
(1984) 03 P&H CK 0089

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 830 of 1976

Smt. Harnam Kaur and others

APPELLANT

Vs

Gurbachan Singh and others

RESPONDENT

Date of Decision : 01-03-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (1984) 03 P&H CK 0089

Hon'ble Judges : B.S. Yadav, J

Bench : Single Bench

Advocate : H.L. Sarin, with Mr. M.M.S. Bedi, for the Appellant; G.R. Majithia, Sr. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Yadav, J.—This is a second appeal against the judgment and decree of the Additional District Judge, Amritsar, who, in appeal, reversed the judgment and decree passed by the Subordinate Judge 1st Class, Amritsar.

2. The dispute is about the estate of Tarlochan Singh who died on 16th Febauary, 1969. He is said to have executed a will in favour of Gurcharan Singh (defendant No. 1) son of Niranjan Singh (defendant No. 3) and Harinder Singh son of Gurcharan Singh (defendant No. 4). On the basis of that will mutation in respect of the estate of Tarlochan Singh was entered in favour of the legatees. By mistake the Revenue Officer sanctioned the mutation in favour of Gurbachan Singh only. The four sisters of Tarlochan Singh filed this suit alleging that he was imbecile and was incapable of understanding his acts. Moreover, he was residing with defendants No. 1 to 4 and was under their influence. According to the plaintiffs, the will was either a forged one or it was not executed by Tarlochan Singh of his free will. The plaintiffs claimed 1 6th share in the land in dispute in which the deceased had 1/4th share and they prayed for a decree for possession of that share.

3. Only defendants No. 1 and 2 contested the suit They pleaded that Tarlochan Singh was of sound disposing mind when he executed the will on 8th February, 1969 in their favour. They further pleaded that the deceased was of normal faculties and intellect. They took up other pleas also but it is not necessary to detail them as now there is no dispute about the findings rendered by the learned Courts below upon those pleas.

4. Issue No. 4 which was argued before me reads as follows :--

4. Whether Tarlochan Singh deceased made a valid will dated 8th February, 1969 in favour of the defendants ?

5. The learned trial Court held under the above issue that will Ex. D 1, said to have been executed by Tarlochan Singh on 8th February, 1969, was surrounded by suspicious circumstances and defendants No. 1 and 2 failed to explain those circumstances by satisfactory evidence. Consequently, it held that the alleged will was not a valid one.

6. Defendants No. 1 to 4 and 7 filed an appeal. It may be mentioned here that before the filing of the appeal, Parsin Kaur (alias Puran Kaur), plaintiff No. 2 had died and her legal representatives were brought on the record. The appeal was heard by the learned Additional Judge, Amritsar. He held that the will was duly executed by Tarlochan Singh and was not surrounded by suspicious circumstances. Consequently, he reversed the finding of the learned trial Court under the above issue and accepted the appeal and dismissed the suit. Feeling aggrieved, plaintiffs No. 1,2 and 4 have come to this Court in second appeal.

7. The learned lower Appellate Court has given a firm finding of fact to the effect that Tarlochan Singh duly executed the will and it was duly attested by DW 3 Bakhshish Singh Lamberdar and DW 5 Lachhman Singh. While giving that finding, he also took into consideration the admission made by PW 1 Amar Kaur who has stated that defendant No. 1 and 2 had got the will executed from Tarlochan Singh. The above are findings of fact, based upon evidence and not liable to be lightly interfered with in second appeal, even if those are erroneous. In this respect, reference can be made to Sadhu Vs. Kishni, wherein it was remarked :

The scope of second appeal as envisaged by Section 100 of the Civil P.C. and Section 41 of the Punjab Courts Act has been a matter of judicial scrutiny a number of times by this court as well as by the final court, that is, the Supreme Court in India. The learned counsel for the appellant has actually made a reference in this regard to Madamanchi Ramappa and Another Vs. Muthalur Bojjappa, ; Afsar Sheikh and Another Vs. Soleman Bibi and Others, . These pronouncements, in a nutshell, lay down that there is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however, gross or inexcusable the error may seem to be. Nor does the fact that the finding of the first appellate Court is based upon some documentary evidence makes it any less a finding of fact. A Judge of the High Court has, therefore, no jurisdiction to

interfere in second appeal with the findings of fact given by the first appellate court based upon an appreciation of the relevant evidence. Their Lordships have further observed that the only ground on which such an appeal can be said to be competent is where there is an error in law or procedure and not merely on an error on a question of fact."

The learned counsel for the appellants failed to point out that the inferences drawn by the learned lower Appellate Court from the facts brought on the file are not common sense inferences. Therefore, on this ground alone, the present appeal is liable to be dismissed.

8. On merits also, the will appears to be a natural document. Tarlochan Singh testator had 4 sisters (who are plaintiffs No. 1 to 4) and 3 brothers, named; Niranjana Singh defendant No. 3, Gurcharan Singh defendant No. 4 and Chanan Singh. Gurbachan Singh (defendant No. 1) and Harinder Singh (defendant No. 2) beneficiaries under the will, are sons of Niranjana Singh and Gurcharan Singh respectively. Gurcharan Singh has also one daughter Mohinder Kaur (correct name appears to be Palvinder Kaur), defendant No. 7. The aforesaid Chanan Singh predeceased Tarlochan Singh leaving behind 2 daughters, named Purnam Kaur and Amar Kaur, defendants No. 5 and 6 respectively. Thus, Tarlochan Singh bequeathed his property to the male-descendants of his brothers. The other male members of the family are Niranjana Singh and Gurcharan Singh, but they are not contesting the will. Tarlochan Singh excluded the female heirs from his bounty. It is common knowledge that an agriculturist usually desires that his land should remain in the family instead of going to the females. It cannot be said that such a desire on the part of male proprietor is unnatural. Enactment like the Punjab Custom (Power to Contest) Act, 1920 was brought on the statute book in Punjab, empowering a male-reversioner upto the 5th degree to challenge the alienation effected by a male proprietor governed by custom so that the property may remain in the family. Thus, on that account, it cannot be said that the will is a suspicious document. One cannot forget the earlier custom prevailing in Punjab under which female heirs were excluded from inheritance.

9. The will in question was executed by Tarlochan Singh on 8th February, 1969. He died on 16th February, 1969. The will was brought to the notice of the Revenue authorities on 18th February, 1969 soon after the death of the testator. On the basis of that will, mutation No. 14 (copy Ex D. 3) was entered which was later on sanctioned on 1st October, 1969, Thus the will saw the light of the day immediately after the death of Tarlochan Singh.

10. The sheet-anchor of the plaintiffs' evidence is to the effect that Tarlochan Singh was deaf and dumb and was practically imbecile. This evidence has been controverted by D.W. 1 Mela Ram, scribe of the will. He has stated that he scribed the will at the instance of Tarlochan Singh to whom it was read over and after admitting the same to be correct, he thumb-marked it. He has also stated that Tarlochan Singh was in sound disposing mind. To the same effect are the statements of D.W. 3 Bakshish Singh and D.W. 5 Lachman Singh. D.W. 4 Sohan

Singh has also stated that Tarlochan Singh was in perfect senses and was a strong-willed person and was not amenable to any influence.

11. Bakhshish Singh, one of the attesting witnesses, is a Lamberdar of village Tung Bhai. He has stated that he knew the family of the parties, as their father Bela Singh was a Lamberdar. He has also stated that he used to visit his Bhua in Shamnagar and her house was adjacent to that of Tarlochan Singh. Thus, he was on friendly terms with Tarlochan Singh. Bakhshish Singh has stated that the will was executed by Tarlochan Singh of his own free will. He has also stated that Tarlochan Singh had expressed a desire to execute the will and, therefore, he had accompanied him from Sham Nagar. There is no evidence to show that any of the legatees or their fathers with whom Tarlochan Singh was residing in Sham Nagar accompanied the testator at the time he went to Amritsar to execute the will or took any part in execution thereof.

12. P.W. 1 Amar Kaur has admitted that defendants No. 1 and 2 used to reside with Tarlochan Singh in Sham Nagar and used to serve him. As noticed earlier, she has admitted that defendants No. 1 and 2 had got the will executed from Tarlochan Singh. She must be knowing about the will, as according to her, she was also residing with Tarlochan Singh in Sham Nagar. Though the will was not got registered during the life time of Tarlochan Singh, but it was got registered later on. This is not a suspicious circumstance. The will is not a document which requires compulsory registration. Thus, I do not find any suspicious circumstances attached to the will Ex. D 1 executed by Tarlochan Singh which has been duly attested by the witnesses.

13. Consequently, the present appeal fails and the same is dismissed with no order as to costs.