

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

RSA-705-2013 (O&M)

Reserved on: 11.01.2023

Date of pronouncement: 18.01.2023

Amrit Pal Kaur and another

...Appellants

Versus

Nishabar Singh (LR of deceased defendant Sarup Kaur)

...Respondent

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

Present: Mr. Jai Bhagwan, Advocate for the appellants.

None for the respondent.

H.S. MADAAN, J.

Briefly stated facts of the case are that Smt. Manjit Kaur, aged about 26 years-widow, Amrit Pal Kaur, aged about 05 years, minor daughter of late Sh. Shamsher Singh, residents of Village Fatehpur, Tehsil Samana, then at Village Alipur, Tehsil & District Patiala had brought a suit against defendant Smt. Sarup Kaur, widow of Surat Singh through her son and legal heir Nishabar Singh, resident of Village Fatehpur, Tehsil Samana, District Patiala seeking a declaration that plaintiffs are owners in joint possession of the suit land to the extent of 1/18th share out of the total land measuring 19K-9M situated at Village Fatehpur, Tehsil Samana, District Patiala and that defendant has 1/36th share in the suit land and mutation No.1449 entered in the

name of defendant qua inheritance of late Shamsher Singh in respect of 1/12th share is illegal, null and void, ineffective qua rights of the plaintiffs and is liable to be set aside; the plaintiff further sought relief of permanent injunction restraining the defendant and persons claiming under her, from alienating the suit property in any manner.

As per case of the plaintiffs, deceased Shamsher Singh, husband of plaintiff No.1 and father of plaintiff No.2 was owner of the land to the extent of 1/12th share out of the suit land; Sh. Shamsher Singh had died on 09.04.2001, leaving behind the plaintiffs and defendant as his only class-I legal heirs; after death of Sh. Shamsher Singh, the plaintiffs and defendant inherited his estate and became joint owners to the extent of 1/36th share each; the defendant had submitted an application to Tehsildar Samana on 29.08.2001 for entering and sanctioning the mutation with regard to the inheritance of late Sh. Shamsher Singh in favour of the plaintiffs and that of defendant, however, no notice was issued to the plaintiffs by Tehsildar concerned; subsequently, the plaintiffs came to know that the defendant in connivance with the revenue officials had got the mutation of the suit land sanctioned in her name, ignoring the claim of the plaintiffs, therefore, the mutation is liable to be set aside.

According to the plaintiffs, they had requested the defendant several times to admit their claim but to no effect, as such, they had approached the Court by way of filing the suit in question.

2. On notice, the defendant appeared and filed written

statement, contesting the suit challenging its maintainability, further contending that the plaintiffs have concealed the material facts from the Court, as such, are not entitled to any relief; as a matter of fact, no cause of action arose in their favour to bring the suit; that Sh. Shamsher Singh deceased had executed a Will dt. 29.03.2001 in favour of his mother Smt. Sarup Kaur, defendant in the suit, since relations of Sh. Shamsher Singh with his wife Smt. Manjit Kaur-plaintiff No.1 were strained, therefore, the impugned mutation was validly sanctioned in favour of the defendant; a compromise dt. 30.05.2002 was entered into between the parties which was attested by Sh. M.R. Vohra, Notary Public, Samana; the plaintiff No.1 had also appeared before the Assistant Collector, Ist Grade, Samana and made a statement that she had no objection if mutation qua inheritance of late Sh. Shamsher Singh was sanctioned on the basis of Will dt. 29.03.2001; plaintiff Manjit Kaur had received an amount of Rs.1,50,000/- from the defendant in terms of compromise dt. 30.05.2002; according to the defendant, she had been in exclusive possession of share of late Sh. Shamsher Singh in the suit property, with which the plaintiffs have got no concern. Refuting the remaining assertions, the defendant prayed for dismissal of the suit.

3. The plaintiffs filed replication, controverting the allegations in the written statement, whereas, reiterating the averments in the plaint.

4. From the pleadings of the parties, following issues were

framed:-

1. *Whether the plaintiffs are entitled to declaration as prayed for? OPP*
2. *Whether the plaintiffs are in joint possession of the suit land? OPP*
3. *Whether mutation no.1449 is illegal, null and void and is not binding upon the rights of the plaintiffs and is liable to be set aside? OPP.*
4. *Whether the plaintiff are entitled to permanent injunction as prayed for?OPP*
5. *Whether Shamsheer deceased executed a Will dated 29.3.2001 in favour of defendant, if so its effect? OPD*
6. *Whether the suit is not maintainable in the present form? OPD*
7. *Whether the plaintiffs have no cause of action to file the present suit?OPD*
8. *Whether the plaintiffs have not come to the court with clean hands, if so its effect? OPD*
9. *Whether plaintiff No.1 is debarred to inherit the property of Shamsheer Singh under Section 2 of Hindu Widows Remarriage Act, 1856? OPD*
10. *Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD*
11. *Relief.*

5. During the course of evidence of plaintiffs, plaintiff Manjit Kaur got her own statement recorded as PW-1 and repeated on oath case of plaintiffs as given in the plaint. She further examined Sh. Balwant Singh as PW-2, who supported their case materially. The plaintiffs produced in evidence several documents including certified copy of jamabandi for the year 2000-01 as Ex.P5 and thereafter, closed their evidence.

6. In rebuttal, the defendant examined Desa Singh as DW-1, Sudesh Kumar as DW-2, Gurdev Singh as DW3, Nishabar Singh (respondent herein) as DW4, H.K. Luthra, Advocate as DW5, Piara Singh as DW6 and Dr. Inderjit Singh as DW7 and thereafter, closed her evidence.

7. During the course of rebuttal evidence of plaintiffs, they tendered in evidence copy of order dated 21.04.2007 Ex.P6, certified copy of statement of Sh. Sahib Singh Dhindsa, Advocate as Ex.P7, attested copy of birth certificate Ex.P8 and thereafter closed the rebuttal evidence.

8. After hearing arguments, the trial Court of Addl. Civil Judge (Sr. Divn.) Samana, vide impugned judgment and decree dt. 04.09.2009 gave issue-wise findings and as a result thereof, the suit of the plaintiffs was decreed partly and plaintiff No.2 Amrit Pal Kaur was declared to be co-owner in joint possession to the extent of 1/36th share out of the suit land and mutation No.1449 was ordered to be set aside being illegal, null and void. A decree for permanent injunction was passed in favour of plaintiff No.2 Amrit Pal Kaur and defendant, her agents and attorney were restrained from alienating the suit property with regard to 1/36th share of plaintiff No.2. However, the suit for declaration as well as permanent injunction filed by Smt. Manjit Kaur-plaintiff No.1 had failed and was dismissed with costs, for the reason that she had already relinquished her rights in favour of the defendant for a consideration of Rs.1,50,000/-.

9. Feeling aggrieved by the judgment and decree passed by the trial Court, the LR of defendant, who is respondent in this appeal, had preferred an appeal, notice of which was given to the plaintiffs who had put in appearance. That appeal was allowed and judgment and decree rendered by the trial Court was set aside and the suit of the plaintiffs was ordered to be dismissed in toto, vide judgment dt. 21.08.2012.

10. Now it was turn of the plaintiffs to feel dissatisfied and they have approached this Court by way of filing the present Regular Second Appeal, notice of which was given to the respondent/Lr of defendant, who had initially put in appearance through counsel but subsequently that counsel stopped putting in appearance.

11. I have heard learned counsel for the appellant/plaintiffs besides going through the record.

12. At the very outset, it may be stated that relationship between the parties inter se and with Sh. Shamsher Singh deceased is not disputed so is the fact that Sh. Shamsher Singh was having 1/12th share in the suit land. Death of Shamsher Singh on 09.04.2001 is also not denied.

Now the question arises as to how estate of Shamsher Singh is to pass either by way of natural succession or by way of testamentary succession.

After giving a careful thought to the facts and circumstances of the case and evidence on the file, I find that the estate

of Shamsher Singh would rather go by natural succession. Though the defendant had set up a Will in her favour said to have been executed by Shamsher Singh but she had failed to establish that Shamsher Singh had executed a legal and valid Will in her favour. The trial Court on detailed analysis of the evidence brought on file by the parties and interpreting the law on the subject has observed that Will Ex.D2 is surrounded by suspicious circumstances, as such, cannot be relied upon. The reason for discarding the Will have been enumerated in para No.13. It has been observed that Will in question appears to have been executed by assuming that plaintiff Manjit Kaur would solemnize second marriage in case of death of Shamsher Singh testator of the Will. Manjit Kaur plaintiff No.1 is said to have solemnized second marriage after death of Shamsher Singh. It has been observed that nobody during one's life time can assume or foresee that his wife will solemnize second marriage after his death, particularly when it is nowhere mentioned in the Will Ex.D2 that testator of the Will had got strained relations with his wife. In that way, Will was held to be not a genuine document.

13. Another suspicious circumstance noticed was that though as per version of the defendant, deceased Shamsher Singh was having strained relations with his wife Manjit Kaur but there is no such mention in the recital of the Will. Furthermore the defendant was unable to prove these assertions by bringing sufficient evidence on the

record, which is a highly suspicious circumstance touching the validity and genuineness of the Will. It has further been observed that even if for a moment, it is taken that Shamsher Singh was having strained relations with his wife Manjit Kaur, it was not so with regard to his minor daughter Amrit Pal Kaur, whom he could not deprive of inheriting his estate without assigning any reason, that also made the Will a doubtful document. The trial Court has noticed that Will Ex.D2 appear signatures of Shamsher Singh in Punjabi whereas he used to sign in English as was deposed by PW-2 Balwant Singh. This witness had proved vouchers Ex.P1 to P4 with regard to receipt of salary by the deceased bearing his signatures which were in English.

14. One more factor which has been observed by the trial Court is that as per version of defendant, plaintiff No.1 Manjit Kaur had entered into a settlement with the defendant. It has been noticed that the defendant would not have paid an amount of Rs.1,50,000/- to the plaintiff without any rhyme or reason. In para No.18 of the judgment, the trial Court had observed that Will in question Ex.D2 is surrounded by suspicious circumstances, as such, it is not a valid and genuine document and is liable to be ignored qua inheritance of Shamsher Singh. In that way, the estate of Shamsher Singh is to go by natural inheritance to his wife Smt. Manjit Kaur-plaintiff No.1 and to his minor daughter Amrit Pal Kaur-plaintiff No.2 as well as Smt. Sarup Kaur deceased mother of Shamsher Singh. As regards Manjit Kaur, it has been observed that she is estopped by her own act and conduct

from claiming share in the suit property, since she herself had relinquished her share as per compromise Ex.D3. Statement made by Smt. Manjit Kaur in the Court of Assistant Collector, Ist Grade, Samana during mutation proceedings to the effect that she had relinquished her right in the suit property in favour of Sarup Kaur defendant has been taken into view.

15. The trial Court had observed that when compromise Ex.D3 is read inconsonance with statement of Manjit Kaur in the Court of Assistant Collector, Ist Grade, Samana Ex.D1, the same leads to the conclusion that Manjit Kaur had relinquished her share in the suit property and till date, she had not lodged any complaint to the police or other wings of the administration that her statement has been wrongly recorded in mutation proceedings and no compromise had been entered into between the parties. To make the things more clear, the defendant had examined DW-7 Dr. Inderjit Singh, Handwriting and Finger print expert, who after comparing the disputed signatures of Manjit Kaur on statement Ex.D1 and compromise Ex.D3 with her standard signatures, vide his report Ex.D8 with the help of photographic charts Ex.D9 to D16, negatives Ex.D17 to D24 came to the inference that the disputed signatures of Smt. Manjit Kaur tally with her standard signatures.

PW-1 Manjit Kaur during her cross-examination admitted her signatures on statement dated 30.05.2002 recorded in the Court of Assistant Collector, Ist Grade, Samana. She denied knowledge with regard to purchase of stamp paper worth Rs.300/- by her from Ram Pal,

Stamp vendor, Tehsil Complex Samana and appearing before Notary Public, Samana who had explained contents of compromise deed to her which she had executed. In that way, the compromise between Manjit Kaur and Sarup Kaur stood proved. Under the compromise, the plaintiff had relinquished her share in favour of defendant by accepting amount of Rs.1,50,000/-.

16. Now the question arises whether the relinquishment was with respect to the share of Manjit Kaur or that of her minor daughter Amrit Pal Kaur. The trial Court vide detailed discussion contained in para No.25 of the impugned judgment referring to Order 32 Rule 7 CPC, has observed that no next friend or guardian for the suit shall, without leave of the Court, expressly recorded in the proceedings enter into any agreement or compromise on behalf of a minor.

17. Under the circumstances, the suit had been filed by plaintiff Manjit Kaur for herself and as mother and natural guardian of her minor daughter Amrit Pal Kaur. It is nowhere claimed by plaintiff No.1 that she had sought any permission from the Court to enter into any agreement on behalf of minor daughter Amrit Pal Kaur. Therefore, compromise Ex.D3 could not deny share in the property to Amrit Pal Kaur.

Accordingly, Amrit Pal Kaur was declared to be co-owner in joint possession to the extent of 1/36th share out of the suit property and mutation No.1449 in favour of defendant was set aside having been found to be illegal, null and void. Relief qua plaintiff No.1 Manjit

Kaur was declined.

18. I find that the judgment passed by the trial Court is quite detailed, well reasoned, based upon proper analysis and appreciation by the Court. However, learned Addl. District Judge, wrongly interfered with that judgment and decree passed by the trial Court. Such Court had rather held the Will propounded by the defendant to be legal and valid document. Such approach of learned Addl. District Judge can certainly be not approved of. The trial Court had pointed out several serious defects and loopholes in the Will which have been conveniently ignored by Addl. District Judge while disposing of the appeal.

19. The judgment by Addl. District Judge rather shows misappraisal of evidence and wrong interpretation of law. The Will set up by the defendant was surrounded by several suspicious circumstances which the propounder of the Will had failed to clear. As such, the Will did not come out to be a legal and valid document. It was rightly rejected by the trial Court but learned Addl. District Judge, Patiala by non-application of mind and by adopting erroneous approach held the Will to be a legal and valid document, in that way, depriving minor Amrit Pal Kaur of her share in the property of her deceased father.

20. So far as Manjit Kaur is concerned, she was rightly denied a share in the property of Shamsher Singh as she had relinquished her claim in favour of her mother in-law, the defendant on accepting

Rs.1,50,000/- which as detailed in judgment of trial Court, she could not have done with regard to claim of Amrit Pal Kaur.

It may be mentioned here that Manjit Kaur had not preferred any appeal against the judgment and decree passed by the trial Court, that means she had accepted the appeal and is bound by the same. Under the circumstances, she is not found entitled to claim any share in estate of Shamsher Singh, whereas, Amrit Pal Kaur daughter of Shamsher Singh has got every right to get a share to the extent of 1/36th, was rightly granted to her by the trial Court which was wrongly snatched away from her by learned Addl. District Judge, Patiala. Therefore, this appeal is accepted. The impugned judgment and decree passed by learned Addl. District Judge, Patiala in CA-22-T are set aside. Resultantly, the judgment and decree passed by the trial Court dated 04.09.2009 are restored and upheld. The appeal is accepted with costs.

18.01.2023
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(H.S. MADAAN)
JUDGE

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