**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****239****RSA-53-2017(O&M)****Date of decision: 21.08.2025****Gurdev Kaur****...Appellant(s)****Vs.****Hardev Singh & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

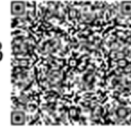
Present:- Mr. G.S. Sandhu, Advocate
for the appellant.

Mr. L.S. Mann, Advocate
for the respondent No.1.

NIDHI GUPTA, J.

Present second appeal has been filed by the plaintiff against the judgment and decree dated 23.09.2016 passed by Id. Additional District Judge, Jalandhar reversing the well-reasoned judgment and decree dated 15.01.2014 of the trial Court, whereby suit of the appellant for declaration that plaintiff is owner of 1/5th share in the suit land, had been decreed.

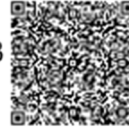
2. Brief facts of the case are that the plaintiff/appellant had filed a suit for declaration to the effect that plaintiff is owner of 1/5th share out of the suit land total measuring 60 kanal 2 marla as described in the head note of the plaint as per fard Jamabandi for the year 2001-02; **and** the plaintiff is in exclusive possession of the above-said land measuring 60 kanal 2 marla



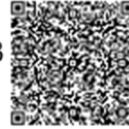
along with all other rights appurtenant thereto; **and** mutation No.5834 of inheritance of Charan Singh in the name of defendants No.1 and 2 on the basis of alleged Will dated 16.03.1981 is illegal, null and void; **and** subsequent entries of fard Jamabandies in the name of defendants No.1 and 2 from the year 1991-92 till today are wrong, illegal, null and void; **and** consequential relief of permanent injunction restraining the defendants from alienating the suit land in any manner; **and** in case the plaintiff is not proved to be in exclusive possession of the entire suit land measuring 60 kanal 2 marla, then in the alternative suit for joint possession of the suit land fully detailed in the head note of the plaint, after declaring the plaintiff as owner of 1/5th share in the suit land.

3. Defendant No.1 is the brother; defendant No.2 is the nephew (son of Amar Singh/brother of plaintiff); defendant No.3 is the sister-in-law (widow of Amar Singh); and defendants No.4 and 5 are the sisters of plaintiff.

4. The facts as pleaded in the plaint are that previously father of the plaintiff namely Charan Singh was owner in possession of land measuring 60 kanal 2 marla. Father of the plaintiff had died on 27.05.1988 leaving behind 3 daughters being the plaintiff and defendants No.4 and 5; and 2 sons being the defendant No.1 and father of defendant No.2 namely Amar Singh, pre-deceased son of Charan Singh. It was the case of the plaintiff that upon death of Charan Singh, she had inherited 1/6th share of the suit property by way of natural inheritance. However, defendants No.1 and 2 were laying

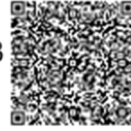


claim to the suit property on the basis of Will dated 16.03.1981 executed by Charan Singh in their favour. The defendants no.1 and 2 were residing abroad. It was the case of the plaintiff that she was in exclusive possession of the suit land measuring 60 kanal 2 marla also through her son namely Gurmukh Singh who was cultivating the said land. Chanan Kaur widow of Charan Singh had died in 2004, whereafter the plaintiff had remained in exclusive possession of the suit land. After the death of Chanan Kaur, the plaintiff and defendants No.2 and 3 became owner of 1/5th each share in the suit land in equal shares. Chanan Kaur too in her lifetime had never executed any Will in favour of anyone. In the absence of the plaintiff, her son Gurmukh Singh is cultivating the suit land on behalf of the plaintiff and is in possession of the same on behalf of the plaintiff. However, in the second week of May 2007, the defendant along with Gurdev Singh alleging to be attorney of defendant No.2 and also on behalf of defendant No.3, came to the suit land and tried to dispossess the plaintiff from the suit land. They also threatened that they are exclusive owners of the suit land on the basis of Will dated 16.03.1981 allegedly executed by Charan Singh in favour of defendants No.1 and 2. Said persons also threatened that mutation No.5834 on the basis of said Will, had been sanctioned in favour of defendants No.1 and 2 as also fard Jamabandi since the year 1991-92 up to date, was in their favour. The plaintiff had requested the revenue entries as well as the mutation are wrong, illegal, null and void; and defendants have no right to alienate or dispossess the plaintiff.



Thereafter, the plaintiff also applied for obtaining the certified copy of Will dated 16.03.1981, which was received on 17.07.2007. Thereafter, the plaintiff obtained other necessary documents such as revenue record, etc. It was further pleaded that defendant No.1 Hardev Singh is permanently residing in England for the last more than 40 years. Relations between Charan Singh and Hardev Singh were always strained. Even defendant No.2 was born in England and since his birth, he is residing in England along with his mother. Relations between Charan Singh and defendants No.2 and 3 had also remained restrained since the beginning as the said defendants never looked after or served Charan Singh. It was further stated that Charan Singh was not of sound disposing mind since 1980. With these pleadings, the present suit was filed on 20.08.2008.

5. Upon notice, defendants No.1 and 2 appeared and resisted the suit by filing written statement inter alia averring that Charan Singh had executed a valid registered Will dated 16.03.1981 in favour of defendants No.1 and 2 in sound disposing mind; whereafter defendants No.1 and 2 are in possession of the suit property. However, defendants No.1 and 2 were living abroad and plaintiff has no concern with the suit property, and she is not in possession of the same. Even khasra girdawaries are recorded in favour of defendants No.1 and 2 as they are self-cultivators of the suit land. Mutation in favour of defendants No.1 and 2 was sanctioned with the knowledge of plaintiff and defendants No.3 and 5; and they have given their



no objection to the revenue authorities. Moreover, Suit of the plaintiff was time-barred. Relations between defendants No.1 and 2 and Charan Singh were cordial. Accordingly, dismissal of the suit was prayed for.

6. Replication was filed by the plaintiff rejecting the averments made in the written statement and reiterating those made in the plaint.

7. On the basis of pleadings of the parties, following issues were framed: -

“i) Whether the plaintiff is entitled to declaration as prayed for?

OPP

ii) Whether the plaintiff is entitled to permanent injunction as prayed for? OPP

iii) Whether the suit is not maintainable in the present form? OPD

iv) Whether the plaintiff has got no locus standi to file the present suit? OPD

v) Whether plaintiff has not come before this court with clean hands? OPD

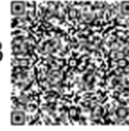
vi) Whether plaintiff has got no cause of action to file the present suit? OPD

vii) Whether suit is time barred? OPD

viii) Whether suit is bad for mis-joinder and non-joinder of necessary parties? OPD

ix) Relief.”

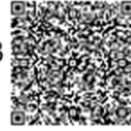
8. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, learned trial Court vide judgment and decree dated 15.01.2014 had decreed the suit of the plaintiff with costs.



9. The appeal was filed only by defendant No.1, which was allowed by the learned lower Appellate Court vide judgment and decree dated 23.09.2016. Hence, present second appeal by the plaintiff.

10. It is inter alia submitted by learned counsel for the appellant/plaintiff that the learned trial Court had correctly held that the respondent/defendants No.1 and 2 propounders of the Will had utterly failed to prove the alleged Will dated 16.03.1981 executed by Charan Singh. Admittedly, widow of Charan Singh namely Chanan Kaur had died in 2004. However, no reason has been asserted in the Will to disinherit Chanan Kaur and even no provision has been made for her maintenance. Even the three daughters including the appellant have been disinherited without assigning any reason at all. Mutation No.5834 was got sanctioned by respondents No.1 and 2 at the back of the appellant and other legal heirs. Thus, the said Will cannot be relied upon.

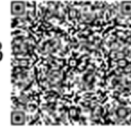
11. Further, the learned trial Court had correctly held that the evidence produced by defendants No.1 and 2 to prove the execution of the Will remained unsuccessful as none of the attesting witnesses have stepped into the witness box nor any other person acquainted with one of the attesting witnesses, has been examined as required under Section 69 of the Indian Evidence Act. Accordingly, issues No.1 and 5 were correctly decided in favour of the plaintiff and against the defendants No.1 and 2. Thus, the estate



left by Charan Singh would be inherited by his legal heirs by way of natural succession. Consequently, mutation No.5834 (Ex.P9) was to be set aside.

12. Further, learned lower Appellate Court was in error in relying upon the evidence of DW7 Ex-Sarpanch and co-villager, who had placed on record his affidavit (Ex.DW7/A) as admittedly DW7 did not step into the witness box to face cross-examination. Thus, as per law, his testimony cannot be read into evidence. On the contrary, lower Appellate Court has placed implicit reliance while referring to testimony of DW7 wrongly holding that he had stated that Vijay Kumar and Rattan Singh, alleged attesting witnesses of the Will, had died; whereas this witness had not stepped into the witness box and his testimony could not have been taken into consideration. It is accordingly prayed that the impugned judgment and decree of the learned lower Appellate Court be set aside.

13. Per contra, learned counsel for respondent No.1 vehemently opposes submissions of learned counsel for the appellant and submits that the evidence of DW2, DW3, DW7 and DW8 clearly establishes the authenticity of the Will. It is further submitted that it was the argument on behalf of the appellant that DW3 and DW7 could not prove the Will as per Section 69 of the Indian Evidence Act, but both the Courts below as well as the counsel for the appellant missed the testimony of DW8 i.e. Mohinder Singh, who categorically stated that attesting witness, Namberdar Vijay Kumar was working as Kitab with him and he identified his handwriting.



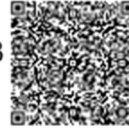
14. Further, Ex.D4 Pattanama was scribed by DW3 and attested by Rattan Singh, who was also attesting witness of the Will. Now when DW3 being scribe has identified the signatures of Rattan Singh on Pattanama, then there is no reason to say that he cannot identify the signatures of same very Rattan Singh on the Will. Thus, the Will stood proved.

15. Lastly, the appellant did not address argument regarding suit being barred by limitation. As per Section 3 of the Limitation Act, though no defence of limitation is taken but the Court has to decide the same. Page 77 of the paper book reveals that the appellant came to know about the Will in the year 1990 and 1996 when her son took property on theka but the suit was filed only on 20.08.2008. Therefore, the appeal deserves to be dismissed.

16. No other argument is made on behalf of the parties.

17. I have heard learned counsel and perused the case file in great detail. I find merit in the submissions made on behalf of the appellant.

18. The attesting witnesses to the Will Ex.D-1, namely Vijay Kumar Nambardar and Rattan Singh, are stated to have expired 20 years prior to filing of the suit. Even the Scribe of the Will, namely Om Prakash had expired. The defendant had sought to prove the handwriting and signatures of Scribe Om Prakash from the evidence of Krishan Lal DW2. Although DW2 had admitted the handwriting and signature of Om Prakash during his examination in chief, however, in his cross-examination DW2 had admitted



that he had not seen Om Prakash writing and signing any specific document.

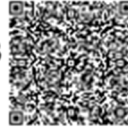
Thus, signature and handwriting of Scribe on the Will could not be proved.

19. It has next been contended by learned counsel for the defendant that the trial court had decreed the suit of the plaintiff by ignoring the evidence of DW8 Mohinder Singh Deed Writer who had identified the signature of attesting witness Vijay Kumar on the Will. The Id. lower Appellate Court has relied upon evidence of DW8 as follows:-

“DW8 Mohinder Singh, Deed Writer, with whom Vijay Kumar, Nambardar was working as a Katab, he identified the signatures of Vijay Kumar over the Will and further stated that Vijay Kumar had died about 20 years back and thereafter counsel for the defendant closed the evidence.”

20. However, the abovesaid finding is incorrect and misguided as DW8 has admitted during his cross-examination that he *“cannot tell any document on which Vijay Kumar had ever signed in his presence.”*

21. In proving the Will, much reliance has been placed by the lower Appellate Court upon the evidence of DW7 Makhan Singh, ex-Sarpanch of the village who had tendered into evidence, his affidavit Ex. DW7/A. DW7 had also deposed that Vijay Kumar, Nambardar had died about 20 years back and he had seen him writing and signing documents in his presence being the Nambardar of their village and is acquainted with the handwriting and signatures of deceased Vijay Kumar (attesting witness of the Will). DW7 had identified the signatures of Vijay Kumar over the Will dated 16.3.1981 Ex.D1

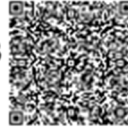


as well as on endorsement Ex.D1/A. However, evidence of DW7 cannot be relied upon as admittedly, DW7 has not appeared in the witness box to face cross-examination. Thus, his testimony cannot be read into evidence.

22. The Will Ex. D-1 has also been sought to be proved from the evidence of DW3 Krishan Kumar, who is the scribe of the Pattanama dated 31.8.1990 Ex. D-4, who had submitted into evidence his affidavit Ex. DW3/A. It has been contented on behalf of the defendant that Ex.D4 Pattanama was scribed by DW3 and attested by Rattan Singh, who was also attesting witness of the Will; and therefore, when DW3 being scribe has identified the signatures of Rattan Singh on Pattanama, then there is no reason that he cannot identify the signatures of same very Rattan Singh on the Will. However, this evidence of the defendant is tenuous to say the least and cannot irrevocably establish that the Will bore the signature of Rattan Singh.

23. Furthermore, the Id. lower Appellate Court has committed great error in misreading the evidence of PW3 Handwriting and Fingerprint Expert Mani Jain. The appellant had produced PW3 to show that the alleged thumb impression of Charan Singh on Will Ex.D1 did not match with the admitted standard thumb impression Mark-A on the sale deed Ex.P12. Expert witness of the plaintiff Mani Jain, Handwriting Expert (PW3) in his report Ex.P13 (at Page 229 till 233 of the LCR) has stated that: -

“The cumulative effect of the above reasonings is sufficient ground to establish that the disputed thumb impressions alleged to be of Charan Singh S/o Nand Singh marked QI, Q4



on front page of disputed will dated 16/3/81 Ex. D1, Q2 on back side of disputed will dated 16/3/81 Ex. D1/A are non-identical with the standard thumb impression marked A1 on back side of original Mortgage Deed Ex. P11 i.e. on Ex. P12 at the writings dated 27/5/58 and the disputed thumb impressions marked Q1, Q2, Q4 have been affixed by some different person other than who has affixed the standard thumb impression marked A1.”

24. However, the Ld. 1st Appellate Court has rejected the above report for absurd reasons to be referred to hereinafter, and has instead, chosen to place reliance on the testimony of DW6 Handwriting and Fingerprint Expert produced by the defendant who had compared the questioned thumb impression of the testator on Will (Ex. D1) with his thumb impression over Account Opening Form (Ex.DW4/A) taking the same as standard thumb impression; while disbelieving the report of Handwriting and Fingerprint Expert PW3 Mani Jain who had compared the thumb impression of the testator with standard thumb impression and proved his report Ex.P13 proving that the questioned thumb impressions of testator did not tally with the standard thumb impressions. The report of both the experts is contradictory, yet the Ld. Appellate Court has given preference to the report submitted by DW6 without assigning any cogent reason to accept the same. Ld. 1st Appellate Court has held that evidence of the appellant was not reliable on the ground that Mark-A on sale deed Ex.P-12 the thumb impression was visible and ridges are visible even to the naked



eye but on the photo-chart, photographs seem to be of some other thumb impression which do not show clear pattern. These findings of the Ld. Appellate Court are based on personal assessment, if not whim and fancy and thoroughly conjectural and consequentially unsustainable. Learned lower Appellate Court has rejected the evidence of Expert produced by the plaintiff for the following reasons:-

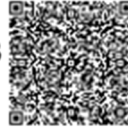
“Expert PW3 examined by the respondent is not reliable witness as he has not compared the thumb impressions properly. He has compared thumb impression of the deceased from one registered sale deed dated 6.6.1971 vide which deceased Charan Singh @ Charna has purchased the property from another person. Thumb impression has been marked as Mark-A on this sale deed Ex.P12. Perusal of this thumb impression shows that thumb impression is clearly visible and ridges are visible with naked eye but on the photo chart photograph seems to be of some other thumb impression and ridges on the photographs are not clear and pattern has been shown different than the pattern Ex.P12 Mark-A. It shows that the Expert did not examine Mark-A on Ex.P12 rather took the photograph of another thumb impression and compared with the thumb impressions on Will Ex.D1, so in these circumstances Expert examined by the respondent is not a reliable witness.”

25. A bare reading of the above shows that the learned lower Appellate Court has no basis for arriving at the above conclusion; and/or for rejecting the evidence of PW3; and/or for relying upon the evidence of DW6. In doing so, the Ld. Appellate Court has ventured into the realm of



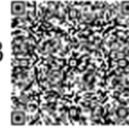
expert evidence by observing that even from naked eye it appears that PW3 did not compare the thumb impression on Ex.P12 and rather took the photograph of some other thumb impressions for the purpose of comparison with the thumb impression of the executant on Will Ex.D1. The above-mentioned observations of the Ld. Appellate Court are based on the personal conjectures and surmises and the same carry no legal basis. In this manner, the Ld. Appellate Court fell in error while placing reliance on the report submitted by DW6 Arvind Sood.

26. It is also necessary to note that defendants no.1 and 2 had tried to prove the execution of Will (Ex.D1) by examining the Expert but it was incumbent upon them to prove the Will as required under Section 69 of the Indian Evidence Act. Defendants No.1 and 2 have not brought forth any relative from the family of marginal witnesses who could have attested to the fact that they had seen the signing or writing of the Will by Charan Singh; or who could have identified the signatures of the attesting witnesses on the said Will. Even the death certificates of the marginal witnesses have not been placed on record. Thus, the defendants had miserably failed to prove the execution of the Will. On the contrary, learned lower Appellate Court has relied upon the evidence of DW3 and Ex-Sarpanch DW7 in holding that the Will stood proved from the evidence of DW3 and Ex-Sarpanch DW7. However, the reasons as to why reliance could not have been placed on the evidence of DW3 and DW7 have already been



discussed above. In this regard, the relevant findings of the learned trial Court in judgment dated 15.01.2014, read as follows: -

“The defendants by examining DW3 Krishan Kumar have proved on record Pattanama Ex.D3. The defendants having examined Arvind Sood DW6 who is an expert in handwriting. The defendants have examined this witness to contradict the opinion given by Mani Jain PW3. The defendants further examined Makhan Singh DW7 who placed on record affidavit Ex.DW7/A. This witness did not come forward for his cross-examination and as such his testimony cannot be read in evidence. The defendants have further examined DW8 Mohinder Singh deed writer who identified the signature of Vijay Kumar Lambardar on Will Ex.D1 but during his cross-examination this witness has stated that he cannot tell any document on which Vijay Kumar had ever signed in his presence. The defendants have tried to prove the execution of Will Ex.D1 by examining the expert but it was incumbent upon defendants to prove the Will Ex.D1 as required by Section 68 and 69 of Indian Evidence Act. Defendants have not brought forth any relative from the family of marginal witnesses who could state the fact that they had seen them signing or writing in the ordinary course, nor any death certificate of these marginal witnesses have been placed on record. Thus, the defendants have failed to prove due execution of the Will as required by law and same cannot be looked into which is hereby discarded. The plaintiff and defendants are entitled to inherit the property of deceased Charan Singh by way of natural succession. Similarly mutation No.5834 Ex.P9 is also liable to be set aside. The plaintiff is also entitled for

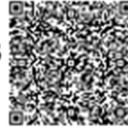


permanent injunction and joint possession of suit land being owner of 1/5 share in suit land. Thus, both these issues are decided in favour of the plaintiff and against the defendants.”

27. Further, it cannot be ignored that no cogent reasons have been given by the testator Charan Singh for excluding the appellant and his other daughters or even his wife from the Will. The learned lower Appellate Court has held that Charan Singh had executed Will (Ex.D1) only in favour of defendants No.1 and 2 while excluding the plaintiff and defendants No.3 to 5 on the following reasoning: -

“In this case, deceased Charan Singh executed a registered Will Ex.D1 in favour of his son Hardev Singh as well as in favour of his grandson Bhupinder Singh son of Amar Singh son of Charan Singh i.e., grand son of the deceased in equal shares. Mostly in agriculturist class, main male member usually wants to give his property to his son or his grand son and reluctant to give the property to the daughters or the sisters. In this case, deceased has equally divided his property amongst his sons and has excluded his daughters on the ground that he has already got married his daughters and whatever he wanted to give them he had already given. He even excluded his wife Chanan Kaur...”

28. However, a perusal of the Will (Ex.D1) (at page 243 of the LCR) shows that it has nowhere been stated therein that Charan Singh had excluded his daughters on the ground that he had already got them married and all that he wanted to give has already been given to them. Clearly, therefore, the above reasoning of the lower Appellate Court is again based on conjectures and surmises and is not borne out from the record. Clearly,



the lower Appellate Court has misread the evidence on record. Furthermore, admittedly, defendant No.1 has been residing abroad since 40 years prior to filing of the suit; and defendant no.2 was also born and lives abroad; while, admittedly, plaintiff and her son have been cultivating the suit land.

29. As regards contention of the learned counsel for the defendant regarding limitation, the same is liable to be rejected in view of the fact that it is the clear assertion of the appellant that she had come to know about the sanctioning of the mutation in favour of the defendants no.1 and 2 only on 17.7.2007; where after she had filed the present suit on 20.8.2008 after obtaining the certified copies of the Will and the revenue record. Nowhere has the above stand of the plaintiff been rebutted by the defendants.

30. In view of the above discussion, the present appeal is **allowed**; and impugned judgment and decree dated 23.09.2016 passed by learned lower Appellate Court is set aside; and the judgment and decree dated 15.01.2014 passed by the learned trial Court is affirmed.

31. Pending application(s) if any also stand(s) disposed of.

21.08.2025
Sunena

(Nidhi Gupta)
Judge

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