

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

RSA No. 1365 of 2001

Date of decision : April 28, 2023

Maghar Singh and others

.....Appellants

Versus

Kartar Kaur and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Vasundhra Asija, Advocate for non-applicant/ appellants.

Mr. Karanjit Singh, Advocate for applicant/respondent No. 1.

LISA GILL, J.

1. This appeal has been filed by the plaintiff-appellants challenging judgment and decree dated 08.02.1999 passed by the learned Civil Judge (Junior Division), Mansa whereby suit for declaration to the effect that the plaintiffs and defendant No. 2 are owners in possession of 3/8th share of land in question, had been dismissed. Challenge is also to judgment and decree dated 09.10.2000 passed by learned Additional District Judge, Mansa whereby appeal filed by the present appellants – plaintiffs has been dismissed.

2. Brief facts necessary for adjudication of the matter are that appellant - plaintiffs filed a suit seeking declaration to the effect that plaintiffs and defendant No. 2 are owners in possession of the property in

question belonging to Chand Singh on the basis of Will dated 05.08.1981 registered on 06.08.1981 and that mutation 2596 dated 07.10.1994 is illegal, having no effect on the rights of the plaintiff and defendant No. 2. It is pleaded in the plaint that Chand Singh son of Sham Singh was owner in possession of $3/8^{\text{th}}$ share of land measuring 340 kanals 1 marla situated in revenue limits of village Chakerian. Chand Singh died issueless on 15.04.1993. Defendant No. 1 namely Kartar Kaur widow of Chand Singh was alive and that Chand Singh during his life time transferred some property/land in her favour. Plaintiffs – Maghar Singh (represented by his legal representatives now), Meta Singh, Bahadur Singh are sons of Jaggar Singh i.e. real brother of Chand Singh. Defendant No. 2 is the widow of Kheta Singh, another brother of plaintiffs who pre-deceased Chand Singh. Chand Singh is stated to have executed Will dated 05.08.1981 in favour of the plaintiffs and Kheta Singh out of his own free will, without any kind of pressure and coercion from any quarter. Will was scribed by Gurcharan Singh PW1. Chand Singh is stated to have affixed his thumb impression in the presence of witnesses namely Hamir Singh PW2 and Hardial Singh (since deceased). Will dated 05.08.1981 was registered on 06.08.1981 with the contents thereof being read over and explained to Chand Singh, who affixed his thumb impression in the presence of witnesses and Sub Registrar after admitting its contents to be correct. Both the witnesses also appended their signatures in witness thereof. It is alleged that defendant Kartar Kaur in order to take forcible possession of land in question prepared a forged and fabricated Will dated 28.03.1993 in connivance with the witness and scribe after the death of Chand Singh. Said Will dated 28.03.1993 was statedly rejected by Assistant Collector First Grade, Mansa, who, however, in an

illegal and arbitrary manner also ignored registered Will dated 06.08.1981 in favour of the plaintiffs and Kheta Singh. Suit was filed when defendant No.1 refused to acquiesce to the demand of land in question being mutated on the basis of registered Will dated 06.08.1981.

3. Defendant No. 1 contested the suit and filed written statement while defendant No. 2 - widow of Kheta Singh was proceeded exparte on 03.02.1996. Defendant No. 1 - Kartar Kaur while raising preliminary objections regarding locus standi of the plaintiffs and cause of action, took a stand that alleged Will dated 05.08.1981 is a forged and fabricated document as Chand Singh had never executed any such Will and moreover as Kheta Singh had already died, alleged Will was ineffective. Furthermore, suit in question, it is pleaded, had been filed only to harass defendant No. 1. Chand Singh is admitted to be the owner in possession of land in question. While denying execution of Will dated 05.08.1981 in favour of plaintiffs and Kheta Singh, defendant No. 1 claimed that said persons had never looked after Chand Singh and that he was residing with her before his death. It is denied that mutation No. 2596 has been incorrectly sanctioned in favour of defendant No. 1 on the basis of natural succession. All allegations in the plaint were denied. Dismissal of the suit was sought.

Replication was filed by the plaintiffs.

4. Following issues were framed on the basis of the pleadings of the parties:-

1. Whether the plaintiffs are entitled to declaration on the basis of Will dated 05.08.1981 registered on 06.08.1981? OPP
2. Whether the plaintiffs have no cause of action to file the present suit? OPD.
3. Whether the suit of the plaintiffs is not maintainable? OPD

4. Whether the Will is forged and fictitious document? OPD.
5. Whether the suit is time barred? OPD.
6. Whether the suit is not properly valued for the purposes of court fee? OPD.
7. Relief.

5. Plaintiffs examined Gurcharan Singh PW1 (scribe of Will dated 05.08.1981), Hamir Singh PW2 (one of the attesting witnesses) and plaintiff Meta Singh himself testified as PW3. Copy of Will dated 05.08.1981 (Ex.P1) and copy of jamabandi for the year 1991-92 (Ex. P2) were placed on record. Defendant No. 1 examined Babu Ram, Clerk as DW1, Saun Singh as DW3 and herself appeared in the witness box as DW2. Statement of Hamir Singh (Ex.DW1) recorded in the mutation proceedings, copy of jamabandi for the year 1996-97 (Ex.DW2), voters list (Ex.D3) and copy of ration card Mark A were produced by the defendant. Certain documents were placed on record by way of additional evidence.

6. Learned trial court on considering the evidence on record, facts and circumstances of the case concluded that plaintiffs had failed to prove their case on the touchstone of preponderance of probabilities. Learned trial Court held that not much reliance can be placed on the witnesses examined by plaintiffs to prove Will dated 05.08.1981 registered on 06.08.1981. It was noted by learned trial Court that in the mutation proceedings before learned Assistant Collector First Grade, Mansa, attesting witness Hamir Singh PW2 stated on oath (Ex.D1) that he was not present at the time of execution of Will and that his signatures were obtained on blank papers. PW2 Hamir Singh explains that this action was taken due to fear of terrorists, therefore, mutation had been sanctioned on the basis of natural succession by the

learned Assistant Collector First Grade, Mansa (Executive Officer). Appeal challenging sanction of said mutation was also dismissed.

7. Appeal filed by the plaintiffs challenging judgment and decree dated 08.02.1999 was dismissed by the learned Additional District Judge, Mansa vide judgment and decree dated 09.10.2000. Aggrieved therefrom, present appeal has been filed by the appellants.

8. Learned counsel for the appellants vehemently argued that both the learned courts below have grossly erred on facts and in law while passing judgments and decrees dated 08.02.1999 and 09.10.2000 and consequently dismissing the suit filed by appellants - plaintiffs. It is submitted that Will dated 05.08.1981 is duly proved on record. Much stress has been laid by learned trial Court on the statement of the attesting witnesses Hamir Singh, Lambardar recorded before Revenue authorities to the extent that his signatures had been obtained on blank papers and he was not aware of the execution of the Will in question. Said reliance, it is contended, is misplaced and unjustified, keeping in view the fact that PW2 had clearly explained that this statement (Ex.D1) before the learned Assistant Collector First Grade, Mansa was suffered by him under pressure and duress on account of terrorism being in place. Apart from the above, evidence of scribe PW1 has been incorrectly ignored. It is contended that Will can be sufficiently proved on the basis of testimony of the scribe as well. PW1 scribe has stated in no uncertain terms that he scribed the Will on 05.08.1981 at the instance of Chand Singh in the presence of Hamir Singh and Hardial Singh. Will was stated to have been read out in the presence of attesting witnesses, pursuant to which Chand Singh had affixed his thumb impression on the Will. Hamir Singh, Lambardar PW2 and Hardial Singh

had signed and thumb marked the Will, respectively. Thereafter, Will was registered on 06.08.1981 at serial No. 1074 in the register. No cross examination of PW1, it was contended, was carried out in regard to his deposition regarding execution of valid Will dated 05.08.1981. Discarding of statement of attesting witness PW2 is alleged to be unjustified as proceedings before the Revenue officer are summary in nature and statements recorded by Revenue Officer are not per se admissible. Learned court below, it is further contended, have lost sight of defendant No. 1 – Kartar Kaur setting up unregistered Will dated 28.03.1993 allegedly executed by Chand Singh. Said Will was disbelieved by the Assistant Collector being surrounded by suspicious circumstances. Will dated 28.03.1993 was not propounded by defendant No. 1 in the civil suit. Nevertheless notice of the same should have been taken inasmuch as earlier Will dated 05.08.1981 executed by Chand Singh in favour of the plaintiffs finds mention. Thus, it proves that Will dated 05.08.1981 had been duly executed in favour of the plaintiffs. It is further submitted that reason for ignoring Kartar Kaur is evident on record as some land already stood transferred by Chand Singh in favour of Kartar Kaur as admitted by DW3 Saun Singh.

9. Learned counsel for the appellants also argued that it is a common trend in the State of Punjab that land in agricultural families would be retained within the family and would be transferred in favour of male members in case, there was no issue from the marriage. Moreover, evidence on record to show that Chand Singh was living with appellants and his last rites etc. were also performed by them, has been incorrectly ignored by both the learned courts below.

10. It is submitted that following substantial questions of law are involved for consideration in this case:-

1. Whether cogent evidence on record has been ignored while returning the finding against the appellants?
2. Whether statement of the attesting witness Hamir Singh PW2 before the Revenue authorities was required to be discarded in the light of his categorical statement before the learned trial Court?
3. Whether both the learned trial Court and first Appellate Court have erred in law and on facts in dismissing the suit for declaration filed by the plaintiffs?

11. It is, thus, prayed that this appeal be allowed, impugned judgments and decrees dated 08.02.1999 and 09.10.2022 passed by the learned Civil Judge (Junior Division), Mansa and learned Additional District Judge, Mansa, respectively be set aside and suit filed by the plaintiffs – appellants be decreed throughout.

12. Learned counsel for respondent No. 1 while refuting the arguments raised by learned counsel for the appellants submits that both the learned courts below have returned well-reasoned and logical judgments after proper scrutiny and consideration of evidence on record. It is, thus, prayed that this appeal be dismissed,

13. Heard learned counsel for the parties and have gone through the record with their able assistance.

14. Property in question admittedly belonged to Chand Singh. Chand Singh was survived by his widow. He died issueless. Chand Singh had nephews (sons of real brother) namely Maghar Singh, Meta Singh and Bahadur Singh sons of Jaggar Singh son of Sham Singh (all plaintiffs) as

well as Kheta Singh son of Jaggar Singh, who had predeceased Chand Singh. Chand Singh died on 15.04.1993. After Chand Singh's death, mutation No. 2596 was proposed to be entered on 24.04.1993 qua property of Chand Singh in favour of his widow. The same was disputed with plaintiffs setting up registered Will dated 06.08.1981 in their favour and in favour of Kheta Singh. Matter was, thus, sent to Assistant Collector First Grade for decision. Learned Assistant Collector First Grade vide order dated 07.10.1994 discarded registered Will dated 06.08.1981 in favour of the appellants as well as unregistered Will dated 28.03.1993 propounded by defendant – Kartar Kaur and sanctioned mutation of Chand Singh's property in favour of Kartar Kaur by way of natural succession. Matter was remanded by the learned Collector, Mansa vide order dated 31.01.1995 while observing that fresh speaking order should be passed by the learned Assistant Collector First Grade after giving due weightage to the evidence on record. Present suit for declaration was then filed by the present plaintiffs - appellants seeking ownership of the property in question to the extent of $\frac{3}{8}^{\text{th}}$ share on the basis of registered Will dated 05.08.1981. In the meanwhile, Assistant Collector First Grade, Mansa vide order dated 09.04.1995 sanctioned mutation in favour of Kartar Kaur on the basis of natural succession being Class I legal heir of Chand Singh.

15. Having filed the suit on the basis of Will dated 05.08.1981, it is undeniable that it was for the plaintiffs – appellants to prove the said Will. It is relevant to refer to Section 63 of the Indian Succession Act, which deals with execution of unprivileged Wills. Section 63 of the Indian Succession Act reproduced as hereunder:-

63. Execution of unprivileged Wills. —Every testator, not being a soldier employed in an expedition or engaged in actual

warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules:—

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

16. To prove the Will in question, plaintiffs examined one of the attesting witnesses namely Hamir Singh, who deposed as PW2. It is pertinent to note that this witness before the learned Assistant Collector First Grade in the year 1994 had specifically deposed that he was not witness to execution of said Will and neither had he seen Chand Singh appending his signatures thereon and that signatures of PW2 were taken on blank papers. PW2 was duly confronted with this document and he sought to explain the same by stating that statement in the year 1994 had been suffered by him under pressure due to terrorism. It is relevant to note at this stage that PW2 has admitted his statement made by him before learned Assistant Collector First Grade. Therefore, argument raised on behalf of the appellants that such statement before the Revenue authorities is to be ignored altogether, is devoid of any merit. Once having admitted the contradictory statement and explanation set forth by PW2 being found to be patently incorrect and

unsubstantiated by the evidence on record, the vacillating stand taken by PW2 does render his testimony unworthy of credence.

17. Similarly argument raised on behalf of the appellants that testimony of scribe is sufficient to prove execution thereof is untenable, hence rejected. Much stress has been laid on the observations of learned Additional District Judge in respect to non-examination of other attesting witness namely Hardial Singh. It was stated that Hardial Singh had pre-deceased Chand Singh therefore, could not be examined. Be that as it may, the same has no bearing keeping in view the factual matrix, wherein the evidence on record is otherwise insufficient to prove execution of Will dated 05.08.1981.

18. Another important fact to be noted is that there is indeed no explanation for exclusion of the wife from the Will. Doubtlessly, it has been claimed that 8½ acres of land was transferred to Kartar Kaur by Chand Singh but there is no evidence on record to this effect. Reference to statement of DW3 Saun Singh in this respect is of no avail whatsoever to the appellants. There is no detail or description of the property in question so transferred in favour of Kartar Kaur. In view of the stray reference by DW3, it cannot be conclusively held that some land was transferred in favour of Kartar Kaur prior to execution of Will dated 05.08.1981. Per contra, defendant – Kartar Kaur has proved on record that she and Chand Singh were living together. There is no evidence on record to show that Chand Singh had been residing with the plaintiffs as pleaded by them. Kartar Kaur has led categorical documentary evidence in the shape of voters list (Ex. D3), ration card, Mark A etc. to prove that they were living together. It is proved from these documents that Chand Singh was living with Kartar Kaur in the

same house. In case, Chand Singh had strained relations with Kartar Kaur as alleged by the plaintiffs, it was not expected that he would be living in the same house. There is no evidence on record to indicate that Chand Singh had been residing with the plaintiffs or that they were rendering any service to him or even that last rites of Chand Singh were performed by the plaintiffs. Mere factum of registration of Will dated 05.08.1981 by itself cannot be proof of its genuineness.

19. Accordingly, questions of law raised in this appeal are answered against the appellants and in favour of respondent No. 1 in the given facts and circumstances as narrated in the foregoing paras.

20. Judgment and decree dated 08.02.1999 passed by the learned Civil Judge (Junior Division), Mansa as well as judgment and decree dated 09.10.2000 passed by learned Additional District Judge, Mansa are well reasoned and logical judgments passed on proper appreciation of evidence on record. Learned counsel for the appellants is unable to point out any illegality and infirmity in the impugned judgments and decrees dated 08.02.1999 and 09.10.2000, which calls for interference by this Court in the concurrent findings returned by both the learned Courts below.

21. No other argument has been addressed.

22. Appeal is, accordingly, dismissed with no order as to costs.

April 28, 2023

rts

(Lisa Gill)

Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No