
(1997) 03 P&H CK 0124

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2906 of 1979

Tirath Singh and Others

APPELLANT

Vs

Sajjan Singh (Died) through his LRs. and Others

RESPONDENT

Date of Decision : 18-03-1997

Acts Referred:

Citation : (1998) 4 CivCC 243 : (1997) 2 CivCC 299 : (1997) 117 PLR 643 :
(1997) 3 RCR(Civil) 468

Hon'ble Judges : B. Rai, J

Bench : Single Bench

Advocate : M.S. Rakkar and J.S. Virk, for the Appellant; Sarwan Singh H.L. Bhatia and K.P.S. Sandhu, for the Respondent

Judgement

B. Rai, J.—This Regular Second Appeal has been directed by the defendants against the judgment and decree, dated September 29, 1979 of the Court of 1st Additional District Judge, Hoshiarpur, reversing the judgment and decree, dated February, 2, 1977 of the trial Court and decreed the suit of the plaintiff.

2. Brief facts of the case are that Sajjan Singh filed a suit for possession of land measuring 40 Kanals 17-1/4 Marias fully described in Clauses (A) and (B) of the head note of the plaint and entered in Jamabandi for the year 1973-74, situated in Village Dagana Kalan and Haryana, Tehsil and District Hoshiarpur. One Chet Singh was the common ancestor of the parties. Gujjar was the son of Chet Singh. Gujjar had four sons, namely Ralla (Deceased) whose estate is in dispute, Sajjan Singh plaintiff, Santu (deceased) and Inder Singh (deceased). Tirath Singh, Karnail Singh and Ajaib Singh defendants are the sons of Santu son of Gujjar. Ralla was unmarried and died on June 9, 1974 without leaving any wife or child. Sajjan Singh plaintiff is real brother of Ralla. It is alleged by Sajjan Singh that after the death of Ralla, defendants had taken possession of the suit land in a wrongful manner claiming that Ralla had executed a valid Will in respect of the suit property in their favour. According to Sajjan Singh, the Will set up by the defendants is not genuine and is a forged document. Ralla was not having sound

disposing mind since about 3 years before its death and remained so till his death. At any rate, the Will set up by the defendants is a result of undue influence, fraud and misrepresentation. The defendants got Mutation No. 1687 sanctioned in their favour on the basis of alleged Will connivance with the revenue officials at his back without any notice to him. When he came to know that Mutation was sanctioned in favour of the defendants, he filed an appeal before the Sub-Divisional Officer (Civil) exercising the powers of the Collector. That appeal was accepted Mutation was set aside and the case was remanded to the Circle Revenue Officer. The mutation has not yet been decided. According to Sajjan Singh plaintiff, he has 1/4th share in the suit land bearing khewat No. 20 and 1/8th share in the suit land bearing Khewat No. 27. He is claiming possession of share belonging to Ralla deceased in the suit land and is not claiming any share belonging to other co-sharers in Khewats No. 20 and 27. The defendants refused to accept his claim which led him to file the suit.

3. The suit was contested by the defendants. They raised preliminary objection that Ralla (deceased) had executed a registered gift deed, date January 14, 1963, in their favour and thereafter he executed a registered Will, dated November 28, 1972 in respect of his entire estate including the suit property in their favour. Therefore, the suit is not maintainable. Inter se relationship of the parties was admitted by the defendants. They, however, pleaded that the Mutation has rightly been sanctioned in their favour and there was no conspiracy or collusion with the revenue officials. All other allegations were denied.

4. The trial Court framed the following Issues:

(1) Whether Ralla deceased executed a valid Will on 28.1.72 in favour of the defendants ? OPD

(2) In case issue No. 1 is not proved, whether the plaintiff is preferential heir to the estate of Ralla deceased ? OPP

(3) Whether the suit as framed is not maintainable. ? OPP

(4) Whether the suit is time barred ? OPD

(5) Relief.

5. After appreciating the evidence led by the parties, under Issues 1 and 2, the trial Court found that Ralla had executed the Will with sound disposing mind and in presence of the Will, the plaintiff cannot be treated as a preferential heir. Issues 3 and 4 were not pressed. Therefore, these were decided against the defendants. Consequently on the basis of the findings under Issues 1 and 2, the suit of the plaintiff was dismissed with costs.

6. Feeling aggrieved, Sajjan Singh plaintiff preferred an appeal. The appeal was allowed by the learned 1st Additional District Judge, Hoshiarpur, the judgment and decree of the trial Court were reversed and the suit was decreed.

Hence, this Regular second Appeal at the instance of the defendants as indicated

in the first paragraph of this judgment.

7. I have heard learned counsel for the parties and have carefully scanned the records. It was argued by the learned counsel for the appellants that Will dated November, 28, 1972 registered on December 13, 1972, Exhibit D1, was executed by Ralla (deceased) in favour of the appellants while in sound disposing mind. The execution of the Will is proved by the evidence of DW.2 Gobind Parshad who stated that it was scribed by him at the instance of Ralla and was attested by witnesses, namely, Kartar Singh and Harbhajan Singh Lambardar. Kartar Singh was examined as DW.3, while Harinder Singh Lambardar another witness could not be examined as he had gone to Dubai. Ralla was residing with the appellants and he had executed the Will in their favour in lieu of the services rendered to him by them. According to the learned counsel, the Will is not shrouded in any suspicious circumstances and the suspicious circumstances, if any, taken note of by the learned lower appellate Court are the result of conjectures and surmises and not well founded being not borne out from the evidence on record. All the circumstances have been satisfactorily explained. It was submitted that the Will being a registered document having been executed by Ralla while in sound disposing mind could not be rejected. It was also argued that though at the time of his death, Ralla was about 90 years of age yet he was in his full senses. It was further argued that earlier Ralla had executed registered gift deed, dated January 14, 1963 in favour of Sajjan Singh plaintiff and Santu defendant to the extent of 1/4th share in the house and Haveli in Village Dagana Kalan and remaining share in favour of the appellants. The appellants filed a suit challenging the validity of the gift deed. In the proceedings of that suit, Ralla appeared as PW2 and made the statement Exhibit D5 that earlier in had cordial relations with Sajjan Singh defendant in that suit but later on they turned to be his enemies. where the gift deed in favour of the appellants was executedly him in lieu of good service done by them to him. The version given by Ralla was believed by the Court and the suit was decided in favour of the present appellants. The Will in question was executed by Ralla about ten years after the execution of the gift deed. According to the learned counsel, that goes to show that Ralla was continuously associated with the appellants who were serving him and in lieu of the service rendered he also bequeathed his entire property in their favour by executing registered Will, dated November 28, 1972, Exhibit D1.

8. On the other hand, learned counsel for the respondent refuting the contentions raised by the learned counsel for the appellants, has strenuously argued that the first appellate Court has rightly appreciated the evidence and had come to the firm conclusion that Will relied upon by the appellants is shrouded in suspicious cir-cumstances and has rightly rejected the same.

9. I have given my thoughtful consideration to the rival contentions and have carefully gone through the evidence. It was stated by Gobind Parshad (DW.2) that Will Exhibit D1 was scribed by him at the instance of Ralla. It was read over to him who thumb-marked the same in token of its correctness. At that time,

marginal witnesses were also present and they had also attested the Will. He had entered the Will in his register at Serial Number 45. Kartar Singh is one of the attesting, witnesses of the Will, Exhibit D.1. He was examined as DW.3. It was stated by him that Ralla son of Gujjar was known to him. The Will, dated November 28, 1972, was scribed at the instance of Ralla which was read over to him by the Scribe who in his and in presence of Harbhajan Singh Lambardar had thumb-marked the same in token of its correctness and they had attested the Will in the presence of Ralla. In his cross-examination, it was stated by him that he was called by Ralla and many days earlier also, Ralla used to tell him that he should accompany him. Thus, the execution of the Will stands duly proved. No doubt, it was stated by Gobind Parshad (DW.2) Scribe that Ralla and the attesting witnesses were not personally known to him and that Tirath Singh and Karnail Singh were present at the time when the Will was scribed. Kartar Singh (DW.3) also stated, in his cross-examination that when they started, from the village, he, Tirath Singh, Ralla, Harbhajan Singh, and Karnail Singh were together. According to the learned Counsel for the respondent, it clearly goes to show that Tirath Singh and Karnail Singh appellants had taken active part in getting the Will executed from Ralla in their favour. There is no substance in this contention. It was not elicited from Gobind Parshad (DW.2) and Kartar Singh (DW.3) as to how and in what manner Tirath Singh and Karnail Singh had taken active part in the execution of the Will or that Ralla was influenced by them to execute that Will in their favour. The mere fact that at the time of scribing the Will, they were present or that they had accompanied Ralla from the village to the Court compound where the Will was scribed, is not sufficient to draw an inference that they had exercised any undue influence on Ralla and under that influence, Ralla had executed the Will in their favour. At the time of execution the Will, as stated by Kartar Singh (DW.3), Ralla was of 90 years of age. It was suggested to him that 3/4 years before the death of Ralla, he was not in his senses and he could not differentiate between right and wrong; and the Will was got executed from some other person, but these suggestions were denied by Kartar Singh (DW.3). Not only this, no such case was set up in the plaint that Will was got executed from some person other than Ralla. Therefore the suggestions put forth to Kartar Singh to that effect are inconsequential. No doubt it was stated by Kartar Singh (DW.3) in his cross-examination that they appeared before the Sub-Registrar on the same day when the Will was scribed and the Will purports to have been scribed on November 28, 1972 and it was registered on December 13, 1972 and not on the day it was executed, as stated by Karnail Singh (DW.5), but that by itself would not make the Will suspicious document. The Will was scribed on November 28, 1972, while Kartar Singh (DW.3) was examined in Court on March 19, 1976, i.e., after about three years of the recording of the statement. Therefore, this minor discrepancy in his evidence cannot be taken as unusual and the same does not really affect his credibility. On the day of execution of the Will, Ralla himself had come to the court compound without the help of a walking stick and even on December 12, 1972 he also travelled from the village up to the Office of the Sub-Registrar and got the Will

registered. That goes to show that Ralla was having good health and was in his full senses. The Will was registered on December 13, 1972. It carries the endorsement of the Sub-Registrar. Harbhajan Singh Lambardar and Kartar Singh (DW.3) attesting witnesses of the Will were also present at that time. The Sub-Registrar certified that the Will was read over to Ralla who admitted the contents of it as correct and then he thumb-marked the same.

From this, it has to be presumed that at the time of registration of the Will, Ralla was having sound disposing mind and it was executed by him while in his full senses. From the mere fact that the testator of the Will, namely Ralla, was of advanced age, "no presumption can be drawn that he was not having sound disposing mind. Therefore, the contention in that respect is repelled. Ralla had died on June 9, 1974 after the execution of the Will. It was stated by Kartar Singh (DW.3) in his cross-examination that Ralla suffered from fever for 2/4 days and then died. There is nothing to show that Kartar Singh (DW.3) was in any way interested in the appellants or was having any animosity with the respondent. A suggestion was put to Kartar Singh (DW-3) that Ralla used to reside with Sajjan Singh and he used to render service to him, but that suggestion was denied by him. The evidence of Kartar Singh (DW.3) inspires full confidence. Therefore, non-examination of Harbhajan Singh Lambardar who is stated to have gone to Dubai does not make the Will a suspicious document. It was stated by Mohan Singh (DW.2) and Jaswant Singh (DW.3) that about 8/9 or 7/8 years before his death, Ralla was not in his senses and he could not understand his right or wrong. He was residing with Sajjan Singh who used to render service to him. Sajjan Singh performed his last rites. According to Jaswant Singh (PE.3), his remains were taken to Kiratpur by Sajjan Singh. According to him, Ralla never resided with Karnail Singh etc. In cross-examination, it was stated by them that about 8/9 years before his death, Ralla was suffering from some mental disease and he used to talk incoherently. They, however, displayed their ignorance as to in which month or year Ralla had died or that he had died in winter. They stated that they did not know as to who had immersed his remains. It was also stated by them that they had no relationship with Sajjan Singh or Ralla. They were not even on visiting terms with Sajjan Singh. If Mohan Singh and Jaswant Singh, PWs. 2 and 3, respectively, were not having any relationship with Sajjan Singh or Ralla and were not on visiting terms with them, they could not know the mental condition of Ralla or that Ralla used to reside with Sajjan Singh and Sajjan Singh was rendering any service to him.

Therefore from their evidence, it is difficult to conclude that Ralla was not having sound disposing mind. Sajjan Singh while appearing as PW.4 stated that Ralla had not executed any Will and the Will which has been produced is a forged document. According to him about 4/5 years prior to his death, Ralla was not in his senses and he was incapable of understanding his right or wrong; and at the time of execution of the alleged Will he was not having sound disposing mind. He had not gone anywhere to execute the Will. Ralla used to reside with him and he used to render service to him. It was further stated that last rites of Ralla were

also performed by him. According to Sajjan Singh, Ralla was got treated from Dr. Mohan Singh but he had no prescription slip with him and name of Ralla was not got recorded in the record of Dr. Mohan Singh. It was also stated that Dr. Mohan Singh was alive, but it is significant to note that said Dr. Mohan Singh was not examined by the plaintiff to prove that Ralla was suffering from any mental disease and he was treated by him. It is pertinent to note that it was nowhere pleaded in the plaint by Sajjan Singh that Ralla was residing with him and he used to render service to Ralla. It was also not pleaded that Ralla was suffering from any mental disease and he Was got treated by him from Dr."Mohan Singh. Therefore, that part of the statement of Sajjan Singh has to be left out of consideration.

Karnail Singh, one of the defendants, examined himself as DW.5. It was stated by him that Ralla was elder brother of this father. Ralla used to reside with them and they were rendering service to him. Ralla died in their house and his last rites were performed by them. Sajjan Singh never rendered any service to him. About 12/13 years before June 7, 1976 when his statement was recorded, Ralla had made a gift deed in their favour regarding a house and a Haveli. There was partition suit between them and Sajjan Singh regarding the gifted property and that suit was decided in their favour. In lieu of service rendered to Ralla by them, Ralla had executed a Will in their favour. Exhibit D.5 is the copy of the statement of Ralla made by him in Civil Suit No. 63/234 of 1964-65 between Karnail Singh etc. and Sajjan Singh and another. That suit was for possession of 1/4th share by way of partition. In that suit, Ralla had appeared as PW.2. He stated that plaintiffs (in that suit) used to serve him. They are is nephews being sons of his brother Santu and he had executed a gift deed, Exhibit P.1, in their favour. In cross-examination, it was stated by him that defendant was his brother. Earlier he was having cordial relations with him and after the execution of the gift deed, he became bis enemy. This statement was made by him on December 17, 1965. The Will was executed by Ralla on November 28, 1972 in favour of the defendants. Statement Exhibit D.5 of Ralla serves as a clincher. It goes to show that after the gift deed was executed in favour of the defendants as also in favour of his brother Sajjan Singh by Ralla, relations between him and Ralla became strained which led him to make that statement. If Ralla was not having good relations with Sajjan Singh, he was not expected to reside with him and there could be no occasion with Sajjan Singh to render any service to him. It is available from the record that on the basis of some forged Will, Sajjan Singh in connivance with revenue officials got sanctioned Mutation No. 1687 in his favour. That Mutation was challenged by way of Mutation Appeal No. 28 of 1975-76 by Tirath Singh and his brothers before the Sub-Divisional Officer (Civil) exercising the powers of the Collector, Hoshiarpur and that appeal was accepted and Mutation was ordered to be sanctioned on the basis of the registered Will, dated December 13, 1972. It is another circumstances to uphold the Will. The evidence on record was not properly appreciated by the learned 1st Additional District Judge, which led him to arrive at an erroneous conclusion.

In view of the above discussion, I cannot persuade myself to agree with the findings recorded by the learned 1st Additional District Judge. Therefore, the appeal is allowed and the judgment and decree of the first appellate Court are set aside. The suit of the plaintiff is dismissed and the judgment and decree of the trial Court are restored. No costs.