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**(1990) 09 P&H CK 0003**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Regular Second Appeal No. 883 of 1981

Jagir Singh

APPELLANT

Vs

Jagir Kaur and Others

RESPONDENT

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**Date of Decision:** Sept. 19, 1990

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302

**Hon'ble Judges:** N.C. Jain, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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**Judgement**

N.C. Jain, J.

This second appeal has been filed by Jagir Singh Defendant against the judgments and decrees of the Courts below by which Will in his favour has been discarded whereas the Will in favour of the Plaintiff-Respondents has been upheld.

2. The necessary facts giving rise to the present appeal are that the Plaintiffs instituted the present suit on the averments that Smt. Harnam Kaur widow of Mansha Singh was their mother who died on 1-4-1975, leaving behind a registered Will dated 5-7-1974 bequeathing her entire properties in their favour. The Defendants were stated to be having no concern with the property but they took forcible possession of the same six months prior to the institution of the suit and, therefore, their possession was unlawful. The Defendant contested the suit by stating that Harnam Kaur did not die a natural death but she was murdered by the Plaintiffs along with another person who were challaned u/s 302 of the Indian Penal Code. It was denied that the Plaintiffs were heirs of Harnam Kaur and therefore, the question of their succeeding to her land did not arise. The Will was set up by the Appellants in their favour, which was alleged to have been executed on 23-3-1975, vide which she was alleged to have bequeathed of her properties in favour of Jagir Singh Defendant. It was further the case of the Defendants that according to the later Will, the previous Will was revoked. The Defendant Appellant described himself

to be the legal heir of the deceased who on her death succeeded her and became full owner of all the properties left -by her as he was collateral and agnate of Harnam Kaur and her deceased husband. The properties in suit were described to have been inherited by Harnam Kaur from her husband. Defendant No. 2 Surjit Singh has been described to have been wrongly impleaded as he was not in possession of the property in dispute. It was denied that the Plaintiffs were the daughters of Harnam Kaur. On the basis of the rival pleas taken by the parties, the trial Court struck the following issues:

1. Whether Shrimati Harnam Kaur made a valid Will on 5-7-1974 in favour of the Plaintiffs? OPP.
2. Whether Harnam Kaur deceased executed a valid Will in favour of Jagir Singh etc. on 23-3-1975 as her last Will? If so, its effect? OPD.
3. Whether the suit is liable to be dismissed on the ground that some properties have not been included? OPD.
4. Whether Jagir Singh Defendant is the nearest heir of Shrimati Harnam Kaur deceased? If so its effect? OPD.
5. Whether Defendant No. 2 is unnecessary party? If so its effect? OPD.
6. Relief.

Under issue No. 1, it was held by the trial Court that Smt. Harnam Kaur executed a valid Will on 5-7-1974 in favour of the Plaintiffs where as under issue No. 2, it was found that Harnam Kaur deceased did not execute any Will in favour of Jagir Singh Appellant on 23-3-1975. Under issue No. 4 Jagir Singh was held not to be the nearest heir of Harnam Kaur as compared to the Plaintiffs. Issues No. 3 and 5 were given up. As a result, the suit of the Plaintiffs was decreed. The judgment and decree of the trial Court have been affirmed by the first appellate Court. This is how Jagir Singh Defendant has come up in second appeal before this Court challenging the correctness of both the judgments of the Courts below.

2. Mr. Ajay Kumar Mittal, Advocate, assisted by Mr. G.S. Sandhawalia, Advocate, has vehemently argued that the findings recorded by the Courts below under the relevant issues are erroneous and based upon non-considerations of the relevant evidence, surmises and conjectures. After hearing the learned Counsel for the parties, I am of the view that the evidence recorded by the Courts below, are based upon good evidence and the same can be sustained.

4. The Will dated 5-7-1974 executed in favour of the Plaintiff-Respondents is supported by two independent witnesses who had attested the same. The Will was registered. The appellate Court was right in observing that the (sic) of the Will is proved from the statement of Gurdev Singh son of Jagir Singh the Defendant-Appellant, who deposed that Harnam Kaur herself had admitted before

him that he had executed the Will earlier in favour of the Plaintiffs-Respondents. Gurdev Singh was holding the power of attorney on behalf of Smt. Jagir Kaur when he stepped into the witness-box as the said lady was ailing and could not come to the Court. Of course, he had given a different version that the Plaintiffs started maltreating Harnam Kaur after her executing the Will in their favour which led her to execute another Will in favour of Jagir Singh Appellant yet it can be safely inferred from her statement that Harnam Kaur had executed a Will in favour of the Plaintiff. In view thereof, the execution of the Will in favour of the Plaintiffs is proved even from the statement of Gurdev Singh son of Jagir Singh Appellant.

5. As regards the Will dated 23-3-1975 propounded by Jagir Singh Appellant is concerned, it has been held by both the Courts below that the Defendants had failed to prove that the Will bore the thumb impression of the testator. This Will was not resisted. It is correct that normally registration of the Will is neither here nor there. However, once a testator was conscious enough to know about the advantages of the registration of the Will as she had got the previous Will registered, there was absolutely no reason as to why she would not get the latter Will registered. In order to meet the point of non-registration, the Defendants led evidence to show that when Harnam Kaur came to Ambala to execute the second Will on 23-3-1975 it was found to be Sunday. In the first instance, it is not understandable as to how the factum of 23-2-1975 being Sunday was lost sight of and in any case even if this fact was discovered after reaching Ambala nothing prevented Harnam Kaur to return to the village, which was hardly at a distance of 3/4 Kms. from Ambala, in order to come to the same place for registering the Will on the following day or any other working day. This Will, in favour of the Defendants was not even scribed by a Deed-Writer. The scribe of the Will happens to be an employee of the Punjab Dairy Development Corporation, Chandigarh, who stated that when Harnam Kaur, Karnail Singh, Ajmer Singh and Prem Singh alighted from a Tonga in front of his house at Ambala on 23-3-1975, he was told that Harnam Kaur wanted to execute a Will. The witness proceeded on to state that when he told the aforesaid persons that the day happened to be Sunday and that Courts were closed, the group told him that a Will was to be scribed and that they had come to his house, where the said Smt. Harnam Kaur dictated the Will. The version, as has been narrated above does not go home and seems to be apparently unacceptable. The scribe stated that he had been earlier residing in village (sic) i.e. the village of Harnam Kaur, but he could not disclose the names of the persons with whom he resided. The Courts below by taking all the aforementioned circumstances into consideration, in my considered view, have reached at the correct conclusion that the Will dated 23-3-1975 is not proved. In this view of the matter, I am of the firm view that no case for interference in second appeal has been made out.

6. Before parting with the judgment, an argument raised by Mr. Mittal, learned Counsel for the Appellant has to be dealt with and which is this. According to the learned Counsel the Plaintiff-Respondents along with another person were

challaned u/s 302 of the Indian Penal Code for the commission of murder of Smt. Harnam Kaur. The Counsel argued that if the Plaintiffs-Respondents have been convicted, they would stand disentitled to get the properties of the deceased. Although this point was not argued before the first appellate Court, this Court specifically asked the counsel for the Respondents as to what is the factual position regarding the said criminal case. Mr. G.S. Grewal, learned Senior Advocate, stated at the Bar that the Plaintiff-Respondents were acquitted by the trial Court and the appeal against acquittal was also dismissed.

7. For the reasons recorded above, this appeal is found to be meritless and is consequently ordered to be dismissed with no order as to costs.