

(1992) 08 P&H CK 0044

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 254 of 1979

Hardayal Singh and Others

APPELLANT

Vs

Harbans Singh and Others

RESPONDENT

Date of Decision : 24-08-1992

Acts Referred:

Succession Act, 1925 — Section 74

Citation : (1994) 1 DMC 234

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : A.S. Cheema, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jhanji, J.—This is plaintiffs' first appeal directed against the judgment and decree dated October 24, 1978 of the Trial Court whereby the suit of the plaintiffs for possession was dismissed. The dispute relates to the property of one Sultan Singh son of Ganda Singh. Sultan Singh died issueless on January 3, 1976. Plaintiffs, who are fourth degree collaterals of said Sultan Singh, filed suit for possession claiming themselves to be the owners of the land belonging to Sultan Singh, detail of which has been given in the body of the plaint, and for declaration that they are entitled to about Rs. 50,000/- lying deposited in Post Office and Central Bank of India at Dharamkot. They also challenged the Will dated December 3, 1974, set up by the defendants, alleging that the same was never executed by Sultan Singh and is a forged and fictitious document. The suit was contested by the defendants, who though stated that they are also collaterals of Sultan Singh, but denied the relationship of the plaintiffs with Sultan Singh. They claimed to have become owners of the property belonging to Sultan Singh on the basis of Will dated December 3, 1974.

2. From the pleadings of the parties, the Trial Court framed the following issues :--

- (1) Whether the plaintiffs are the legal heirs of Sultan Singh ?
- (2) Whether Sultan Singh made a valid Will in favour of the defendants ?
- (3) Whether the defendants are the collaterals of Sultan Singh ?
- (4) Relief.

3. The Trial Court on issue Nos. 1 and 3 found that the plaintiffs as well as the defendants are the fourth degree collaterals of Sultan Singh. The Will set up by the defendants was found to be valid and, therefore, suit of the plaintiffs was dismissed. The plaintiffs have impugned the said judgment and decree dated October 24, 1978 in this appeal.

4. I have gone through the entire evidence on record, including the statements of witnesses with the help of the Counsel for the appellants. On consideration of the entire evidence on record, I am of the view that this appeal deserves to succeed. The defendants in order to prove the due execution of the Will, examined both the attesting witnesses, namely, Sohan Singh son of Nasib Singh (DW-1) and Gurbachan Singh son of Bahadur Singh (DW-2) as well as deed-writer Surinder Kumar (DW-3). Deed-Writer Surinder Kumar in his cross-examination has stated that Sultan Singh was not personally known to him. Sohan Singh (DW-1) though has stated that the Will was executed by Sultan Singh, but he has admitted in his cross-examination that he is closely relates to one of the defendants, namely, Teja Singh. He has also admitted that he did not know as to whether Sultan Singh was literate or not. He further stated that at the time of execution of the Will, he was about 40 years old and Sultan Singh was older to him by 45 years, meaning thereby that he put the age of Sultan Singh to be 85 years. In the Will Sultan Singh is shown to be of 65 years of age. Therefore, no reliance can be placed on his statement, Gurbachan Singh (DW-2) in his statement nowhere stated that the Will was executed by Sultan Singh. He rather stated that the Will was executed by Teja Singh (Teja Singh is one of the defendants). He also stated that the Will was read over to Teja Singh, who are admitting the same to be correct put his thumb-impression. His statement too, therefore, cannot be taken into consideration for the purpose of due execution of the Will. The plaintiffs produced Harbans Lal, Sub Post Master, Dharamkot, as PW-2 who brought the record relating to the account maintained by Sultan Singh in the Post Office. From the relevant record, he deposed that at the time of opening of the account, specimen signatures of Sultan Singh in Gurmukhi script were obtained. This shows that Sultan Singh was literate and used to put his signatures. The defendants have not explained as to why he thumb-marked the Will instead of putting his signatures on the Will. The discrepancies as pointed out clearly established number of suspicious circumstances surrounding the execution of the Will. The burden to remove the suspicious circumstances was on the defendants, who have failed to explain them to the satisfaction of this Court. The Will, therefore, set up by the defendants cannot be accepted as genuine. The finding of the Trial Court on issue No. 2, is, thus set aside.

5. The plaintiffs in the suit have claimed possession of the entire land belonging to Sultan Singh as well as approximately Rs. 50,000/- lying deposited with the Post Office and the Central Bank of India at Dharamkot, but in view of the findings of the Trial Court that plaintiffs and defendants are related to deceased Sultan Singh in equal degrees, the plaintiffs are entitled to succeed to the property belonging to Sultan Singh to the extent of half share.

6. As a result thereof, the appeal is allowed. The suit of the plaintiff for joint possession to the extent of half share is decreed and they are held entitled to half share of the land mentioned in the heading of the plaint. They are also held entitled to claim half of the amount lying deposited in the accounts of Sultan Singh maintained by the Post Office and the Central Bank of India at Dharamkot. There shall be no order as to costs.