
(1993) 11 P&H CK 0012

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1309 of 1980

Gurmej Singh and
Others

APPELLANT

Vs

Smt. Gurcharan Kaur

RESPONDENT

Date of Decision: Nov. 2, 1993

Citation: (1993) 11 P&H CK 0012

Hon'ble Judges: R.K. Nehru, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

R.K. Nehru, J.

This regular second appeal has been filed by Defendants Gurmej. Singh and others against the judgment and decree dated

29.2.1980 passed by Shri Iqbal Singh, Additional District Judge, Amritsar, affirming on appeal those of the trial Court, decreeing the suit of the

Plaintiff for possession of the suit property in this suit.

2. For better appreciation of the facts, the following pedigree table may be looked into:

Facts:

3. Plaintiff Smt. Gurcharan Kaur is the daughter of Darshan Singh who was the owner of the property in dispute. His wife and pre- deceased him.

He died on 6.6.1970 at Hissar. Appellants- Defendants No. 1 to 8 entered into possession of the property in dispute, regarding which they also

got the mutation of inheritance sanctioned in their favour on the basis of the will dated 21.7.1969 Ex. D-1, stated to have been executed in their

favour by Darshan Singh deceased.

4. Plaintiff Gurcharan Kaur filed civil suit No. 114/74 against the Defendants for a decree of possession of the suit property on the allegations that

her father Darshan Singh never executed any Will in favour of the Defendants and that it was a forged document. She averred that she had very

cordial relations with her father, Darshan Singh and there was no reason for him to disinherit her from the suit property through the alleged Will in

favour of Defendants No. 1 to 8.

5. The suit was contested by Defendants No. 1 to 8 only by setting up a case that the relations between the Plaintiff and her father Darshan Singh,

testator, were strained because she had eloped with and married a person from outside their caste, namely, Kulwant Singh and thus damaged his

reputation, so the deceased had no love and affection for her. Darshan Singh deceased had as such executed the Will Ex. D-1 in respect of his

entire property in their favour out of love and affection and that they had got Will Ex. D-1 registered after his death.

6. The parties contested the suit on the following issues:

(1) Whether the plaint is properly valued for purposes of Court- fee and jurisdiction? OPP.

(2) Whether Darshan Singh deceased executed a valid Will in favour of Defendants No. 1 to 8? OPD

(3) Relief.

The learned trial Court answered the crucial issue No. 2, against the Defendants by holding that Will Ex. D-1, was surrounded by a number of

suspicious circumstances and that its execution by Darshan Singh testator, was not proved on record. Resultantly, the trial Court decreed the suit of

the Plaintiff, Smt. Gurcharan Kaur vide judgment and decree dated 29.9.1976. In appeal, the first appellate Court affirmed the above findings of

the learned trial Court vide impugned judgment and decree dated 29.9.1980, which has been appealed against by the Defendants in this regular

second appeal before me,

7. I have heard the learned Counsel for the parties at length, examined the pleadings and evidence on record as also carefully gone through the judgments of the Courts below.

8. The learned Counsel for the Appellants has vehemently argued that the learned Courts below have mis-read, mis-construed and mis-interpreted the evidence on record and arrived at a wrong conclusion and thus wrongly decreed the suit of the Plaintiff.

9. On the other hand, with a view to support the conclusion of the Courts below, the contention raised on behalf of the Plaintiffs-respondent is

two-fold, firstly, that testator, Darshan Singh was an illiterate person; he did not know how to sign and, therefore, there was no question of his

having signed the Will Ex. D-1, and secondly, that the testator had love and affection for the Plaintiff, who was his only child and as such there was

no reason for the testator to deprive her of his property.

Both the above submissions of the Plaintiff-respondent have been dealt with a great detail by both the Court below. After examining Will Ex.D-1,

and the entire evidence on record, I am convinced that there is no infirmity in the impugned judgment and the learned Court below have rightly

concluded that Will Ex. D-1 is not a genuine document and same is surrounded with suspicious circumstances which have not been dispelled by the

Defendants.

10. The main reasons for declaring the Will as a fictitious document by the trial Court are thus:

(1) Khushi Ram DW-2, the scribe of Will Ex. D-1 has admitted that he did not know Darshan Singh, personally and so he could not say if the

executant of the Will was, in fact, Darshan, deceased, or some other person had impersonated before him in his stand.

(2) The entry in the register of scribe Khushi Ram DW-2 regarding the execution of Will Ex.D-1 is very much suspicious inasmuch as this Will

stands entered in the register at the serial No. 678 against which mark (""), (denoting ditto), already exists. There is also a similar mark ("") existing

above this very entry at serial No. 677, and prior thereto against serial No. 676, some agreement is entered. The bare examination of the Register

shows that mark (""") (denoting ditto). appearing against both the entries at serial No. 677 and 678 in fact relates to copy of a document entered at

serial No. 676. Against entry No. 678 the scribe has neither entered the substance of the Will in question nor the names of the beneficiaries under

it, whereas against other entries in the register he has consistently mentioned the substance of each document scribed by him from time to time. No

explanation has been given by the scribe for not recording the substance of the Will in question against the relevant entry in his register.

11. The signature of Darshan Singh, alleged executant of the Will, appear at two places against entry No. 678 in the register, whereas the scribe

did not obtain signatures or thumb impressions of executant of any other document at two places.

12. The testimony of Wirsa Singh DW-3, one of the attesting witnesses of Will Ex. D-1 does not deserve credence. He has stated that the testator

had signed the Will in his presence at only one place, whereas his signatures, in fact, purports to appear at four places including the one at page 4

are not of the testator. He could not produce any document in the shape of Khasra Girdawaries or Jamabandies to show his cultivation or

ownership of any land located in the village of the testator and as such his statement that he owns the land in the village of the testator is not

acceptable. He has even not been able to tell as to whether the details of the properties bequeathed by the testator were incorporated in the Will

or not. He has given the age of the testator at the time of the testator at the time of his death as about 45/50 years, whereas the age of the testator

as mentioned in the Will is 52 years and the testator admittedly died 10-11 months after its alleged execution. Although he deposed in a parrot-like

manner that the Plaintiff had eloped with one Kulwant Singh Barber, but when cross-examined, he stated that she had not been married which is

against the admitted fact that the Plaintiff is, in fact, the wife of Kulwant Singh to whom she was married in the year 1966.

13. Bharpur Singh DW-9, another attesting witness of the alleged Will Ex. D-1 is the father-in-law of Defendant Gurmej Singh, one of the

beneficiaries under the Will and as such he is a highly interested witness in favour of the Defendants. He is also not a co-villager of the testator. In

his testimony in Court, he stated that he was brought by the testator himself from his village but he was duly confronted with his earlier statement,

copy of which is Ex. P-1, made by him in mutation proceedings before the S.D.O (Assistant Collector 1st Grade), wherein he had stated that he

was summoned by the testator through some person before executing the Will. Moreover, it is hard to believe that the testator would either himself

or through somebody else call him from his village which is situated at a distance of about 7-8 miles from that of the testator for attesting the Will

when many other persons were already available for the said purpose in the village of the testator himself.

14. Defendant Wazir Singh DW-11 has deposed that Darshan Singh deceased had been going to is school at Hissar for learning Punjabi and that

he could write his name in Punjabi but his evidence cannot be relied upon firstly because it is beyond the Defendants' pleadings and secondly, that

it is difficult to believe that at old age the testator had joined the school for learning Punjabi. The Defendants had neither disclosed the name of the

school nor the name of the teacher from whom he used to learn Punjabi, so much so, that no person from any such school has been examined by

the Defendants to prove that the testator had been learning Punjabi.

15. One of the four attesting witnesses to the alleged Will, is Tirlok Singh, who has been examined by the Plaintiff as PW-6. He has categorically

stated that Darshan Singh deceased had not executed the Will in his presence in favour of Defendants No. 1 to 8, and that his attestation on it was

obtained by Gurmej Singh Defendant subsequently.

16. The Defendants in their attempt to prove that the testator was literate and used to sign in Punjabi, have relied upon the following documents,

which, according to the Courts below do not, in any manner, establish this claim of the Defendants:

(i) Ex. DW-7/r is the mortgage deed dated 24.10.1967 purported to have been signed by Darshan Singh deceased as one of its attesting

witnesses. However, neither the scribe nor any attesting witness of this document has been examined by the Defendants to prove that the deceased

had signed it in their presence. Besides, this document was got produced on record in the unsworn statement of Amar Singh DW-5, on of its

mortgagees. He was not examined on oath to state that this document was attested by the deceased in his presence for the reasons best known to

them. Teja Singh DW-7 has deposed that Ex. DW-7/1 was attested by the deceased but his evidence is not reliable because firstly, he admittedly

had no acquaintance with the testator, secondly, the land covered by this mortgage deed is situated in a different. village from that of the testator

and thirdly, the endorsement of the Sub Registrar on its back reveals that the testator did not appear before him at the time of its registration and as

such there is no evidence to prove that this mortgage deed was signed by the testator as the third attesting witness in Punjabi.

(ii) The next document is Ex. DW-8/1, which is a sale deed dated 8.5.1969. It is also purported to have been signed by the testator in Punjabi as a

third attesting witness. However, neither the vendor nor the vendee of this document has been examined by the Defendants to prove the factum of

the deceased having signed it in Punjabi in their presence. This sale deed was also got produced only in the unsworn statement of Piara Singh DW-

4, a vendee and no value as such can be attached to this piece of evidence.

(iii) The testimony of Lakha Singh DW-8, one of the attesting witnesses to this sale deed Ex. DW-8/1 that the deceased had signed it in Punjabi in

his presence, does not deserve acceptance. As admitted by him, his brother is the son-in-law of Jarnail Singh, Defendant, father of Defendants No.

5 to 8. Otherwise also he is proved to be an untrustworthy witness, inasmuch as he has deposed that Darshan Singh deceased had appeared

before the Sub Register and has signed this sale deed in his presence but the endorsement of the Sub Register on the back of this document shows

that the testator had not at all appeared before him at the time of its registration.

17. Besides what has been stated above, the following salient features render the claim of the Defendants regarding the deceased having signed

these documents in Punjabi as unreliable and unacceptable:

(a) the alleged signatures of Darshan Singh appear as third attesting witness, whereas in normal course, such documents are got attested only by

two witnesses;

(b) on mortgage deed Ex. DW-7/1, the alleged signatures of Darshan Singh appear at an unusual place, i.e. top corner of its first page;

(c) on sale deed Ex. DW-8/1, alleged signatures of Darshan Singh appear on the third page and that too, last of all, in the end, whereas sufficient

space has been left in between the thumb impressions of the other two attesting witnesses on this document.

So far as the alleged signatures of Darshan Singh deceased at two places in the Bahi of M/s. Sohan Lal Mohan Lal are concerned, no reliance can

be placed on them on the following grounds:

(i) the scribe of these two entries is the Munim of the aforesaid firm, who was admittedly alive but he has not been examined by the Defendants,

thus giving rise to an irresistible presumption that had the Munim been examined, he would not have supported them.

(ii) there are 33 other entries in this Bahi relating to Darshan Singh deceased but none of them has been signed by him. On the other hand, these

have been shown to have been thumb marked by him. For obvious reasons, these entries have not been called to their aid by the Defendants. Even

these entries including the disputed two entries in the Bahi have not been exhibited on record.

18. The Defendants had earlier filed a suit in respect of the property in dispute on the basis of Will Ex. D-1 in the civil Court at Hissar but they

withdrew it subsequently on 17.4.1971 with permission to file a fresh one on the same cause of action, as is clear from the copy of order of the

Sub Judge, Ex. P-24. However no fresh suit was thereafter filed by the Defendants on the basis of this Will for the reasons best known to them.

19. It is admitted on record that on receipt of telegram Ex. P-22 from Defendant regarding the death of her father i.e. the testator, the Plaintiff had

gone to his village on 7.6.1970 and stayed there for about 20 days but during all this period of her stay, the Defendants, who were also present

there, never disclosed about the existence of any Will allegedly executed by her father. It is proved on record that it was for the first time on

17.7.1970 that the Plaintiff came to know about the existence of the alleged will from a common relation of the parties and on learning about it, she

immediately moved an application on 18.7.1970 before the Tehsildar that her father had not executed any Will and the Will, if any, was a forged

document.

20. Ex. PW-5/3 to Ex. PW-5/8 are the Bonds executed by Darshan Singh deceased in favour of Chetanpur Co-operative Society which bear his

thumb impressions. These bonds were got produced and proved in the testimony of Kundan Singh PW-5, Secretary of the said Society and they

have come from a proper custody.

21. The Plaintiff has proved in her shown testimony in court registered sale deeds Ex. P-2 dated 2.4.1959, Ex. P-33 dated 26.7.1968, Ex. P-13

dated 16.5.1959 and Ex. P-14 dated 21.5.1959, vide which Darshan Singh deceased had purchased various parcels of land jointly with his

brothers, namely, Amrik Singh-Defendant (father of beneficiary-Defendants No. 1 to 4) and Jarnail Singh- Defendant (father of beneficiary-

Defendants No. 5 to 8). All these sale deeds are thumb marked by Darshan Singh as one of the vendees at the time of their execution as also at

the time of their registration.

22. The Plaintiff has also proved in her evidence registered mortgage deeds Ex. P-6, P-5, P-4, P-7, P-8 and P-9 executed on 16.10.1933,

14.10.1936, 5.11.1941, 10.2.1943, 25.1.1945 and 21.5.1953 respectively vide which Darshan Singh deceased had taken various parcels of land

on mortgage from different mortgagors. These mortgage deeds bear the thumb impressions of the deceased by way of attestation.

23. The fact that Darshan Singh used to put his thumb impression on the documents has even been admitted by Bharpur Singh DW-9 examined by

the Defendants as one of the attesting witnesses of the alleged Will Ex. D-1, that Darshan Singh deceased ordinarily used to put his thumb

impression on the documents.

24. In order to prove that the Plaintiff had very good relations with her father Darshan Singh deceased, and that he never signed in Punjabi as he

was illiterate and on the other hand, he only used to thumb mark the documents, the Plaintiff has relied upon telegram Ex. P-22, money order

postal acknowledgement receipt Ex. P-23 and two letters Ex. P-10 and P-11.

25. Telegram Ex. P-22 was put in the course of telegraphic transmission to the address of the Plaintiff and her husband Kulwant Singh by Gurmej

Singh Defendant No. 1, informing them about Darshan Singh having died on 6.6.1970. This telegram bears the seal of the Telegraph Office as

7.6.1970.

26. Postal acknowledgement receipt Ex. P-23 shows that the Plaintiff had sent a money order of Rs. 500/- to her father Darshan Singh deceased

on 3.9.1965 and he thumb marked the same in token of its having received this amount.

27. Ex. P-10 and Ex.P-11 are the letters written by Baldev Singh-Defendant No. 2 on behalf of Darshan Singh deceased to the address of

Kulwant Singh, husband of the Plaintiff in 1969 and 1970 respectively, as is evident from the postal seal affixed thereon. The Plaintiff in her

testimony as PW-8 has deposed that these letters are in the handwriting of Baldev Singh-Defendant No. 2 (her cousin brother), written on behalf

of her father Darshah Singh deceased who was an illiterate person. This part of her testimony on oath has been challenged by the Defendants.

Defendant Baldev Singh could not dare to come in the witness box to dispute the above fact. The contents of these letters also show that the

deceased had been enquiring about the welfare of the Plaintiff and her children.

28. Although Defendant Wazir Singh (DW-11) has deposed in Court that the deceased had no love and affection for the Plaintiff but he was duly

confronted with his earlier statement made by him on 20.4.1974 during mutation proceedings, copy proved as Ex. DW- 11/2, wherein he had

categorically stated that Darshan Singh deceased had great love and affection for the Plaintiff. The Defendants are bound by this admission of

Wazir Singh-Defendant. It is as such hard to believe that a person would exclude from his estate the only child for whom he had all love and

affection.

29. The specific plea of the Defendants in their written statement was that Darshan Singh deceased was literate and used to sign the documents in

Punjabi. However, this plea stands falsified when Wirsia Singh DW-3 and Sita Ram DW 6 examined by the Defendants, came out with a new

version in their deposition and that too, in their examination-in-chief that Darshan Singh deceased sometimes used to thumb mark and sometimes

used to put this signatures in Punjabi, so much so, Wirsia Singh DW 3 has gone to the extent to depose that the deceased used to sign the

documents when he carried his spectacles with him, whereas he used to thumb mark the documents when he did not carry his spectacles. This

somersault in the testimony of Wirsia Singh DW3 and Sita Ram DW6 is nothing but a clumsy attempt on the part of the Defendants to wring out

of the situation, being conscious of the fact that the Plaintiff has successfully been able to prove that the deceased had very cordial relations with

her father and that the Will Ex.D1 is a forged document because he was illiterate and as such used to put his thumb impressions on the documents.

30. The learned Counsel for the Appellants has urged that sale deeds Exhibits P2, P3, P13 and P14 and mortgage deeds Ex.P6,P5,P4,P7 and P9

are inadmissible in evidence as these have not been proved according to law and an objection regarding their exhibition and admissibility was

raised by the Defendants when these were sought to be proved by the Plaintiff in her testimony.

31. It is true that neither the scribe nor any attesting witness of these documents had been examined by the Plaintiff to prove the thumb impressions

of the testator on these documents but the fact remains that all these documents have been produced by the Plaintiff from her custody. She is the

daughter and the only child of the testator. She has categorically stated that these documents were given to her by her father. These documents of

title are coming from proper custody. These were executed in favour of the Plaintiff's father. These were registered by the Registering Officer and

it contains certificate of registration. Darshan Singh deceased appeared before the Registering Officer and was duly identified. The certificate of

registration is a relevant evidence of proving the execution of these documents. In AIR 1929 711 (Lahore) , it was held thus:

xx xx xx xx

The registration is a solemn Act, to be performed in the presence of a competent official appointed to act as Registrar whose duty it is to attend the

parties during the registration and see that the proper persons are present, are competent to act, and are identified to his satisfaction; and all things

done before him in his official capacity and varified by his signature will be presumed to be done duly and in order. Of course, it may be shown that

a deliberate fraud upon him has been successfully committed; but this can only be very much stronger evidence than is forthcoming here.

Further so far as the recitals in the aforesaid sale deeds about the various parcels of the land having been purchased by the testator jointly with his

brothers namely Amrik Singh Defendants (father of beneficiaries, Defendants No. 1 to 4) and Jarnail Singh Defendants (father of beneficiaries

Defendants No. 1 to 4) and Jarnail Singh Defendant (father of beneficiaries Defendants No. 5 to 8) are concerned, there is no challenge even

remotely from the side of the Defendants. Even the beneficiaries of the Will in dispute did not dare to examine Defendants Amrik Singh and Jarnail

Singh to disprove the contents of these sale deeds.

32. The conclusions arrived at the trial Court in holding the Will in dispute to be a forged document have been affirmed in appeal by the first

Appellate Court, which are based on good evidence and sound reasoning and I do not find any infirmity in the approach of the Courts below to

conclude that the Will Ex. D1 is riddled with suspicious circumstances which the Defendants have failed to dispel by any cogent evidence.

For the reasons stated above, the appeal fails and the same is dismissed. No order as to costs.