

(1997) 05 P&H CK 0060

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 889 of 1980

Sardara Singh (Died) through his LRs. and Others

APPELLANT

Vs

Sadhu Singh and Others

RESPONDENT

Date of Decision : 15-05-1997

Acts Referred:

Citation : (1997) 2 CivCC 242 : (1997) 117 PLR 619 : (1997) 3 RCR(Civil) 472

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : Hemant Kumar, for the Appellant; J.C. Nagpal, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The dispute is regarding the estate of Bishan Singh who had died leaving behind 57 Bighas and 9 Biswas of land, He was initially married to Smt. Har kaur. Three sons, viz. Sadhu Singh, Darshan Singh and Kesar Singh were born out of his wedlock. After the death of Har Kaur, Bishan Singh had got married to Smt. Kartar Kaur. Four sons were born out of this wedlock. On January 31, 1967, Bishan Singh passed away. The two sons and the legal representatives of the third son Kesar Singh-the offspring of Bishan Singh through his first wife-Har Kaur - filed a suit for 3/8th share of the land left behind by their father. Kartar Kaur, the second wife the four sons born through her were impleaded as the defendants. It was claimed by the plaintiffs that the defendants had forcibly taken possession of the suit land on the basis of will which was a forged document.

2. The defendants contested the claim of the plaintiffs and pleaded that Bishan Singh had only one wife, namely, Kartar Kaur. He had never married Har Kaur. He had executed a valid will on September 11, 1966. On the basis thereof, the defendants had rightly succeeded to the property and got its possession. They also averred that vide order dated March 25, 1970, the Assistant Collector 1st Grade had sanctioned the mutation of the land in favour of defendant Nos. 1 to

4.

3. After examination of the evidence; the trial Court held that "Bishan Singh had married Har Kaur; that Sadhu Singh, Darshan Singh and Kesar Singh are the sons of Bishan Singh and that Maya Devi is the widow of Kesar Singh and her children plaintiffs Nos. 4 to 8 are the sons and daughters of Kesar Singh, son of Bishan Singh." However, it further held that the will Exhibit D.1 was genuine and had been executed by Bishan Singh when he was in a sound disposing mind. Resultantly, in view of this finding, the suit filed by the plaintiffs was dismissed. They filed an appeal. The findings of the trial Court regarding the validity of the will were challenged. The appellate Court came to the conclusion that the - "findings of the trial Court on will Exhibit D.1..... cannot be sustained It is a suspicious document." Consequently, the appeal was accepted and the judgment of the trial Court was reversed. The defendants have, thus, filed the present second appeal.

4. The litigation having taken a long time, certain persons had expired during the pendency of the appeal. Their legal representatives were impleaded through different orders of the Court.

5. Mr. Hemant Kumar, learned Counsel for the appellants, has contended that the lower appellate Court had erred in holding that the will is not a genuine document. He further submitted that Bishan Singh had no relationship with the plaintiff respondents and that the defendant-appellants had rightly succeeded to the property. According to the learned counsel, the reasons given by the learned lower appellate Court for rejecting the will were not tenable.

6. Mr. J.C. Nagpal who appeared for the plaintiff-respondent controverted the claim made on behalf of the appellants.

7. The will is on record as Exhibit D.1, It is not registered. It has not been written by a regular deed writer. Pritam Singh, the scribe of the will has not been produced by the defendants. It bears the date 11.9.66. However, it appears that initially some other year had been written. It was later on changed to 6. A perusal of Exhibit PD, the death certificate of Bishan Singh, shows that he had died on January 31, 1967, at the age of 105 years. In this situation, the change in the last digit in the year 1966 is not totally meaningless.

8. It is true that the will had been attested by Kundan Singh DW.2 and Gurdev Singh DW.3. Kundan Singh admitted that he was illiterate. He could not read the will. He could only sign. He was called by Kartar Kaur. He admitted that there was a tick mark and that he had appended his signatures at that point. As for Gurdev Singh, DW.3, he could not say if Kundan Singh had signed the will or thumb-marked it.

9. It is true that a person executes a will only to confer rights, on some person and to deprive another. However, normally, there is an indication regarding the reason for excluding the natural heir. In the present case, the Courts below have

recorded a concurrent finding that the plaintiffs were the sons or the heirs of Bishan Singh through his first wife Har Kaur. There is not even an indication as to why they have been excluded. Why did Bishan Singh leave out his offspring through the first wife? Would he wait till he attained the age of more than 104 years before executing the will? Would he choose a person to scribe the will who is not even a registered deed writer? Why did he not take the care to get the will registered? Why was there an overwriting regarding the year of execution? Why did Kundan Singh where a tick mark had already been put? Why Pritam Singh, the scribe, was not produced by the propounder of the will? There was not even a suggestion that he had been won over by the other side. These are some of the questions which have not been answered either during the arguments or by the witnesses. In this situation, the learned lower appellate Court cannot be said to have committed an error in holding that the will is a suspicious document. Added to all this is the fact that the defendant-appellants made a categorical averment in paragraph 2 of the written statement that "Bishan Singh had only one wife, namely, Kartar Kaur who is still alive. Bishan Singh never married Har Kaur. Har Kaur was not the legally wedded wife of Bishan Singh." This plea as obviously false. Even the trial Court had not accepted this claim of the defendant-appellants. No reason has been shown which will persuade me to take a different view. At the lowest, the plea indicates that the defendant-appellants have no regard for truth. For the sake of property, they can stoop to telling lies. Their statements in Court have to be taken with a pinch of salt.

10. No other point was urged.

11. In view of the above, no ground for interference is made out. The appeal is, accordingly, dismissed. However, the parties are left to bear their costs.