

RSA-403-1989 (O&M)
RSA-760-1989 (O&M)

2024:PHHC:072876 
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127 (2 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on : 05.03.2024
Pronounced on : 23.05.2024

1) RSA-403-1989 (O&M)

Gurdial SinghAppellant

Versus

Deep Singh and othersRespondents

2) RSA-760-1989 (O&M)

Deep SinghAppellant

Versus

Gurdial Singh and othersRespondents

CORAM: HON’BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. R.S. Rai, Sr. Advocate
with Mr. Anurag Arora, Advocate
for the appellant in RSA-403-1989 and
for respondent No.1 in RSA-760-1989.

Mr. Gopal Sharma, Advocate and
Ms. Palak Jain, Advocate
for the appellant in RSA-760-1989 and
for respondent No.1 in RSA-403-1989.

PANKAJ JAIN, J.

These two appeals are directed against a common judgment
passed by the Appellate Court on 19.12.1988. For convenience, the parties
are being referred by their original position in the suit i.e. Deep Singh as



plaintiff i.e. respondent No.1 in RSA-403-1989 and Gurdial Singh as defendant No.1 i.e. appellant in RSA-403-1989. Suit filed by plaintiff for possession stands partly decreed in appeal. Both the plaintiff as well as the contesting defendant i.e. defendant No.1 are in appeal.

2. Plaintiff filed a suit for possession as owner for land measuring 3 kanals 2 marlas as detailed in the plaint. Propounding will was executed by Anokh Singh, father of the parties. Plaintiff relied upon registered a Will dated 24.02.1978. Defendants contested the Will and claimed that the same was result of undue influence of fraud committed by the plaintiff on the testator Anokh Singh who had no authority to bequeath ancestral property.

3. Based on the rival pleadings, following issues were framed:-

1. Whether Anokh Singh father of the defendants/plaintiff executed any will in favour of the plaintiff vide which he bequeathed the land measuring 3 kanal 2 marla khewat No.411, Khatoni No.70, Khasra Nos.434(3-2)? OPP
2. Whether the suit is bad for non-joinder of necessary parties? OPD
3. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
- 3A. Whether the property in dispute is coparcenary property of Anokh Singh and his sons?OPD
4. Relief.

4. On appraisal of evidence vis-à-vis pleadings, the Trial Court dismissed the suit holding that Will is shrouded by suspicious circumstances and that the Will being in the nature of partition deed *qua* ancestral property was not binding and decided issue No.1 against the plaintiff. Issue No.3A framed with respect to the nature of the property was also decided against



the plaintiff. The Trial Court returned the finding that the property in the hands of Anokh Singh was ancestral in nature and dismissed the suit preferred by the plaintiff.

5. In appeal preferred by the plaintiff, the Appellate Court reversed finding on issue No.1 holding that there are no suspicious circumstances surrounding the Will. The same is not in the nature of partition deed. The Appellate Court also held the property to be ancestral in the hands of Anokh Singh and held that the plaintiff is entitled to succeed only *qua* share of Anokh Singh which is 1/8th. Thus, partly decreeing the suit filed by the plaintiff to the share of Anokh Singh.

6. Counsel for plaintiff while assailing the judgment passed by Appellate Court has attacked finding returned on issue No.3A, asserting that onus to prove issue No.3A was on defendants. It has been argued that a person who claims the property to be ancestral in nature has to prove that the same devolved from three prior generations. There being no evidence led by defendants to that effect, the Courts below erred in holding the property to be ancestral in nature. Counsel representing the plaintiff has supported the findings recorded by the Appellate Court on issue No.1 claiming that it's a registered document, the attesting witness as well as scribe of the same stand examined and both of them proved that the Will was executed by the testator in accordance with law. The same being the last wish of the testator needs to be honoured.

7. Counsel for defendant No.1 on the other hand has drawn attention of this Court to the findings recorded by Trial Court to submit that



in whole of the judgment, no evidence has been discussed to reverse the findings recorded by Trial Court. It has been argued that Trial Court rightly relied upon the law laid down by Supreme Court in the case of ***Kalyani (Dead) By LRs vs. Narayanan and others, 1980 Supp Supreme Court Cases 298*** to hold that the Deed created by father specifying shares of members of joint family and making it effective from the date of his death, in absence of consent of affected members of the family, cannot be held to be a valid arrangement and thus cannot be enforced by filing a civil suit. The Appellate Court without any reasoning has reversed the said finding. Merely recording that “perusal of the document shows that it is a Will and not a partition deed” is total misreading of evidence on record as well as the law on issue. Thus, the findings recorded on issue No.1 by the Appellate Court need to be reversed being perverse.

8. I have heard rival arguments of counsels for parties and have carefully gone through records of the case.

9. The primary issue relates to the estate left by Anokh Singh who died on 03.01.1984. In issue is the registered Will dated 24.02.1978 propounded by plaintiff alleged to have been executed by Anokh Singh. Anokh Singh died leaving behind six sons namely Mohinder Singh, Gurdial Singh (defendant No.1), Gurbir Singh, Pritam Singh, Surjit Singh and Deep Singh (plaintiff), three daughters namely Ranjit Kaur, Gian Kaur and a widow Punjab Kaur. Anokh Singh excluded his two sons namely Mohinder Singh and Surjit Singh, all the three daughters and wife. The reasons for exclusion of his two sons, all three daughters and wife have been given in



the Will. He bequeathed his property measuring 16 kanals in favour of his son Gurdial Singh (defendant No.1), 15 kanals 5 marlas in favour of Gurbir Singh and 16 kanals in favour of Pritam Singh and rest of his movable and immovable property to the plaintiff (Deep Singh). The relevant portion of the Will reads as under:-

“ ਵਸੀਅਤ ਨਾਮਾ

.....ਹੁਨ ਮੈਨੂੰ ਡਰ ਹੈ ਕਿ ਮੇਰੀ ਮੌਤ ਪਿਛੋਂ ਮੇਰੀ ਜੈਦਾਦ ਦੀ ਨਿਸਬਤ ਕੋਈ ਝਗੜਾ ਪੈਦਾ ਹੋ ਕੇ ਮੇਰੀ ਜੈਦਾਦ ਤਬਾਹ ਵਾ ਬਰਬਾਦ ਨਾ ਹੋ ਜਾਵੇ। ਇਸ ਲਈ ਅਜ ਮੈਂ ਬਕਾਇਮੀ ਹੋਸ਼ ਹਵਾਸ ਬਰੈਰ ਕਿਸ ਦੇ ਦਬ ਦਬਾ ਦੇ ਆਪਣੀ ਖੁਸ਼ੀ ਨਾਲ ਇਹ ਵਸੀਅਤ ਕਰਦਾ ਹਾਂ ਕਿ ਜਦ ਤਕ ਮੈਂ ਜਿੰਦਾ ਰਹਾਂਗਾ ਮੈਂ ਆਪਣੀ ਕੁਲ ਜੈਦਾਦ ਦਾ ਮਾਲਕ ਕਾਮਲ ਰਹਾਂਗਾ। ਮੇਰੀ ਮੌਤ ਪਿਛੋਂ ਮੇਰੀ ਜੈਦਾਦ ਅਰਾਜੀ 16 ਕਨਾਲ ਖਸਰਾ ਨੰ: 47(9-12) (8-8) ਮਾਲਕ ਕਾਮਲ ਮੇਰੇ ਪੁਤਰ ਗਰਦਿਆਲ ਸਿੰਘ ਤੇ ਅਰਾਜੀ 15 ਕ- 5 ਮ ਖਸਰਾ ਨੰ: 47 / 2 / 2 (4-18), 53 / 1 / 1 (2-7), 48/21/8 ਦਾ ਮਾਲਕ ਕਾਮਲ ਮੇਰਾ ਪੁਤਰ ਗੁਰਬੀਰ ਸਿੰਘ ਤੇ ਅਰਾਜੀ 16-ਕਨਾਲ ਖਸਰਾ ਨੰ 47 (19-22) (8-8) ਦਾ ਮਾਲਕ ਕਾਮਲ ਮੇਰਾ ਪੁਤਰ ਪ੍ਰੀਤਮ ਸਿੰਘ ਵਾਕਿਆ ਰਕਬਾ ਫਤੇਗੜ ਕਰੋਟਾਨਾ ਤਹਸੀਲ ਜੀਰਾ ਹੋਣਗੇ। ਬਾਕੀ ਦੀ ਮੇਰੀ ਕੁਲ ਜੈਦਾਦ ਮਨਕੁਲਾ ਵਾ ਗੈਰ ਮਨਕੁਲਾ (some text illegible) ਵਾਲਾ ਮਕਾਨ ਮੋਟਰ ਬਿਜਲੀ ਕਨੈਕਸ਼ਨ ਆਦਿ ਦਾ ਮਾਲਕ ਕਾਮਲ ਮੇਰਾ ਪੁਤਰ ਦੀਪ ਸਿੰਘ ਮਜ਼ਕੂਰ ਹੀ ਹੋਵੇਗਾ। ਮੇਰੇ ਹੋਰ ਕਿਸੇ ਵੀ ਵਾਰਸ ਦਾ ਮੇਰੀ ਜੈਦਾਦ ਮਨਕੁਲਾ ਵਾ ਗੈਰ ਮਨਕੁਲਾ ਨਾਲ ਕੋਈ ਵਾਸਤਾ ਨਹੀਂ ਹੋਵੇਗਾ। ਮੇਰੇ ਪੁਤਰ ਸੁਰਜੀਤ ਸਿੰਘ ਦੇ ਗੁਜਾਰੇ ਲਈ ਮੇਰੀ ਮੌਤ ਪਿਛੋਂ ਸ਼੍ਰੀ ਦੀਪ ਸਿੰਘ ਮੇਰਾ ਪੁਤਰ ਮਬਲਗ ਇਕ ਸੌ ਰੁਪਏ ਮਹਵਾਰ ਬਤੌਰ ਗੁਜਾਰਾ ਦੇਵੇਗਾ ਲਿਹਾਜ਼ਾ ਇਹ ਵਸੀਅਤ ਨਾਮਾ ਲਿਖ ਦਿਤਾ ਤੇ ਪੁਸ਼ਟੀ ਰਹੇਗੀ ਮਿਤੀ 24/2/1978

Will Deed

...I have apprehension that my property may ruin and destroy due to any dispute that may arise with regard to my property after my death. Therefore, today, I, while enjoying my right five senses and without any coercion and with my free will am executing this will that I will be owner and in possession of my property during my life time and after my death my son Gurdial Singh will be owner and is possession of my land measuring 16 kanals comprised in Khasra No. 47(9-12) (8-8) my son Gurbir Singh will be owner and in possession of my land measuring 15K -5M comprised in Khasra No. 47 / 2 / 2 (4-18), 53 / 1 / 1 (2-7), 48/21/8 my son Pritam Singh will be owner and in possession of my land measuring 16-0 Kanals com-



prised in Khasra No. 47 (19-22) (8-8) Situated in area of Fatehgarh Korotana, Tehsil Zira. My aforesaid son Deep Singh will be owner and in possession of my remaining moveable and immoveable property, house of (some text illegible), motor, electricity connection etc. My no other heir will have any concern with my moveable and immoveable property. My son Deep Singh will be providing hundred rupees per month for the maintenance of my son Surjit Singh after my death. Hence this will deed has been scribed which may serve as an authority as and when requires. Dated: 24/2/1978”

10. In order to prove the Will, plaintiff examined scribe Brij Mohan who appeared as PW3 and one of the attesting witnesses namely Darbara Singh who appeared as PW2. Trial Court while deciding issue No.1 held the exclusion of Mohinder Singh and Surjit Singh and wife Punjab Kaur as the suspicious circumstances. Trial Court further held that the reason assigned in the Will to exclude Surjit Singh could not be proved. It was further held that from the contents of the Will it is evident that the same amounted to partition of the joint family property held by Karta without consent of male members and thus the same was not enforceable in view of law laid down by Supreme Court in ***Kalyani’s case (supra)***. Appellate Court has reversed the finding holding that counsel for defendant No.1 is not able to point out any circumstances surrounding the Will to show that Anokh Singh did not execute the same and is a forged document.

11. The law regarding Will is well settled. Reliance can be placed upon the case of ***B. Venkatamuni vs. C.J. Ayodhya Ram Singh and others 2007 AIR (Supreme Court) 311***. Certain basic principles of law regarding



Will which have also been reiterated by the Courts from time to time that need to be kept in mind are as under:-

- (a) Onus to prove a Will is always on the propounder.*
- (b) Where there is a suspicious circumstance pointed out by the opposite party, the onus lies heavily upon the propounder to remove the suspicion by leading appropriate evidence.*
- (c) While arriving at a finding with respect to execution of the Will, the Court is thus not only required to see that the legal formalities have been proved, but is also required to satisfy its conscience regarding totality of circumstances.*
- (d) Section 68 of the Evidence Act postulates the mode and manner in which execution of a document is to be proved. If an attesting witness is alive, the propounder must examine one attesting witness subject to process of Court and capable of during evidence.*

The list is not exhaustive.

12. Thus, the propounder of the Will has not only to prove that the same is executed as per law but also has to dispel any suspicious circumstance surrounding the Will. The issue in present case relates to suspicious circumstance. In the considered opinion of this Court, mere exclusion of the natural heirs itself does not make a suspicious circumstance surrounding the Will. After all, Will is always divergence from the natural succession. Thus, exclusion of two sons, daughters and widow itself cannot be held to be a suspicious circumstance sufficient enough to dislodge a validly executed Will. Executant has assigned reasons. Court should be slow in commenting upon the sustainability of these reasons. The same should be perceived from point of view of testator. Apart from that Surjit



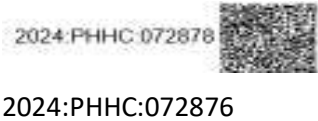
Singh has not been excluded but has been taken care of by a well thought arrangement.

13. Coming to the question as to whether the Will can be held to be invalid for having effected partition deed among the members of Hindu Undivided Family without their consent. Reliance by Trial Court on ratio of law laid down in *Kalyani's case (supra)* is misplaced. There is no pleading raised in written statement that any coparcener has any objection. Will comes into effect on death. Hindu Succession Act provides for mechanism under which undivided interest of a deceased coparcener can be ascertained. The interest of a Hindu Mitakshara Coparcener shall be deemed to be the share in the property that would have been allotted to him if the partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not. Notional partition has to be assumed immediately before his death.

14. In view of above, this Court finds that the judgment and decree passed by the Appellate Court needs to be modified to the extent that findings on issue No.1 and issue No.3A are affirmed. However, suit filed by plaintiff for specific portion cannot be decreed. He needs to get the suit property partitioned by metes and bounds.

15. As a sequel of discussions held herein above, both the appeal bearing RSA No.403 of 1989 filed by Gurdial Singh (defendant No.1) and the appeal bearing RSA No.760 of 1989 filed by Deep Singh (plaintiff) are dismissed. No costs.

RSA-403-1989 (O&M)
RSA-760-1989 (O&M)



- 16. Pending application(s), if any, shall also stand disposed off.
- 17. Photocopy of this order be placed on file of the connected case.

(PANKAJ JAIN)
JUDGE

May 23, 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No