
(1992) 09 P&H CK 0006

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1279 of 1981

Kashmir Singh

APPELLANT

Vs

Sucha Singh and Others

RESPONDENT

Date of Decision: Sept. 16, 1992

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100

Hon'ble Judges: Jawahar Lal Gupta, J

Bench: Single Bench

Advocate: Arun Jain, for the Appellant; H.L. Sarin with Ms. Kavita Mankotia, for the Respondent

Final Decision: Dismissed

Judgement

J.L. Gupta, J.

The suit of the plaintiff-respondent Sucha Singh was decreed by the trial court, Kashmir Singh's appeal having been dismissed by the lower appellate court, he has come up in second appeal to this Court. A few facts as admitted between the parties may be noticed.

2. Achhar Singh who was the last holder so the property died on December 27, 1972. Proceedings for the mutation were initiated. There were three sets of claimants to the estate of deceased Achhar Singh. First was Sukhdial Singh son of Kashmir Singh who claimed that he had been adopted as a son. The second set of claimants consisted of Sucha and others who claimed inheritance of the estate as natural heirs. The third claimant was Kashmir Singh who claimed the property on the basis of a registered will. The Assistant Collector 1st Grade by his order dated January 4, 1974 held that the will "Ex-P 1 is a genuine document and I have no hesitation in sanctioning the mutation in accordance with its terms. I therefore sanction mutation of inheritance of the estate of Achhar Singh deceased in favour of Kashmira Singh." A copy of this order appears at page 293 of the record of the lower court.

3. Sucha Singh and Katha Singh filed a suit for possession to the extent of 1/6 share in the land. The claim was based on the ground that he was natural heir of Achhar Singh, being the brother's son and was, therefore, entitled to succeed to the property. It was also averred that the will if any, in favour of Kashmir Singh and adoption deed in favour of Sukhdial Singh son of Kashmir Singh are fictitious. The suit was contested by the appellant and his son Sukhdial Singh.

4. On the pleadings of the parties, the learned trial court framed the following issues:-

1. Whether the plaintiff is the brother's son of Achhar Singh deceased, if so its effect? OPP

2. Whether Achhar Singh deceased executed a valid will in favour of Kashmir Singh defendant No.2? OPD

3. Whether said Achhar Singh validly adopted Sukhdial Singh defendant No. 1, if so its effect? OPD (onus objected to)

4. Whether the suit is not within time? OPD (onus objected to)

5. Relief.

Issues Nos. 1,2 and 4 were decided in favour of the plaintiff- respondent. On Issue No. 3 no evidence was led. Accordingly, the claim of the respondents was decreed by the trial Court. These findings were affirmed even by the learned lower appellate court. As a result, it was held that the will produced by the defendant- appellant could not be relied upon on account of the five suspicious circumstances enumerated by the two courts. Aggrieved by the judgment and decree, the appellant has come up in the present appeal.

5. I have heard Mr. Arun Jain for the appellant and Mr. H.L. Sarin for the plaintiff-respondent.

6. Mr. Jain contends that the reasons assigned by the courts below for disbelieving the genuineness of the will are based on a total misreading of the document itself as also the evidence on record. Accordingly, he contends that the find is wholly unsustainable and vitiated. On the other hand, Mr. Sarin contends that the finding of fact howsoever erroneous cannot be interfered with by the High Court in a second appeal.

7. It is undoubtedly correct that in exercise of jurisdiction u/s 100 of Code of Civil Procedure, the High Court will not interfere with a finding of fact recorded by the courts below on a proper appreciation of evidence. However, the primary question in this case is as to whether or not the evidence led by the parties has been properly appreciated by the courts below. For reasons, which follow, it is clear that the finding is based on a total misreading of the evidence.

8. The first circumstance taken into consideration by the courts is that the stand of the defendant-appellant that the will had been presented for registration on February 22, 1968 is belied by the documentary evidence on the record. It has been held on an examination of a certified copy of the will "Ex-P-4" that it had been presented for registration only on April 22, 1968. It is so? The original will has been produced on record as Ex. P-8. At some stage it appears to have been marked as Ex. D-8. But as noticed by the learned trial court it has to be read as Ex. R8. The will bears the thumb impressions of Achhar Singh the testator, Darshan Singh the Lambardar of village, Ajaib Singh and Gurbachan Singh. At the back of this document, there is an endorsement by the Sub Registrar Patti to the effect that "the document has been presented for registration in the office of the Sub Registrar, Patti today-at 12/1 P.M. by Achhar Singh son of Mehtab Singh resident of Kalsian Kalan in my presence." A perusal of this endorsement shows that the date has not been mentioned. It appears that in the certified copy, which has been produced as Ex. P-4, the date 22-4-68 has been wrongly mentioned. Still further, there is another endorsement on the will Ex. P-8 to the effect that the testator Achhar Singh had accepted the contents of the will as correct after hearing, and that he had been identified by Gurbachan Singh, Sarpanch and Ajaib Singh, "on whom I can rely." This also appears to have been signed by the sub Registrar. There is a third endorsement to the effect that the concerned persons had "thumb marked and signed the documents in my presence." This is also signed by the Sub Registrar. It has been further recorded that an entry about this document has been made at No. 16 in file No.3 volume No.11 at page 399/400 on- 4.68. The date give against this endorsement is not clearly legible. In the document at Ex. P-4 this date has been mentioned as April 22, 1968. However, in Ex. P-8 the month and year are clearly decipherable. Only the date is not legible.

9. On an examination of the document, I find that there is nothing to indicate that it was actually presented for registration on April 22, 1968 as held by the courts below. It only appears to have been entered in the relevant file or register on April, 1968. In view of above, the finding of the courts below that oral testimony is unbelievable or that the presentation of the document or its genuineness becomes suspicious on the ground that it was not presented on February 22, 1968 but on April 22, 1968 is based on a total misreading of the original will Ex. P-8.

10. The second circumstance taken into consideration is regarding the statement made by the scribe of the will viz. Barkat Ram who has appeared as DW.3. Firstly, a reference may be made to the entry which has been produced on record is Ex. DW/3/1. It bears the serial No.340. It is dated February 21, 1968. The name of Achhar Singh son of Mehtab Singh, caste Jat, resident of village Kalsian Kalan has been clearly mentioned. It is also indicated that the document written is a will in favour of Kashmir Singh son of Jiwan Singh. So far as this entry is concerned, there is no suspicious circumstance about it. In fact this entry is clearly corroborated by the original document Ex. P.8 which itself bears the date of February 21, 1968. The only

suspicious circumstance noticed by the lower court is that there is another entry at serial No.340 bearing the name of Bur Singh son of Fateh Singh. Entering a serial number twice in a register is a mere clerical mistake. It does not mean that the original entry in the register of the scribe becomes suspicious. It is not unknown that sometimes a serial No. is repeated on account of an inadvertent mistake or over-sight. However, in the present case, the entry in the register in fact supports the claim of the appellant rather than belying it in any manner. The repetition of serial No.340 does not make the original entry doubtful. Nor is this circumstance sufficient to discard the oral testimony of the scribe. Consequently, even this ground cannot be sustained.

11. The third circumstance noticed by the court is that "Kashmir Singh did not set up the will before the revenue authorities at the earliest and rather set up the adoption deed." This is belied on a perusal of the mutation entry to which a reference has already been made. A perusal of the mutation ordered by the Assistant Collector 1st Grade shows that it was on the basis of the will that the land was ordered to be mutated in the name of the present appellant.

12. The court has also found the will to be suspicious on account of minor contradictions in the oral testimony and the fact that the attesting witnesses Gurbachan Singh is a relation of the testator. The fact that a minor discrepancy existed in the statements is a circumstance which supports the claim of the appellant that the witnesses have not be tutored. Further, the fact that one of the witness is the wife's sister's husband is no ground to cast my suspicion regarding the genuineness of the document. One may normally like to have the relation as one of the witnesses so that no family dispute arises at a later stage. Equally fallacious is the suggestion that since the name of Gurbachan Singh has not been written by the scribe in his own hand, the presence of Gurbachan singh becomes doubtful. Not only has Gurbachan Singh signed the document but he had also appeared before the Sub Registrar who has recorded his presence in his own hand. Accordingly, this circumstance is of no consequence.

13. Lastly, the courts below have disbelieved the genuineness of the will on the ground that an adoption deed has been executed. This is not a circumstance to conclude that the will has not been executed or that the testator was revoking the will.

14. On a consideration of the evidence on record. I am satisfied that the findings are not based on a proper appreciation of evidence and more particularly the documentary evidence has been totally misread. As a result these findings cannot be sustained.

15. Accordingly, the finding that the will is a suspicious document and that the appellant is not entitled to succeed to the land on that basis, is set aside. As a result, the appeal is accepted, the judgment and decree of the Courts below are set aside

and the suit of the plaintiff-respondent is dismissed. In the circumstances of the case, the parties are left to bear their own costs.