

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 3750 of 2016 (O&M)

Rupinder Kaur alias Golu
... Appellant(s)

Versus

Sukhjit Kaur and Others
... Respondent(s)

AND

2. Regular Second Appeal No. 4436 of 2016 (O&M)

Kuldeep Singh and Others
... Appellant(s)

Versus

Sukhjit Kaur and Another
... Respondent(s)

DATE OF DECISION: 23.01.2024

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Vishal Aggarwal, Advocate
for the appellant(s) (In RSA-3750-2016) and
for the respondent No.2 (In RSA-4436-2016).

Ms. Mona Goyal, Advocate
for the appellant(s) (In RSA-4436-2016) and
for the respondent No.2 to 5 (In RSA-3750-2016).

Mr. Deepak Gupta, Advocate
for the respondent No.1 (In RSA-3750-2016 and
RSA-4436-2016).

Anil Kshetarpal, J.

CM-8296-C-2022 In RSA-3750-2016 And CM-8297-C-2022 In RSA-4436-2016

1. The prayer made in the application, which is supported by an

DEEPAK KUMAR BHARDWAJ
2024.02.01 11:01
I attest to the accuracy and
integrity of this document
affidavit, is allowed, subject to all the just exceptions. The proposed legal

**Regular Second Appeal No. 3750 of 2016 (O&M) AND
Regular Second Appeal No. 4436 of 2016 (O&M)**

2

representatives, named in para 2 of the application, are Class-I heirs of Darshan Singh, respondent No.4 (In RSA-3750-2016 and appellant No.3 (In RSA-4436-2016), who is stated to have died on 03.06.2016. They are permitted to be brought on record as the legal heirs of Darshan Singh, for the purpose of defending and prosecuting both the appeals.

RSA-3750-2016 And RSA-4436-2016

2. With the consent of the learned counsel representing the parties, two connected regular second appeals separately filed by the defendant as well as the subsequent purchasers shall stand disposed of by a common order.

3. In these regular second appeals, the correctness of the findings of facts, arrived at by the First Appellate Court, is assailed by the defendant and her subsequent vendees. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. The crux of this litigation lies in the competing claims of the widow and mother of late Sh. Hridey Pal Singh, who died at the young age of 32 years. Late Sh.Hridey Pal Singh was married to the appellant-Rupinder Kaur on 29.04.2005, whereas he allegedly executed the Will in favour of his mother on 21.11.2005. He died in a motor vehicular accident on 04.02.2006.

4. The suit was filed by Sukhjot Kaur, mother of late Sh.Hridey Pal Singh to claim the decree of declaration that she is the exclusive owner of the property left behind by late Sh.Hridey Pal Singh on the basis of the aforesaid Will, which was contested by Rupinder Kaur claiming that it is forged and fabricated. The Will has been produced as Ex.P4. It is not only

signed by late Sh.Hridey Pal Singh, but also signed by the two attesting

**Regular Second Appeal No. 3750 of 2016 (O&M) AND
Regular Second Appeal No. 4436 of 2016 (O&M)**

3

witnesses, namely Jaspal Singh, Nambardar and Gurcharan Singh. Both the witnesses are the residents of the same village. The Will scribed by Ranjit Singh, former Sarpanch. Jaspal Singh and Ranjit Singh have proved the Will while appearing in the witness box as PW.3 and PW.4, respectively. Sukhjit Kaur entered into the witness box as PW.1. It was a hand written Will, which was executed, signed and attested in the village. Late Sh.Hridey Pal Singh was serving as a Patwari in the Punjab Government. It has been stated in the Will that late Sh.Hridey Pal Singh was not maintaining cordial relations with his wife and she was also not residing with him. Thereafter, the testator referred to his married sisters and mother. It is also recited in the Will that his wife and mother would get the retiral and pensionary benefits in equal share, whereas he bequeathed his immovable property exclusively in favour of his mother.

5. The trial Court dismissed the suit claiming that the Will is surrounded by suspicious circumstances. However, the First Appellate Court reversed the judgment of the trial court after noticing the following facts:-

“The major facts supporting the claim of appellant and disproving the claim of respondent Rupinder Kaur are mentioned below:-

i) Rupinder Kaur had married to Hirdepal Singh on 29.4.2005 i.e. only a few months before his death which took place on 4.2.2006 in an accident and it has come in the evidence on record that their marital relations were not cordial. As such under these circumstances the

**Regular Second Appeal No. 3750 of 2016 (O&M) AND
Regular Second Appeal No. 4436 of 2016 (O&M)**

4

execution of Will dated 22.11.2005 (Ex.P-4) by deceased Hirdepal Singh in favour of his mother Sukhjit Kaur, aged about 62 years, cannot be doubted.

- ii) *Rupinder Kaur, respondent-defendant, while appearing as DW-1 categorically admitted in her cross-examination that she did not go back to her in-laws house at village Jodhpur Romana after Bhog ceremony of her deceased husband. She categorically admitted that no child was born to her from Hirdepal Singh. This fact apparently supports the plea of appellant-plaintiff that she never had cordial relations with her deceased husband and his family members.*
- iii) *Not only this, during the pendency of the main suit, she sold the suit land on 26.8.2011 vide sale deed Ex.D-7 to Kuldeep Singh son of Sadhu Singh, Harkirat Singh son of Tarlochan Singh, Darshan Singh son of Karnail Singh and Rakesh Kumar son of Jagan Nath, without seeking prior permission of the Court.*
- iv) *It is strange to note that none of the purchasers ever filed an application before the concerned Court where litigation was pending for becoming a party to the litigation.*
- v) *Rupinder Kaur apparently had got married for the second time, as is manifest from Mark-A to Mark-E, inspite of the fact that she had given an affidavit in the*

**Regular Second Appeal No. 3750 of 2016 (O&M) AND
Regular Second Appeal No. 4436 of 2016 (O&M)**

5

Government department before claiming pensionary benefits of deceased Hirdepal Singh.

- vi) *It would be appropriate to mention here that an FIR No.72 dated 9.6.2010, Ex.P-17, had been lodged against Rupinder Kaur under Sections 420 and 120-B of the Indian Penal Code and in the said FIR it has categorically been mentioned by the concerned police that the secret investigation conducted by them reveals second marriage contracted by Rupinder Kaur with Kamaljeet son of Baljinder Singh Brar, resident of village Kot Bhai.*
- vii) *Rupinder Kaur while appearing as DW-I categorically admitted in her cross-examination that Ranjit Singh is Ex.Sarpanch of village Jodhpur Romana and she knows him personally and she also knows Jaspal Singh Lamberdar and Gurcharan Singh son of Inder Singh of village Jodhpur Romana. It would be pertinent to mention here that Jaspal Singh and Gurcharan Singh are the marginal witnesses to the Will dated 22.11.2005 (Ex.P-4), whereas Ranjit Singh has scribed the said Will. Therefore, when Jaspal Singh, marginal witness appeared in the Court as PW-3 and supported the Will through his affidavit, Ex.PW-3/A, and Ranjit Singh scribe of the said Will appeared in the Court as PW-4 and supported the Will through his affidavit, Ex.PW-4/A, and*

**Regular Second Appeal No. 3750 of 2016 (O&M) AND
Regular Second Appeal No. 4436 of 2016 (O&M)**

6

both these witnesses categorically deposed that at the time of execution of the said Will Hirdepal Singh was of sound disposing mind and on his dictation the said Will was written and he after admitting its contents to be true had put his signatures on Will dated 22.11.2005 (Ex.P-4) and along with him both the marginal witnesses, namely, Jaspal Singh and Gurcharan Singh had put their signatures/thumb impression respectively on the Will, then under these circumstances the Will dated 22.11.2005 (Ex.P-4) has to be given due weightage, especially so when the same is in favour of Smt.Sukhjit Kaur aged about 62 years i.e. mother of deceased Hirdepal Singh.”

6. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book. Ms. Mona Goyal, Advocate, appearing for the subsequent purchasers, has also been heard at length.

7. The learned counsel representing the appellant-Rupinder Kaur contends that the spacing in between the different lines is uneven and the Will is not registered. He submits that though late Sh.Hridey Pal Singh was working as a Patwari, however, he did not get his Will scribed from a professional Scribe. In the end, the learned counsel contends that there is variation in the depositions of PW.3 Jaspal Singh and PW.4 Ranjit Singh.

8. On the other hand, the learned counsel representing the respondent-Sukhjit Kaur has supported the judgment of the First Appellate

**Regular Second Appeal No. 3750 of 2016 (O&M) AND
Regular Second Appeal No. 4436 of 2016 (O&M)**

7

Court while contending that appellant-Rupinder Kaur was not staying with late Sh.Hridey Pal Singh and this fact is not only recited in the Will, but also stated unequivocally by Ranjit Singh. He further submits that Rupinder Kaur has failed to produce any evidence to prove that she was staying with her husband in the village after her marriage.

9. This Court has considered the submissions of the learned counsel representing the parties.

10. The depositions of PW.1 Sukhjot Kaur, PW.3 Jaspal Singh and PW.4 Ranjit Singh have been read in open Court. It is evident that Sukhjot Kaur, while appearing in evidence, has stated that Rupinder Kaur was not maintaining cordial relations with her husband and she was also not residing with him. It is further contended by the learned counsel representing the respondent that late Sh.Hridey Pal Singh was working as a Patwari and no evidence has been led by appellant-Rupinder Kaur to prove that late Sh.Hridey Pal Singh did not execute the Will.

11. The Will is hand written and scribed by the former Sarpanch in Gurmukhi (Punjabi). It is specifically recited in the Will that Rupinder Kaur, though married to the testator, however, was not residing with him. It is a natural Will of the testator who felt disheartened on account of the marital discord. Late Sh. Hridey Pal Singh and Rupinder Kaur were married only seven months before the Will was executed. It has also come on record that late Sh.Hridey Pal Singh was not maintaining good health. Furthermore, all the three witnesses namely, PW.1 Sukhjot Kaur, PW.3 Jaspal Singh and PW.4 Ranjit Singh have been put searching questions in their detailed cross-

examination by the learned counsel representing the defendant, however, he

**Regular Second Appeal No. 3750 of 2016 (O&M) AND
Regular Second Appeal No. 4436 of 2016 (O&M)**

8

failed to discredit them.

12. The learned counsel representing the appellant, while highlighting the uneven spacing in between the lines, has tried to impress upon this Court to conclude that the Will is not a natural Will while submitting that late Sh.Hridey Pal Singh used to go to the office of the Deputy Commissioner quite often. He submits that he could have got the Will registered.

13. There is no requirement to get the Will registered. It is the option of the testator. In other words, there is no mandatory requirement to get the Will registered. Late Sh.Hridey Pal Singh was working as a Patwari who was well versed with the law. The defendant has not led any evidence to prove that late Sh.Hridey Pal Singh did not sign the Will or he was under any coercion. At the cost of repetition, the defendant has also failed to prove that she was residing with late Sh.Hridey Pal Singh either at the time of execution of the Will or thereafter.

14. The learned counsel representing the subsequent purchasers contends that her clients are the bonafide purchasers. In the considered view of this Court that the aforesaid submission lacks substance because the property has been sold in the year 2011 i.e. during the pendency of the suit. Hence, the sale deed shall be governed by Section 52 of the Transfer of Property Act, 1882 and the rights of the subsequent purchasers would be subservient to the result of the case.

15. Keeping in view the aforesaid facts, no ground is made out to interfere with the findings of facts arrived at by the First Appellate Court.

Hence, both the appeals are dismissed.

16. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)

Judge

January 11, 2024

“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No