

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1694-2001 (O/M)
Reserved on : 17.05.2024
Date of decision : 20.05.2024

Mohinder Singh minor adopted s/o Naranjan Singh Appellant

Versus

Gurdial Kaur alias Dialo and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Satinder Khanna, Advocate
for the appellant.

Mr. Jugam Arora, Advocate for
Mr. R.K. Arora, Advocate
for respondents.

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HARSH BUNGER, J.

1. The present regular second appeal has been filed by the appellant-plaintiff against a common judgment and decree dated 30.03.2001, passed by the Court of Additional District Judge, Ludhiana; whereby the appeal filed by respondents-defendants against the judgment and decree dated 30.11.1994, passed by the trial Court, decreeing the suit of appellant-plaintiff for declaration that he is the only legal and natural heir of Naranjan Singh and thus, entitled to receive the death-cum-retirement gratuity, group insurance scheme etc. of Naranjan Singh; had been allowed and the cross objections filed by the appellant-plaintiff were dismissed and consequently, the suit of the appellant-plaintiff was dismissed.

2. Succinctly, the appellant-plaintiff filed a suit for declaration, as noticed above; on the plea that Naranjan Singh son of Sohan Singh was his real uncle, who died on 18.07.1985 at village Nothe-Khazooran, Tehsil Jagraon. It is the pleaded case of the appellant-plaintiff that he was adopted by Naranjan Singh, as his son and the ceremony of adoption was performed in the presence of near relations. It was averred that after the adoption, Naranjan Singh had been treating appellant-plaintiff as his son and similarly appellant-plaintiff was treating said Naranjan Singh as his father. It was further averred that Naranjan Singh never married during his lifetime and he had been living with the appellant-plaintiff, in the house of Pritam Singh (natural father of appellant-plaintiff). It was yet further pleaded that in lieu of the services rendered by appellant-plaintiff to abovesaid Naranjan Singh, said Naranjan Singh executed a Will dated 04.06.1985 whereunder appellant-plaintiff was appointed as a sole legatee. Appellant-plaintiff stated that the respondent-defendant No. 1 claimed herself to be the widow of Naranjan Singh and respondents-defendants No. 2 to 5 claimed themselves to be children of Naranjan Singh, whereas appellant-plaintiff claimed that Naranjan Singh never married during his lifetime. According to the appellant-plaintiff, he approached the respondents-defendants several times to admit his claim qua gratuity etc. of Naranjan Singh, however, of no avail.

On the basis of the aforesaid pleas, the suit was filed.

3. Upon notice, respondents-defendants appeared and filed their written statement wherein certain preliminary objections were taken as regards, maintainability of the suit, locus-standi of the appellant-plaintiff to file the suit, non-joinder of Northern Railway as a necessary party etc.

On merits, the respondents-defendants denied that Naranjan Singh ever adopted the appellant-plaintiff as his son and it was further denied that Naranjan Singh ever treated the appellant-plaintiff as his son. It was specifically denied that Naranjan Singh had made any Will as propounded by appellant-plaintiff. It was stated that the said Will is a forged and fabricated document. It was claimed by respondents-defendants that Naranjan Singh married Gurdial Kaur (respondent-defendant No. 1) and out of this wedlock, respondents-defendants No. 2 to 5 were born. It was, therefore, stated that there was no question of appellant-plaintiff being adopted by Naranjan Singh. It was claimed that only the respondents-defendants are entitled to receive gratuity and other monetary benefits of Naranjan Singh.

With the aforesaid submissions, prayer for dismissal of the suit was made.

4. The appellant-plaintiff filed replication and from the pleadings of the parties, the trial Court framed the following issues :-

- “1. Whether Mohinder Singh is the adopted son of Naranjan Singh ? OPP*
- 2. Whether Naranjan Singh has executed a valid Will dated 4.6.85 in favour of the plaintiff ? OPP*
- 3. Whether the plaintiff is entitled for declaration ? OPP*
- 4. Whether the suit is bad for non-joinder of necessary parties ? OPP*
- 5. Whether Gurdial Kaur defendant is widow of Naranjan Singh ? OPD*
- 6. Relief.”*

5. In order to prove their case, the parties led their respective evidence.

6. The trial Court, on appreciation of oral as well as documentary

evidence led by the parties, returned findings on issue No. 1 that the appellant-plaintiff was never taken in adoption by Naranjan Singh. As regards issue No. 5, learned trial Court held that no doubt Gurdial Kaur (defendant No. 1) married to Naranjan Singh, but said Gurdial Kaur left the house of Naranjan Singh in the year 1969 and started living with Lekh Raj as his wife at Moga alongwith her children. Further, the learned trial Court, while deciding issue No. 2, came to the conclusion that the Will (Ex.P1) is a valid Will of Naranjan Singh and stands duly proved.

On the basis of the aforesaid findings, the learned trial Court decreed the suit of appellant-plaintiff by holding that Mohinder Singh (appellant-plaintiff) was the sole legal heir of Naranjan Singh on the basis of Will dated 04.06.1985 and thus, entitled to inherit the estate of Naranjan Singh. It was further declared that the respondents-defendants had no concern with the payment of death-cum-gratuity, group insurance scheme and other dues left by Naranjan Singh.

7. Feeling aggrieved, the respondents-defendants filed an appeal before the lower appellate Court. On the other hand, the present appellant-plaintiff also preferred his cross objections.

8. The appeal filed by respondents-defendants and also the cross objections filed by the present appellant-plaintiff came to be decided by the lower appellate Court, vide a common judgment and decree dated 30.03.2001, whereby the appeal filed by the respondents-defendants was allowed by setting aside the judgment and decree dated 30.11.1994, passed by the trial Court and the cross objections filed by the appellant-plaintiff were dismissed. Consequently, the suit for declaration filed by the appellant-plaintiff was

dismissed.

Hence, the present regular second appeal by the appellant-plaintiff.

9. Learned counsel for appellant-plaintiff submitted that the first appellate Court has erred in law and fact in accepting the appeal of respondents-defendants and dismissing the suit of the appellant-plaintiff. It is submitted that the first appellate Court has failed to consider the material evidence placed on record and the findings have been returned on the basis of inadmissible and inadequate evidence. Learned counsel for appellant-plaintiff would submit that the first appellate Court has wrongly discarded the Will dated 04.06.1985 (Ex.P1) by holding the same to be surrounded by suspicious circumstances and, therefore, not a genuine document. It is submitted that the Will in question was duly proved on record. It is contended that the first appellate Court has taken the suspicious circumstances on assumptions and presumption and the same are untenable in law. Accordingly, it is prayed that the impugned judgment and decree dated 30.03.2001 be set aside being legally un-sustainable and suit filed by appellant-plaintiff be decreed.

10. Per contra, learned counsel appearing for respondents-defendants controverted the submissions made on behalf of appellant-plaintiff. It is submitted that the first appellate Court has passed a well reasoned and justified judgment taking into consideration all the relevant facts, pleadings as well as evidence available on record. It is further submitted that the alleged Will dated 04.06.1985 (Ex.P1) is surrounded by suspicious circumstances; which have not been dispelled by the appellant-plaintiff and no reliance could have been placed on the said Will. Therefore, it is contended that the alleged Will dated 04.06.1985 (Ex.P1), propounded by the appellant-plaintiff, has been

rightly discarded by the Court below.

It is further submitted that there is no merit in the appeal and neither there is any substantial question involved. Accordingly, the prayer for dismissal of the appeal has been made.

11. I have heard the learned counsel for the parties and perused the record.

12. Whether a Will is surrounded by suspicious circumstances or not is essentially a question of fact. The legal principles in regard to proof of a Will are no longer res-integra. A Will must be proved having regard to the provisions contained in clause (c) of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872, in terms whereof the propounder of a Will must prove its execution by examining one or more attesting witnesses. Where, however, the validity of the Will is challenged on the ground of fraud, coercion or undue influence, the burden of proof would be on the caveator. In a case where the Will is surrounded by suspicious circumstances, it would not be treated as the last testamentary disposition of the testator.

13. In *H. Venkatachala Iyengar v. B.N. Thimmajamma*, AIR 1959 *Supreme Court* 443, Hon'ble Apex Court opined that the fact that the propounder took interest in execution of the Will is one of the factors which should be taken into consideration for determination of due execution of the Will. It was also held that one of the important features which distinguishes Will from other documents is that the Will speaks from the date of death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his Will or not; and

this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last Will and testament of the departed testator.

It was also held that the propounder of Will must prove:

- (i) that the Will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and he put his signature on the document of his own free will, and
- (ii) when the evidence adduced in support of the Will is disinterested, satisfactory and sufficient to prove the sound and disposing state of testator's mind and his signature as required by law, Courts would be justified in making a finding in favour of propounder, and
- (iii) If a Will is challenged as surrounded by suspicious circumstances, all such legitimate doubts have to be removed by cogent, satisfactory and sufficient evidence to dispel suspicion.

In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts indicated therein.

14. In ***Jaswant Kaur v. Amrit Kaur and ors., (1977) 1 SCC 369***, Hon'ble Apex Court pointed out that when the Will is allegedly shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and defendant. An adversarial proceeding in such cases becomes a matter of Court's conscience and propounder of the Will has to remove all suspicious circumstances to satisfy that Will was duly executed by testator wherefor

cogent and convincing explanation of suspicious circumstances shrouding the making of Will must be offered

15. In ***Bharpur Singh v. Shamsheer Singh, 2009 (1) RCR (Civil) 826;***

Hon'ble Supreme Court held as under:-

“17. Suspicious circumstances like the following may be found to be surrounded in the execution of the Will:

i) The signature of the testator may be very shaky and doubtful or not appear to be his usual signature.

ii) The condition of the testator's mind may be very feeble and debilitated at the relevant time.

iii) The disposition may be unnatural, improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate provisions for the natural heirs without any reason.

iv) The dispositions may not appear to be the result of the testator's free will and mind.

v) The propounder takes a prominent part in the execution of the Will.

vi) The testator used to sign blank papers.

vii) The Will did not see the light of the day for long.

viii) Incorrect recitals of essential facts.

18. The circumstances narrated hereinbefore are not exhaustive. Subject to offer of reasonable explanation, existence thereof must be taken into consideration for the purpose of arriving at a finding as to whether the execution of the Will had duly been proved or

not... ”

16. Coming to the case in hand, the case set up by the appellant-plaintiff that he was adopted by Naranjan Singh was not believed by the trial Court and the trial Court further held that defendant No. 1 (Gurdial Kaur) was the wife of Naranjan Singh. Therefore, the claim of the appellant-plaintiff that Naranjan Singh was unmarried was disbelieved; however, the suit of the appellant-plaintiff was decreed only on the basis of the Will dated 04.06.1985 (Ex.P1), allegedly executed by Naranjan Singh. The said Will (Ex.P1) is stated to be scribed by PW4 (Kuldeep Kumar, Deed Writer). In order to prove the said Will, the appellant-plaintiff examined Ujagar Singh (PW1), Dessa Singh (PW2) and Pala Singh (PW3).

17. Although, the learned trial Court returned a finding that the Will dated 04.06.1985 (Ex.P1) was proved; however, the learned first appellate Court has discarded the Will by observing that the same was surrounded by suspicious circumstances. The appellate Court below has noticed the following suspicious circumstances surrounding the aforesaid Will dated 04.06.1985 (Ex.P1) :-

- i) Will (Ex.P1) is an unregistered document, which was scribed by a licenced deed writer Kuldeep Kumar of Jagraon. There is no explanation on the part of the plaintiff as to why this Will was not got registered with the Sub Registrar ;*
- ii) Defendants have examined DW6-A.K. Singla, Document and finger print expert and as per his report (Ex.DW6/1), it is clearly stated that the disputed signatures of Naranjan Singh on the Will (Ex.P1), does not tally with his standard signature*

S1 to S3 :

- iii) Plaintiff has not examined any expert witness to rebut the said report of DW6 A.K. Singla :*
- iv) Raj Kumar, Record Keeper, Railway Department, Ludhiana examined as DW9 has produced attendance register (Ex.DW9/A) for the period 16.03.1985 to 15.03.1986 and as per this register, Naranjan Singh was on duty on 04.06.1985. Defendants have examined this witness to prove the fact that Naranjan Singh was not present in Jagraon, when Ex.P1 (Will) was executed and rather he was on duty at Ludhiana in Railway Department on 04.06.1985 when the Will in question was executed ;*
- v) PW4 Kuldeep Kumar, Scribe of the Will stated that he comes to the Court compound at 9.30 am but he does not remember whether the Will was completed at 12 noon or started at 12 noon, though he stated that he has scribed the same at about 12 noon. In the attendance register, Naranjan Singh had been shown to be present on his duty on 04.06.1985, during his entire duty hours ;*
- vi) It is case of the plaintiff that he was adopted by Naranjan Singh, since he was unmarried and had no widow or issue. Further, it is the case that said Naranjan Singh had also executed the Will in question, in his favour, on account of love and affection, as well as on account of services rendered by him towards the executant of this Will. If he had been adopted*

by Naranjan Singh, then, certainly he was to succeed his entire inheritance by way of operation of law and there would have been no need to execute any kind of Will etc. so the plea of adoption as well as plea of alleged Will are found to be quite contrary as well as inconsistent to each other ; and

vii) Plaintiff (Mohinder Singh) appeared as PW13 and deposed that Naranjan Singh was not having any wife or issue and he used to treat plaintiff as his son and that plaintiff used to call him by saying “Taya”. He has nowhere stated that any Will had been executed by said Naranjan Singh.

18. I have considered the rival contentions raised on behalf of the parties. The onus of proving the impugned Will set up by appellant-plaintiff was on him. It is well established that if there are suspicious circumstances about the execution of Will, it is the duty of the person seeking declaration about the validity of the Will to dispel with suspicious circumstances. In this regard, reference can be made to the decision of Hon'ble the Supreme Court in ***Rani Purnima Debi and another Versus Kumar Khagendra Narayan Deb and another, AIR 1962 SC 567.***

19. In this case, the plaintiff-appellant might have complied with requirement of Section 68 of the Evidence Act by examining an attesting witness of the Will; however, this is not sufficient to hold the impugned Will to be genuine. Concededly, the testator (Naranjan Singh) was working with Northern Railway and on the day when the impugned Will is alleged to have been executed by Naranjan Singh, he was on his duty for the entire day. The respondents-defendants have led sufficient evidence on record by requisitioning

the attendance register and by examining DW9-Raj Kumar, Record Keeper, Railway Department, Ludhiana, wherein he deposed that he has brought the attendance register of the period 16.03.1985 to 15.03.1986 and as per this register, Naranjan Singh was on duty on 04.06.1985 for his entire duty hours. Learned counsel appearing for the appellant-plaintiff has been unable to refute the aforesaid evidence. Therefore, once the appellant-plaintiff has failed to prove the fact that on dated 04.06.1985, the testator (Naranjan Singh) was personally present at Jagraon for the purposes of execution of Will (Ex.P1) and on the other hand, the respondents-defendants had proved on record that on 04.06.1985, Naranjan Singh was present on his duty for his full duty hours at Ludhiana; no fault can be found with the findings returned by the first appellate Court that the Will dated 04.06.1985 was surrounded by suspicious circumstances. Furthermore, defendants have examined DW6-A.K. Singla, Document and finger print expert and as per his report (Ex.DW6/1), it is clearly stated that the disputed signatures of Naranjan Singh on the Will (Ex.P1), does not tally with his standard signature S1 to S3. It has also been held by the first appellate Court that when plaintiff (Mohinder Singh) appeared as PW13, he deposed that Naranjan Singh was not having any wife or issue and he used to treat plaintiff as his son and that plaintiff used to call him by saying "Taya". It has been held that appellant-plaintiff nowhere stated that any Will had been executed by said Naranjan Singh.

20. Considering the totality of circumstances, this Court is of the view that the suspicious circumstances indicated by the first Appellate Court, indeed creates suspicion on the validity as well as due execution of the Will dated 04.06.1985. The appellant-plaintiff has miserably failed to dispel all the

suspicious circumstances, as noticed above. Therefore, the Will set up by the plaintiff-appellant cannot be taken as the true and valid testament of late Naranjan Singh (testator) and the same has been rightly discarded by the first appellate Court. The finding recorded by the first appellate Court discarding the said Will does not suffer from any infirmity much less perversity or illegality nor it is based on misreading or mis-appreciation of evidence, so as to call for interference in second appeal.

21. Furthermore, drawing of a different inference other than that of the lower appellate Court, upon re-appreciation of the evidence, is outside the purview of Section 100 of Civil Procedure Code. In para 25 of ***Mst. Sugani Versus Rameshwar Dass and another***, 2006 (4) RCR (Civil) 319 (SC), the Hon'ble Apex Court has observed as under :-

"It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal, when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible. One drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence."

22. Applying the aforesaid principle to the facts of the present case, no fault can be found with the findings returned by the first appellate Court.
23. No question of law much less substantial question of law arises for adjudication in the instant second appeal. There is no merit in this appeal and the same is accordingly dismissed.
24. No other point has been urged.
25. Appeal dismissed.
26. All pending applications (if any) shall also stand closed.

(HARSH BUNGER)
JUDGE

20.05.2024
sjks

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No