



IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH

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**RSA-5230-2016 (O&M)
Date of decision: 27.02.2025**

**Veero @ Baljinder Kaur (now deceased)
through her LR**

...Appellant(s)

Vs.

**Jaswant Singh Dhillon (now deceased)
through his LRs and others**

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. I.P.S.Doabia, Advocate for the appellant.

NIDHI GUPTA, J.

CM-13586-C-2016

Prayer in this application filed under Section 151 CPC is for
condonation of delay of 19 days in refiling the accompanying appeal.

Heard.

For the reasons mentioned in the application, the same is
allowed and delay of 19 days in refiling the accompanying appeal is
condoned.

RSA-5230-2016 (O&M)

The plaintiff is in second appeal against the concurrent
judgments and decrees of the learned Courts below, whereby the suit for
declaration that plaintiff is owner to the extent of 1/5th share in suit land,



with consequential relief of joint possession, has been dismissed by both the Courts below.

2. At the very outset, it may be pointed out that the present appeal is of the year 2016. However, notice has not yet been issued in the same as the matter has been adjourned due to non-appearance of learned counsel for the appellant on 23.07.2018; and at request of learned counsel for the appellant on 10.10.2018, 31.01.2019, 27.05.2019, 23.07.2019, 23.01.2020, 20.12.2023, 06.05.2024 and 18.10.2024.

3. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'plaintiff'; and the respondents are the 'defendants'.

4. The brief facts of the case as set out in the plaint are that the Dalip Singh-father of the plaintiff and defendants No. 1 to 4, died intestate about more than 17 years back, leaving behind the plaintiff and defendants No. 1 to 4 as his only legal heirs/successors as their mother has also died and hence the father of the plaintiff was owner to the extent of 1/2 share alongwith defendant No.5, out of the land as detailed and described in the head note of the plaint. After the death of Dalip Singh, who died intestate, his property to the extent of 1/2 share was inherited in equal shares by the plaintiff and defendants No. 1 to 4. As such plaintiff has become owner to the extent of 1/5th share of the land owned by her father late Dalip Singh. The plaintiff who is an illiterate lady, was not called at any time, in order to sanction the mutation by the Revenue Authorities nor she was having knowledge about the sanctioning of the Inheritance regarding mutation, of



her late father Dalip Singh, as the defendant No.1 used to pay some amount of the crops to the extent of the share of the plaintiff i.e. 1/5th share and the plaintiff used to accept the same in a good faith. The defendant No.1 has stopped to pay the amount of crop, after the harvesting of the paddy crop of this year and alleged himself that he is the owner of the land owned by their father late Sh. Dalip Singh and he also alleged that he has got the mutation by impersonating somebody else in place of the plaintiff and as such the act of the defendant No.1 is illegal and is the act of fraud and deception and is not in any manner binding on the legal rights of the plaintiff as an owner. The plaintiff who is an illiterate lady got the papers from the Patwari Halqa on 18.10.2005 and has come to know that the mutation has wrongly been got sanctioned by defendant No.1 in his name only, after excluding the plaintiff and defendants No. 2 to 4, whereas father of the plaintiff had not executed any Will while having sound disposing mind during his lifetime nor he has transferred the land through any registered document in favour of defendant No.1. As such, the mutation is in the name of defendant No.1 is illegal, null and void and is not binding on the plaintiff, as an owner to the extent of her 1/5th share out of the 1/2 share of the total land. The plaintiff has requested the defendant No.1 to admit her claim as owner and to handover the possession to the extent of her share i.e. 1/5th share of the land owned by her father but the defendant No.1 has refused to admit the claim of the plaintiff, on the basis of some fraudulent documents. Hence, this suit.



5. Upon notice, defendant No.1 appeared and resisted the suit by filing written statement taking objections that Dalip Singh had died more than 24 years ago i.e. on 22.05.1982. During his lifetime, he had executed legal and valid Will dated 07.04.1982 in favour of defendant No.1 to the extent of 2/3rd share and 1/3rd share in favour of his wife Smt. Kishan Kaur i.e. the mother of the plaintiff and defendant No.1. On the basis of the said Will of Dalip Singh, mutation No. 656 was also sanctioned in favour of defendant No.1 and his mother Smt. Kishan Kaur in the year 1983. As such, defendant No.1 and mother of the plaintiff had inherited the estate of Dalip Singh by virtue of Will dated 07.04.1982. Thereafter, Kishan Kaur had died on 06.05.1995. As she was residing with defendant No.1, Kishan Kaur executed legal and valid Will dated 04.04.1995 in favour of defendant No.1 on the basis of which mutation of inheritance was sanctioned in favour of defendant No.1. As such, after the death of Dalip Singh and Kishan Kaur, defendant No.1 became owner in possession of the land having inherited the same from his parents. It was admitted that father of defendant No.1/ Dalip Singh was co-owner of the half share of the suit land which he had inherited from his parents. The plaintiff was fully aware regarding the execution of Will of Dalip Singh dated 07.04.1982; and Will of Kishan Kaur dated 04.04.1995 in favour of defendant No.1. Plaintiff was also aware regarding sanctioning of mutation Nos. 656 and 783 in favour of defendant No.1. The said mutations are legal and valid having been rightly sanctioned in favour of defendant No.1 on the basis of legal and valid Wills; and the plaintiff has full knowledge of the said Wills and mutations. It was further



asserted in the written statement that the plaintiff is not entitled for alleged 1/5th share out of the suit land as Dalip Singh had executed legal and valid Will in favour of defendant No.1 along with Kishan Kaur; whereafter Kishan Kaur, during her life time had also executed legal and valid Will in favour of defendant No.1. Accordingly, dismissal of the suit was prayed for.

6. Defendants No. 2 to 4 filed separate written statement along the same lines of defendant No.1. Defendant No.6 opposed the claim of the defendant No.1.

7. Defendant No.8 by filing separate written statement has also submitted that after the death of Dalip Singh, his estate was inherited by his son Jaswant Singh and Kishan Kaur widow of Dalip Singh, on the basis of valid Will executed by Dalip Singh in favour of his son Jaswant Singh and wife Kishan Kaur. Said Jaswant Singh sold land and surrendered possession in favour of the answering defendant and executed valid registered sale deed on 24.4.2001 and surrendered possession regarding land measuring 0-2 1/2 marlas for consideration of Rs.10,000/- and answering defendant constructed shop in the said portion.

8. Replication was filed by the plaintiff denying the pleas of the defendants taking in their written statements and reiterating the averments made in the plaint.

9. From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiff is entitled to decree for declaration ?
OPP



1.a) Whether Dalip Singh had executed valid Will in favour of defendant No.1 and Smt. Kishan Kaur on 7.4.1982 if so what effects ?OPD

2. Whether the plaintiff is entitled to decree for joint possession as an owner as prayed for ?OPP

3 Whether the suit of the plaintiff is not maintainable ?OPD

4. Whether the suit is not within time ?OPD

5. Whether the plaintiff is estopped by her own act and conduct ?OPD

6. Relief.

10. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court decided issues No. 1 to 3 against the plaintiff and in favour of the defendants; issues No. 4 and 5 in favour of the defendants and against the plaintiff; and accordingly suit of the plaintiff was dismissed with costs vide judgment and decree dated 23.01.2013 passed by learned trial Court. The appeal filed by the plaintiff was also dismissed by the learned Additional District Judge, Gurdaspur vide judgment and decree dated 08.01.2016 thereby affirming the findings of the learned trial Court. Hence, the present second appeal.

11. Ld. counsel for the appellant/plaintiff *inter alia* submits that the plaintiff is the daughter of the deceased Dalip Singh and Kishan Kaur. It is firstly submitted that Will dated 07.04.1982; as also the Will dated 04.04.1995 on the basis of which the defendant No.1 has laid claim to the suit property are unregistered documents. It is secondly contended that the same have also not been proved in accordance with law. It is thirdly contended that the said Wills are surrounded in suspicious circumstances as

one of the attesting witness, namely Harbhajan Singh/DW7 had admitted in



his cross-examination that the above said Wills were scribed and signed on the same day. It is pointed out that even the Scribe of the Will of Kishan Kaur, namely Manbir Singh Sekhon/DW6 had admitted in his cross-examination that he maintained no register in his office; and therefore, there is no entry regarding the Will of Kishan Kaur in his register. It is also pointed out that DW6 had criminal cases against him for forging documents. Therefore, testimony of DW6 affirming the Will, is unreliable. It is accordingly submitted that the Wills in question were shrouded in suspicious circumstances and therefore should not have been relied upon. It is submitted that though the said facts have been duly noted by the learned trial Court in para 25 of the impugned judgment and decree dated 23.01.2013, however the said arguments have not been dealt with. Learned counsel for the plaintiff also submits that the Will of Dalip Singh was executed on 07.04.1982 and he expired on 22.05.1982 i.e. barely 1 month and 15 days after execution of the Will. Similarly, Kishan Kaur executed her Will on 04.04.1995 and expired on 06.05.1995 i.e. only one month and 2 days after execution of the said Will. It is contended that both the said persons were old and infirm and not of sound mind, and therefore too, the Wills are surrounded in suspicious circumstances. It is accordingly prayed that the present appeal be allowed; and the impugned judgments and decrees be set aside.

12. No other argument is raised on behalf of the appellant/plaintiff.



13. I have heard learned counsel for the appellant/plaintiff and perused the case file in great detail.

14. Perusal of the record of the case shows that in order to prove the Will dated 07.04.1982 (Ex. D2) executed by Dalip Singh, the defendant No.1 has examined attesting witness of the said Will i.e. DW7/Harbhajan Singh. DW7 had testified that Dalip Singh had executed Will in favour of Kishan Kaur to the extent of 1/3rd share and in favour of defendant No.1 to the extent of 2/3rd share. DW7 had further testified that at the time of execution of Will, Dalip Singh was of sound mind; and after admitting the contents of the Will to be correct, he had put his thumb impressions in the presence of other attesting witnesses. DW7 had duly identified his signatures on the Will (Ex.D2); as also the thumb impression of Dalip Singh on the said Will. Despite lengthy cross-examination, testimony of DW7 could not be shaken. No suggestion was put by the plaintiff side to DW7 that he is having inimical relation with the plaintiff or her family.

15. In regard to DW7, it has been contended by learned counsel for the appellant that the Will in question is shrouded in suspicious circumstances as DW7 had stated that both the Wills were subscribed on the same date. However, this argument of the plaintiff is liable to be rejected as cross-examination of DW7 Harbhajan Singh was conducted on 29.03.2011 i.e. decades after the execution of the said Wills; and therefore DW7 being 70-year-old aged man at the time of leading evidence, there may have been some error in his recollection of dates; and the same will not in any manner detract from the validity and veracity of the said Wills.



Moreover, there is sufficient evidence to prove the Will of Dalip Singh. It is evident from the record that mutation on basis of Will of Dalip Singh was sanctioned in favour of defendant No.1 and Kishan Kaur vide mutation No. 656 of 1983 (Ex.D1). In this regard, it is pertinent and important to note that defendant No.4-Dalbir Kaur/daughter of Dalip Singh/DW3, in her cross-examination has admitted that Dalip Singh had told her about the Will dated 07.04.1982; and that at the time of sanction of mutation, all the 4 sisters i.e. the plaintiff and defendants No.2 to 4 were present; and DW3 had put her signatures and plaintiff had put her thumb impression when the mutation was sanctioned.

16. Defendant No.1 had also examined DW5 Beant Singh/attesting witness of the Will dated 04.04.1995 (Ex.D4) executed by Kishan Kaur, who had stated that on 04.04.1995, Kishan Kaur was of sound, disposing mind and of good health; that the Will was scribed by Deed Writer and after scribing the same, the Deed Writer read over and explained the contents of the Will to Kishan Kaur, who after admitting the same to be correct, had affixed her thumb impression on the Will (Ex.D4) in the presence of DW5 and Deed Writer. DW5 further deposed that Kishan Kaur had bequeathed her share to defendant No.1 as he had been serving Kishan Kaur during her life time and had also performed all the last rites of his mother. No doubt, defendant No.1 was the brother-in-law of DW5. However, the said fact cannot in any manner, shake the credibility of DW5, as DW3 Dalbir Kaur/sister of the plaintiff and defendants No.1 to 4, has also deposed against the plaintiff.



17. It has next been contended by learned counsel for the plaintiff that testimony of DW6 is unreliable as there is no entry to this effect in his register about the Will of Kishan Kaur. However, the said argument is also liable to be rejected as it has been admitted by learned counsel that DW6 was a lawyer and was also a Deed Writer and the same will again not detract from the veracity of the Will.

18. As regards contention of Id. counsel for the plaintiff that both the above said Wills were executed just about a month prior to deaths of both the testators. I find no merit to the said argument as well as, as already noted above there is ample oral and documentary evidence on record in the form of testimonies of attesting witnesses DW5 Beant Singh and DW7 Harbhajan Singh; as also the daughter of testator i.e. Dalbir Kaur/DW3. All had admitted in their respective depositions that the testators were not ill at the time of their death and were of sound and disposing mind at the time of execution of their respective Wills. It has also come on record, in particular in evidence of Narinder Singh/PW1 that the testators resided with defendant No.1, who used to look after Dalip Singh and Kishan Kaur. It is in these circumstances that defendant No.1 was the beneficiary of both the Wills.

19. Even otherwise, a perusal of the Will of Dalip Singh shows that it has categorically been mentioned therein that he had solemnized marriage of his two daughters (the plaintiff and defendant No.3 herein), and therefore, nothing has been given to the said daughters. As regards the remaining two daughters, whose marriage could not be solemnized, it has



been stated in the Will that it would be the responsibility of defendant No.1 and Kishan Kaur regarding the marriage of other two daughters. What Clinches the entire issue at hand is that learned counsel for the appellant/plaintiff has nowhere denied that the plaintiff had affixed her thumb impression when the mutation was sanctioned.

20. I am further in agreement with the following observations of the Id. trial Court in paras 27 and 28 of the judgment dated 23.01.2013:-

“27. It is further pertinent to mention here that the very nature and the purpose of execution of a Will is to make known the intention of testator regarding his property and same has to be executed when the intention is to obstruct the natural normal life of succession. It is thus natural that in the case of execution of Will, natural heirs are debarred and disinherited from inheriting the property left behind by the deceased. It is settled law that mode of proving Will does not ordinarily differ from that of proving any other document except to the special requirement of attestation prescribed in the case of Will by Section 63 of the Succession Act. The onus of proving the Will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the Will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where, however, there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the Court before the Court accepts the Will as genuine. Even where circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the court. The suspicious circumstances may be as to the genuineness of the signatures of the testator, the condition of the testator's mind, the dispositions made in the Will being unnatural, improbable or



unfair in the light of relevant circumstances, or there might be other indications in the Will to show that the testator's mind was not free. In such a case the court would naturally except that all legitimate suspicious should be completely removed before the document is accepted as the last Will of the testator. In her Will Kishan Kaur has also explained the reasons for giving his entire estate to her son Jaswant Singh. As such, defendant No.1 has duly proved the execution of Will of deceased Dalip Singh and Kishan Kaur by examining its attesting witnesses. It has also been admitted by PW.1 that deceased Dalip Singh and Kishan Kaur were residing with Jaswant Singh and he was looking after after them. More so, both i.e. deceased Dalip Singh and Kishan Kaur have given reasons for disinherited their other daughters. PW.1 has admitted during cross-examination that he is having not good terms with deceased Jaswant Singh.

28. *The next contention raised by learned counsel for plaintiff is that both the Wills are the unregistered one and hence cannot be taken into consideration. But the court finds no force in the arguments advanced by learned counsel for plaintiff. In these circumstances, this court is supported with "Gurdial Kaur and others vs. Kartar Kaur and others, 1998 Volume-II, CCC 421 (S.C.)". So in the ratio of law laid down by Hon'ble High Court, if the Will is registered it will not be itself be sufficient to dispel all suspicious regarding the validity of the Will where suspicion exist. As such, the defendant No.1 has already proved regarding the legality and genuineness of both the Wills in respect of the registration. As such, the defendant has dispelled all the suspicious circumstances surrounding the Will."*

21. Learned counsel for the appellant/plaintiff is unable to dispute

or controvert the above said concurrent facts and findings.



- 22. Accordingly, the present regular second appeal is **dismissed**.
- 23. Pending applications, if any, stand disposed of.

27.02.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

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