depriving the share of natural heirs. If a person intends his property to pass to his natural heirs, there is no necessity at all of executing a Will. It is true that a propounder of the Will has to remove all suspicious circumstances. Suspicion means doubt, conjecture or mistrust. But the fact that natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be a suspicious circumstance especially in a case where the bequest has been made in favour of an offspring. As held in P.P.K. Gopalan Nambiar v. P.P.K. Balakrishnan Nambiar [1995 Supp (2) SCC 664 : AIR 1995 SC 1852] it is the duty of the propounder of the Will to remove all the suspected features, but there must be real, germane and valid suspicious features and not fantasy of the doubting mind. It has been held that if the propounder succeeds in removing the suspicious circumstance, the court has to give effect to the Will, even if the Will might be unnatural in the sense that it has cut off wholly or in part near relations. (See Pushpavathi v. Chandraraja Kadamba [(1973) 3 SCC 291 : AIR 1972 SC 2492].) In Rabindra Nath Mukherjee v.

Panchanan Banerjee [(1995) 4 SCC 459] it was observed that the circumstance of deprivation of natural heirs should not raise any suspicion because the whole idea behind execution of the Will is to interfere with the normal line of succession and so, natural heirs would be debarred in every case of Will. Of course, it may be that in some cases they are fully debarred and in some cases partly.”

In **Ved Mitra Verma vs. Dharam Deo Verma [(2014) 15 SCC 578]** also it was held that *“The exclusion of the other children of the testator and the execution of the will for the sole benefit of one of the sons i.e. the respondent, by itself, is not a suspicious circumstance. The property being self-acquired, it is the will of the testator that has to prevail”*.

A Will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents, so in the case of proof of Wills, it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters. Applying that test to the case at hand, this Court has no manner of doubt that the Will Ex.D1 executed by Kishan Singh, which is a duly registered document, is not surrounded by any suspicious circumstances of any kind and is proved to have been duly and properly executed.

In view of the above, the substantial questions of law are answered and the Will Ex.D1 is held to having been proved and there are no suspicious circumstances surrounding its execution. The present regular second appeal is allowed, the judgments and decrees passed by the Courts below are modified

and the suit of the plaintiff-respondents stands dismissed. Pending applications, if any, also stand disposed off.

14.02.2023
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO