

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

RSA No. 3710 of 2011

DATE OF DECISION :- April 11, 2023

Dilmeet Kaur @ Dato

...Appellant

Versus

Daljit Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Amit Jain, Sr. Advocate
with Mr. Dhruv Mittal, Advocate for the appellant.

Mr. H.S. Bath, Advocate for the respondent.

1. In nutshell facts of the case are that plaintiff Dilmeet Kaur @ Dato, a married daughter of Gurdit Singh through power of attorney Jaideep Singh Dhillon son of Gurdeep Singh Dhillon resident of Village Chabhal Kalan, Tehsil and District Tarn Taran had brought a suit against Daljit Kaur, another married daughter of Gurdit Singh, resident of village Sabhra, Tehsil Patti, District Amritsar, now District Tarn Taran seeking a declaration that plaintiff is co-sharer in possession of land measuring 84 kanals 17 marlas i.e. 1/2 share each of land measuring 169 kanals 13 marlas and 50 kanal 18 marlas as detailed in head note (a) and (b) of the plaint situated at Village Sabhra, Tehsil Patti and that the defendant has no right or interest in the suit land and as a consequential relief, the plaintiff prayed for grant of permanent injunction restraining the defendant from alienating the suit land in any

manner and as alternative relief plaintiff prayed for joint possession of suit land.

2. As per version of the plaintiff the suit land was originally owned and possessed by Sh. Gurdit Singh son of Sunder Singh resident of Village Sabhra. Gurdit Singh was married with Smt. Charan Kaur and from that wedlock he was blessed with a daughter namely Dilmeet Kaur alias Dato-plaintiff. Swaran Kaur alleged herself to be wife of Gurdit Singh whereas defendant No. 1 Daljit Kaur claimed to be daughter of Gurdit Singh from womb of Swaran Kaur. Gurdit Singh has expired. Swaran Kaur has also expired. Initially she was arrayed as defendant No. 2 but after her death her name was struck off from the memo of parties.

3. According to plaintiff defendant No. 1 Daljit Kaur has no right or concern with estate left behind by Gurdit Singh but she alleged that she has got executed a sale deed as well as a Will from Gurdit Singh. According to plaintiff if any sale deed or Will are proved then these documents are illegal, null and void and must have been prepared by such defendant in connivance with scribe and attesting witnesses. The sale deed must be paper transaction because Gurdit Singh was not in sound disposing mind at the time of execution of alleged Will. According to plaintiff she requested the defendant several times to concede her claim and not to alienate the suit land to any other person but to no effect. Feeling aggrieved, the plaintiff brought the suit in question.

4. On notice, the defendant appeared and filed a written statement contesting the suit raising various legal objections to wit that suit is not maintainable because plaintiff is not in possession of the suit land; the plaintiff has no locus standi to file the present suit; the suit has not been

properly valued for purpose of Court fee and jurisdiction; the suit is bad for non-joinder of necessary parties i.e. State Bank of India Branch, Sabhra. On merits the defendant admitted that suit land in ownership of Gurdit Singh earlier but added that Sh. Gurdit Singh during his lifetime had sold the land measuring 50 kanals 18 marlas detailed in head note (b) of the plaint to defendant for a valuable consideration of Rs.25,000/- vide sale deed dated 2.12.1983 and mutation was also sanctioned on basis of the said sale deed. Further Sh. Gurdit Singh had sold land measuring 39 kanals 19 marla comprising of khasra numbers 254//21,22,23,25/1,25/2 for a sum of Rs.30,000/- vide sale deed dated 6.4.1993. In that way at the time of his death Sh. Gurdit Singh was owner of land measuring 78 kanals 16 marlas only. The defendant denied that plaintiff has 1/2 share in the suit land.

5. According to defendant Sh. Gurdit Singh had two wives namely Charan Kaur @ Gurcharan Kaur and Swaran Kaur. Charan Kaur died during lifetime of Gurdit Singh. Dilmeet Kaur alias Dato-plaintiff was born from wedlock of Gurdit Singh and Charan Kaur while Daljit Kaur defendant was born from wedlock of Gurdit Singh and Swaran Kaur. The defendant denied that marriage of Swaran Kaur with Gurdit Singh was illegal and void. According to the defendant, Gurdit Singh during his lifetime had executed Will dated 9.10.1998 in favour of Daljit Kaur-defendant in lieu of services rendered to him by her because Daljit Kaur used to live with Gurdit Singh at Village Sabhra. Plaintiff had left Village Sabhra and was living at Pune. Gurdit Singh executed three sale deeds during his life time i.e. one in favour of plaintiff for land measuring 69 kanals 5 marlas and second sale deed for land measuring 50 kanals 18 marlas in favour of defendant for a sum of Rs.25,000/- dated 2.12.1983 whereas third sale deed dated 6.4.1993 for land

measuring 39 kanals 19 marlas was executed by Gurdit Singh in favour of defendant Daljit Kaur for Rs.30,000/-; the sale deeds in favour of defendant as well as Will executed by Gurdit Singh in favour of defendant are legal, and valid documents while denying that Gurdit Singh was not in sound disposing mind at the time of execution of Will.

6. According to the defendant Gurdit Singh remained in sound disposing mind until his death and did not challenge the sale deed executed by him in favour of defendant during his life time. The plaintiff has no concern or interest with inheritance of Gurdit Singh and she has no locus standi to file the suit. In the end the defendant prayed for dismissal of the suit.

7. The plaintiff filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint. On pleading of the parties following issues were framed :-

- 1) Whether the plaintiff is owner in possession of land measuring 84K-17M fully detailed in the head note of the plaint?OPP
- 2) Whether the sale deed dated 2.12.1983 and 6.4.1993 executed by Gurdit Singh in favour of defendant are illegal, null and void?OPP
- 3) Whether Gurdit Singh executed Will dated 9.10.1998 in favour of defendant Daljit Kaur?OPD
- 4) Whether the suit of the plaintiff is not maintainable in the present form?OPD
- 5) Whether the plaintiff has no locus standi to file the present suit?OPD
- 6) Whether the suit is within limitation?OPP
- 7) Whether the plaintiff is entitled to declaration as prayed for?OPP

- 8) Whether the plaintiff is entitled to injunction as prayed for?OPP
- 9) Whether the plaintiff is entitled to joint possession of the suit as an alternative relief?OPP
- 10) Relief.

8. The parties were afforded adequate opportunities to lead evidence in support of their respective claims. Vide judgment and decree dated 17.3.2010, the trial Court of Civil Judge (Senior Division), Tarn Taran by giving issue wise findings dismissed the suit of the plaintiff.

9. Feeling aggrieved, the plaintiff had preferred an appeal before District Judge which was assigned to Additional District Judge, Tarn Taran, who vide judgment and decree dated 20.4.2011 had dismissed the appeal. Still feeling aggrieved the plaintiff has knocked at the door of this Court by way of filing a Regular Second Appeal, notice of which was given to respondent defendant who had put in appearance through counsel.

10. I have heard learned counsel for the parties besides going through the record.

11. In this case certain facts are not much disputed i.e. Gurdit Singh being earlier owner of the property, his having married twice firstly with Charan Kaur and from that wedlock being blessed with a daughter Dilmeet Kaur alias Dato-plaintiff and second time with Swaran Kaur, who having given birth to Daljit Kaur defendant No. 1 from loins of Gurdit Singh. Gurdit Singh, Swaran Kaur and Charan Kaur have all expired. Now the litigation is between Dilmeet Kaur alias Dato daughter of Gurdit Singh from his first marriage with Charan Kaur as well as Daljit Kaur his daughter from second marriage with Swaran Kaur

12. If the estate of Gurdit Singh devolves by natural succession, then both his daughter i.e. Dilmeet Kaur alias Dato-plaintiff and Daljit Kaur defendant take the property in equal shares. But the question here is that whether Gurdit Singh had died intestate as claimed by the plaintiff or he had executed any Will in favour of defendant as claimed by the defendant.

13. To prove the Will in her favour defendant had examined DW4 Niranjn Singh Lambardar an attesting witness of the Will and the other attesting witnesses of the Will also namely DW2 Randhir Singh, DW3 Resham Singh besides its scribe. All of them have testified with regard to due execution of the Will by Gurdit Singh. Will is a registered document which carries presumption of due execution. The Will comes out to be a natural disposition which satisfies the judicial conscious of the Court. There is no such glaring circumstance which may put doubt in the mind regarding the Will being legal and valid document. Though before the trial Court and First Appellate Court several circumstances were pointed out by counsel for the plaintiff which according to the plaintiff give rise to suspicion with regard to execution of Will by Gurdit Singh in favour of defendant but all such circumstances have been discussed in detail and rejected observing that those do not create any suspicion. It is clear from the record that the plaintiff was earlier residing at Pune then she he had shifted to Canada and it was defendant along with her husband and family which had been looking after and serving the testator during his lifetime, therefore, testator was interalia inclined towards the defendant and wanted to reward her for the services rendered and had executed the Will qua his properties in her favour.

14. As far as the plaintiff is concerned though she had not made any mention in the plaint but it comes out that Gurdit Singh had also transferred

69 kanals 5 marlas of his land in favour of the plaintiff vide a registered sale deed. The plaintiff is desirous of claiming 1/2 share in the estate of Gurdit Singh but as discussed above, the testator had a natural desire to give more property to the defendant who had been residing with him and looking after him during his old age rather than the plaintiff who was residing at a far off place earlier at Pune and then in Canada. Therefore, it was all the more natural for the plaintiff to execute sale deed in favour of defendant qua land more in area than one transferred to the plaintiff. Similarly the execution of Will is outcome of that natural desire.

15. Although learned counsel for the appellant has argued that on account of unequal distribution of the land between the two daughters Will becomes a suspicious document but as has been pointed out earlier the testator was justified in making such unequal distribution with his more inclination towards the defendant who was residing with him and looking after him in his old age.

16. Another argument advanced by learned counsel was that Lambardar who has attested the Will is from different village but that is hardly a circumstance to reject the Will. Section 68 of the Evidence Act requires attestation of Will by two witnesses and it is nowhere provided that the Will should be attested by Lambardar of the village to which the testator belongs. The testator may get his Will attested from the person in which he has got faith and trust and those persons may be from the locality where he resides or relatives, friends, acquaintances etc. Therefore, this is no reason to doubt the authenticity of Will.

17. Another ground put forward by learned counsel for the appellant was that Will is result of undue influence but I do not find force in

this contention. Will bears photographs of the testator. It is a registered document bearing endorsement of the Sub Registrar that Will had been presented by the testator and he had read over and explained the contents of the Will to testator who had admitted those to be correct.

18. Sub-Registrar, a public servant acting in discharge of his official duties would not have registered the Will unless he was satisfied that the testator was executing it of his free mind and without any duress or coercion. As has already been observed registration of the Will goes a long way in showing due execution of the Will. Further more the plaintiff has not brought any cogent, convincing or reliable evidence much less in the form of medical documents to show that the testator was not possessed of sound mental faculties at the time when he had executed the Will. Therefore, the Will set up by the defendant comes out to be natural disposition and there is no reason to reject such Will. Further more with regard to sale deeds executed by Gurdit Singh in favour of defendant those are registered documents and during his life time the defendant had not made any effort to get them set aside. No reason is there to declare the sale deeds as illegal, null and void. Counsel for the appellant had referred to various judgments titled ‘Rashpal Singh Bahia and others versus Surinder Kaur and others’ 2008(2) R.C.R. (Civil) 411, ‘Savithri and Ors. Versus Karthyayani Amma and Ors.’ 2007(4) R.C.R. (Civil) 749, ‘Gajjan Singh versus Virsa Singh and others’ 2007(3) R.C.R. (Civil) 3 and ‘Babu Singh and ors versus Ram Sahai @ Ram Singh’ 2008(3) R.C.R. (Civil) 154 in support of contentions but those judgments are not applicable due to different circumstances and the context in which such observations had been made.

19. I find judgment of the trial Court as well as of the First Appellate Court to be quite detailed, well reasoned, based on proper appraisal, principle of evidence and correct interpretation of law. They do not suffer from any illegality or infirmity. Those are upheld.

20. The Regular Second Appeal is found to be without merit. No substantial question of law arises. Therefore, the appeal stands dismissed.

(H.S. MADAAN)
JUDGE

April 11, 2023
p.singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No