
(1998) 03 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2873 of 1984

Smt. Hardial Kaur

APPELLANT

Vs

Hazur Singh and Another

RESPONDENT

Date of Decision : 16-03-1998

Acts Referred:

Registration Act, 1908 — Section 31

Citation : (1998) 3 CivCC 199 : (1998) 119 PLR 592 : (1998) 3 RCR(Civil) 307

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : J.P.S. Sandhu, for the Appellant; Amarjit Singh Sandhu, for the Respondent

Final Decision : Dismissed

Judgement

T.H.B. Chalapathi, J.—This appeal has been preferred against the decree and judgment of the learned Additional District Judge, Faridkot

dated 28.9.1984 in Civil Appeal No. 275 of 1982.

2. The defendant is the appellant.

3. The respondents Hazur Singh and Gurbax Singh filed the suit for a declaration of their title and recovery of possession of the suit property.

According to them one Kapur Singh was the owner of the suit property and he died issueless and the plain tiffs are the legal representatives of

Kapur Singh and they succeeded to the same on the death of Kapur Singh on 6.3.1977. The defendant appellant Hardial Kaur took the possession

of the suit property without any right. According to her, Kapur Singh executed a will in her favour on 28.2.1977 and on the basis of the said Will

she got the mutation effected in her favour. The plaintiffs case is the said will is not genuine and valid one and Kapur Singh never executed any Will

and the entries in the revenue records in favour of the defendant on the basis of the said will are not binding on them. According to them, Hardial

Kaur is a tress-passer of the suit property. They further pleaded that Kapur Singh was ailing for about six months prior to his death and he was

weak and of unsound mind. The defendant-appellant in her written statement inter alia contended that the plaintiffs filed the suit at the instance of

Jugraj Singh and Kartar Singh as she filed civil suit against them for recovery of amount due to her and the plaintiffs have no right to the suit

property. She further contended that the deceased Kapur Singh executed a valid Will in her favour on 28.2.1977 as she had been serving him and

that Kapur Singh was of sound and disposing state of mind at the time of the execution of the Will and that Kapur was ill only for a period of 9/10

days prior to his death and he executed the Will out of his own free will and therefore, she became the rightful owner and in possession of the suit

property on her own right. On the basis of the pleadings, the learned Subordinate Judge framed appropriate issues and on consideration of the

evidence on record, the trial Court held that the defendant failed to prove that Kapur Singh executed the valid Will on 28.2,1977 in her favour and

she is not entitled to claim property on the basis of the said Will copy of which is marked as Ex. D-3 and the property devolved upon the heirs of

Kapur Singh in accordance with law and the plaintiffs and the father of the defendant namely Chuhar Singh became entitled to succeed to the

property of Kapur Singh as Kapur Singh died issueless leaving behind no legal heirs and since the father of the defendant Chuhar Singh died after

the death of Kapur Singh, she became entitled to the share of Chuhar Singh and accordingly held that the plaintiffs cannot claim to be sole owners

of the suit property and they are entitled to suit property alongwith the other L.Rs. of Kapur Singh. There fore, the Trial Court held that the

plaintiffs can not take possession of the property except by partition through the Revenue Court in respect of agricultural land. The trial Court

further injucted the defendant Hardial Kaur from alienating the suit property except to the extent of her share therein. Hardial Kaur preferred an

appeal to the Additional District Judge, Faridkot, who by his judgment dated 28.9.1984 dismissed the appeal. Therefore, the defendant Hardial

Kaur filed the present appeal. There is no dispute of the fact that the suit property belonged to Kapur Singh. The plaintiffs and the father of Hardial

Kaur are the brothers of Kapur Singh and Kapur Singh died on 6.3.1977. It is also an admitted fact that Hardial Kaur, the appellant herein died

some time after the death of Kapur Singh. The plaintiffs who are brothers of Kapur Singh filed the suit for declaration that they succeeded to the

property of Kapur Singh and for possession of the property from the defendant-appellant. According to the case of the defendant, her paternal

uncle Kapur Singh executed a Will on 28.2.1977 before his death and on the basis of the said Will she succeeded to the property of Kapur Singh

and the mutation has been effected in her favour and, therefore, the plaintiffs have no right in the suit property. Both the Courts below on the basis

of evidence on record found that the defendant failed to prove the execution of the Will dated 28.2.1977 by Kapur Singh. The Courts below

further held that on the death of Kapur Singh, the properties devolved upon the brothers i.e. plaintiffs and the father of the defendant Chuhar Singh

and Hardial Kaur is also entitled to succeed to the property alongwith the plaintiffs and accordingly held that the property of Kapur Singh devolved

on the legal heirs and Hardial Singh cannot alienate the property in her possession in excess of her share.

4. The only point that is to be decided in this appeal is whether the Will set up by Hardial Kaur dated 20.2.1977 is proved to have been validly

executed by Kapur Singh. There cannot be any dispute that the burden to prove that the Will has been executed by Kapur Singh is on the

propounder i.e. Hardial Kaur, appellant. Admittedly, the Will was executed after the deceased was admitted to Dr. Goyal's Hospital. It is also in

evidence that after the execution of the Will and that on the next date i.e. 1.3.1977 the deceased was removed to Ludhiana where he died on

6.3.1977. According to the plaintiffs-respondents, Kapur Singh was not in sound and disposing state of mind at the time of the execution of the

alleged will as he was seriously ill. The Will was attested by Jugraj Singh and Nidhan Singh, who were examined as PW-2 and DW-3 respectively,

DW-3, who was examined by the appellant deposed that the Will was produced before the Sub Registrar at his office. He further deposed that the

Will was scribed at the clinic of Dr. Goyal as Kapur Singh was suffering from ailment. The evidence of this witness was disbelieved by the Courts

below on the ground that, in the earlier suit filed by the appellant against him, he stated that the Will was presented before the Sub Registrar at his

office. In the evidence in this suit, he stated that Dr. Goyal was not present at the time when the Will was drawn up, whereas in the earlier suit, he stated that Dr. Goyal declared that the testator is fit to execute the Will. In view of the contradictory stand taken by DW-3, both the Courts below did not place any reliance on his evidence. The other attester of the Will namely Jugraj Singh was examined by the plaintiffs as PW-2. According to him, Kapur Singh remained ill for two months prior to death and he was admitted in Dr. Goyal's Hospital and he visited Dr. Goyal's Hospital two or three times to see Kapur Singh, but no Will was executed in his presence. He further deposed that Hardial Kaur and her brother Harbans Singh were sitting in the Hospital and they got the thumb impressions of Kapur Singh on white papers. He categorically stated that he did not attest the document in the presence of Kapur Singh. The appellant has also not examined Dr. Goyal in whose Hospital the Will was said to be executed. In the Death certificate issued by the Ludhiana Hospital, the cause of death was shown due to Cardio Respiratory Arrest and the disease has been shown as Ruptured Aortic Aorta. Thus, it is clear that the deceased was suffering from serious ailment before his death. The Will was said to have been executed on 28.2.1977 while Kapur Singh died at Ludhiana Hospital on 6.3.1977. The evidence of Jugraj Singh, who was examined as PW-2 clearly shows that the testator was not in sound and disposing state of mind.

5. The appellant examined the scribe of the Will as DW-4. According to him, Dr. Goyal was present at the time of the execution of the Will, but the will does not contain any endorsement of the Dr. and the Dr. also did not attest the Will. The other attester of the Will namely Nidhan Singh, who was examined by the appellant as DW-3 categorically stated that the Dr. was not present in the Hospital at the time of the execution of the Will, whereas DW-4 the scribe of the Will stated that the Dr. was present. Thus the evidence of DW-3 and DW-4 is contradictory to each other.

6. It is no doubt true that the Will is a regd. document. The endorsement on the Will shows that it was presented before the Sub-Registrar at his office. Nidhan Singh also stated that the Will was produced in the office of Sub-Registrar, but according to the evidence on record, on the next day of the execution of the Will the deceased was removed to the Hospital at Ludhiana. Therefore, unless the condition of Kapur Singh was

serious, there was no need to shift him to Ludhiana Hospital. In the suit copy of the Will was filed and marked as Ex D-3. The original Will was

produced in Civil Suit No. 56 of 1979 filed by Hardial Kaur. By an order dated 10.7.1991, this court directed the record in the suit to be sent for.

Accordingly, the record in that suit was sent for alongwith the original Will. The registration endorsement made on the Will shows that it was

presented before the Sub Registrar at his office in the afternoon. It is not specifically mentioned that the Will was registered at Dr. Goyal's,

Hospital. For registering the document at some other place other than the office of the Sub Registrar, an application to that effect has to be made.

The same has to be entered in the register maintained in the office of Sub Registrar. Section 31 of the Registration Act provides the procedure for

registering a document. According to the said Section, the registration of the document shall be made only at the office of the Officer authorised to

accept the same for registration, but it also provides that on special cause being shown, the officer may attend at the residence of any person

desiring to present a document for registration. According to the evidence of DW-3 in the previous litigation, the Sub Registrar to register the

document which is marked as Ex F-5, came to the Hospital. Thus, the evidence of DW-3 is belied by the endorsement on registration document

i.e. Ex. D-3. The appellant had to make an application to the registering officer to attend the place where the executant was staying for the purpose

of producing the document to be registered, but there is no evidence to that effect on record. Since, the evidence of DW-3 is itself contradictory. I

am not able to place reliance on the same. The evidence of the scribe DW-4 also does not inspire any confidence. Neither the Sub Registrar nor

the Dr. Goyal who attended the deceased at Goyal's clinic was examined to prove the state of the mind of the executant. Further even the

application filed by the appellant for the issue of Succession Certificate on the basis of the said Will has also been rejected. On the basis of the

evidence, I am of the opinion that both the Courts below rightly held that the appellant failed to prove the execution of the Will by Kapur Singh. In

the absence of the Will the plaintiffs and the father of the appellant succeeded to the property of Kapur Singh. The appellant is only entitled to a

share in the property being the heir of her father, who also succeeded to the property left by Kapur Singh alongwith his other brothers namely the

plaintiffs.

7. In this view of the matter, I do not find any ground warranting interference with the well reasoned judgments of the Courts below.

8. The appeal, therefore, fails and is accordingly dismissed. There will be no order as to costs.