
(1989) 03 P&H CK 0022

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1399 of 1978

Jagsir Singh and
Another

APPELLANT

Vs

Punjab Kaur and
Others

RESPONDENT

Date of Decision: March 16, 1989

Acts Referred:

- Transfer of Property Act, 1882 - Section 41

Hon'ble Judges: S.S. Sodhi, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

S.S. Sodhi, J.

The controversy in appeal here is with regard to the land originally owned by Ishar Singh. The points at issue being with regard to the validity of the Will propounded by his nephew's widow Punjab Kaur and the plea of the appellants Jagsir Singh and Arjan Singh, of being bonafide purchasers for value without notice of the land purchased by them from the grand-children of the said Ishar Singh.

2. The said Ishar Singh died on October 31, 1968 leaving behind five grand-children. Darshan Singh, Chand Singh, Gurmit Singh, Amar Kaur and Dalip Kaur, the children of his pre-deceased daughter-Sant Kaur as his nearest legal heirs. The other heirs being Punjab Kaur the wife of his brother's son Puran Singh, who claimed the property in suit on the basis of the Will Exhibit P1, said to have been executed in her favour on February 22, 1968.

3. In so far as Jagsir Singh and Malkiat Singh appellants are concerned, their claim in the suit is with regard to 18 Kanals and 5 Marias of land, which they purchased for Rs. 12,000/- vide sale-deed Exhibit D4 of April 9, 1970, which was executed in their favour by the grand-children of the said Ishar Singh. Both the courts below up-held the validity of

the Will in favour of Punjab Kaur and also negated the plea of the appellants founded upon Section 41 of the Transfer of Property Act. Neither of these findings warrants any interference in the second appeal.

4. The Will was sought to be impeached on the ground that there were suspicious circumstances surrounding it which had not been satisfactorily explained by its propounder-Punjab Kaur. Stress in this behalf was laid upon the fact that there was no mention in the Will why the Testator Ishar Singh had chosen to ignore his nearest heirs namely; the children of his predeceased daughter Sant Kaur.

5. The next circumstance adverted to was that the Will had not seen the light of the day till the filing of the suit which was about 18 months after the death of Ishar Singh. Reference was in this behalf made to the mutation sanctioned in favour of the grand-children of Ishar Singh on July 9, 1969 and the fact that it was later also attested by Inder Singh, Lambardar, who was one of the attesting witnesses of the Will.

6. Finally, counsel adverted to the decree exhibit DW4/1 obtained by Ishar Singh against Joginder Singh, where, when Punjab Kaur appeared in the witness box, she was described as the widow of Ishar Singh.

7. None of the circumstances sought to be branded as "suspicious circumstances surrounding the Will" can stand scrutiny. It deserves note at the very outset that the grand-children of Ishar Singh, who were the persons most adversely affected by the Will have not come-forth to contest it. Further, the evidence on record shows that it was with Punjab Kaur and her husband that Ishar Singh used to live and it was they who used to look after him, whereas his grand-children resided in another village, and it appears, had hardly anything to do with him during his life time. In this situation, the fact that no mention is made in the Will of the grandchildren cannot raise any adverse inference against its genuineness/or validity.

8. As regards the sanctioning of the mutation in favour of the grandchildren and the delay in the filing of present suit by Punjab Kaur, the important point to note is that no notice of these proceedings was ever given to Punjab Kaur nor indeed was there any notice to the General Public. PW2 Inder Singh, the sole Lambardar of the village was also present at the time of the sanctioning of this mutation. This aspect of the matter has also to be seen in the context of the categorical finding that the possession of the land in suit was with Punjab Kaur. Further, the report of the Patwari on the basis of which the mutation was entered does not disclose the name of the informant. This report was no doubt, later got thumb marked by PW2-Inder Singh, but there is no evidence to show that it was ever read over to him by the Patwari before he thumb marked it. The thumb marking by an illiterate person of a written report is clearly of no value unless there is reliable evidence to show that he knew the content of such report and had thumb marked it accepting them to be correct. One Harpal Singh was there at the time of the sanctioning of this mutation who represented himself to be a close relative of Ishar Singh. This Harpal

Singh has not been examined. The sanctioning of the mutation in these circumstances cannot, therefore, be given any credence.

9. Next, it was said that Punjab Kaur played a dominant role in the execution of the Will. A reference to the evidence on record would show that this role consisted in Punjab Kaur accompanying Ishar Singh to Moga, where the Will was scribed and it was she who paid the expenses for the execution of this Will. In a case like the present, where it stands established that the testator was living with Punjab Kaur and was being looked after by her, it is but natural that she would be with him when he went to the court compound for this purpose. Here, mere presence cannot be construed as a circumstance, which can, by itself, create any doubt with regard to the genuineness of the Will. Here, a half-hearted argument was also raised that when the Will had been executed in the court premises, it should also have been registered too. As is well known, the validity of the Will does not rest solely upon the registration of it. The fact that it was not formally registered, cannot, on the facts of this case, be held against Punjab Kaur.

10. Finally, as regards the description of Punjab Kaur as the widow of Ishar Singh, in her statement, in the suit filed by Ishar Singh, this is clearly a clerical error as nowhere else was she ever described as such and it has not been shown that she ever claimed to be the widow of Ishar Singh. Counsel also could not suggest any motive or purpose which could have impelled Punjab Kaur to so describe herself.

11. Such being the circumstances and the evidence on record, it cannot, but he held that the Will Exhibit PI was rightly held to be valid and genuine.

12. Turning to the plea of the appellants of being bonafide purchasers for value without notice, the law is well settled that in order to take the benefit of this doctrine, it must be established that all enquiries that a reasonable prudent man would be expected to make, regarding the right, title and interest of the vendor in the land concerned, were made by the vendees before they purchased the land. Any additional precautions taken would of course be a further factor in favour of the applicability of this doctrine, whereas in the present case, possession of the land was never with the vendors, enquiry into the nature of the interest of the person in possession would undoubtedly, be an essential pre-requisite. As mentioned earlier, there is clear finding that the possession of the land in suit was with Punjab Kaur when it was purchased by the appellants. No evidence has been led to establish any enquiry having been made by them with regard to the nature and possession of Punjab Kaur. In this behalf, it is also pertinent to note that Punjab Kaur was a co-sharer of Ishar Singh in the same Khata. The vendors were also not residents of the village and what is more, this plea u/s 41 of the Transfer of Property Act was taken by the appellants for the first time in appeal. This circumstance, by itself, has its own tale to tell.

13. In this situation, the benefit of the provisions of Section 41 of the Transfer of Property Act are clearly not available to the appellants. The judgment and decree of the lower

appellate court is accordingly hereby upheld and affirmed and this appeal is dismissed with costs.