

(2000) 07 P&H CK 0031

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal 669 of 1986

Ramji Dass

APPELLANT

Vs

Gurdwara Singh Sabha and
Another

RESPONDENT

Date of Decision: July 18, 2000

Citation: (2001) 1 CivCC 175 : (2000) 126 PLR 592 : (2000) 4 RCR(Civil) 293

Hon'ble Judges: M.L. Singhal, J

Bench: Single Bench

Advocate: Yogesh Sharma, for the Appellant; D.S. Chahal, for the Respondent

Judgement

M.L. Singhal, J.

Smt. Sardhi (widow of Harnama Jat) was owner of land measuring 49 kanal 18 marla situated in the area of village Dharamkot as entered in Jamabandi of 1977-78 and described in the heading of the plaint. Ramji Dass Chela Mahant Badri Dass alias Malha Ram of village Dharamkot filed suit for possession of this land as owner against Gurdwara Singh Sabha Dharamkot through its President Shri Kirpal Singh and Dera Ramdhan Lohgarh through Mahant Sant Ram Dass on the allegations, that Smt. Sardhi used to reside with him. He was serving her. He served her to the fullest. He was her Mukhtare-am. He used to manage the property of Smt. Sardhi. He had been paying her land revenue. Smt. Sardhi had executed a registered will in his favour on 12.4.71 constituting him as her sole heir while in sought disposing mind. Defendants in collusion with the revenue authorities got the suit land mutated in their favour. Smt. Sardhi had never executed and will thereafter nor she had cancelled the aforesaid registered will executed by her in his favour on 12.4.71.

2. Defendants contested the suit of the plaintiff urging that Smt. Sardhi was devotee of Guru Granth Sahib. She used to spend most of her time in the service of Gurudwara Singh Sabha, Dharamkot. She was also worshipper of Dera Ramdhan Lohgarh. Plaintiff did not serve her. It was denied that Smt. Sardhi had appointed the plaintiff as her Mukhtar. Sardhi used to manager her won affairs herself. It was

denied that the plaintiff had been paying her land revenue. Sardhi had no connection with the plaintiff. She had no love and affection for him. Harnama's sister was married at Lohgarh. Ranjit Singh and Kishan Singh are sister's sons of Harnama. Sardhi also used to spend some time at Lohgarh in the house of Ranjit Singh and Kishan Singh who also served her. It was denied that Sardhi ever executed any will in favour of the plaintiff of her free will and volition. Assuming that the will set up by the plaintiff had been executed by Smt. Sardhi, the same was cancelled by her when she executed will in favour of the defendants on 23.12.80 before the gram Panchayat of village, Lohgarh. This will was scribed by Mastan Singh, Secretary Gram Panchayat, Lohgarh and was witnessed by Bant Singh Sarpanch, Sarwan Singh Panch, Surjit Kaur, Saghar Singh, Malkiat Singh Panchs. Sajjan Singh, Joginder Singh and Chand Singh of Dharamkot also witnessed the will in favour of the defendants. Will was written in the Karvai Register of the Gram Panchayat. Land in suit was mutated in the name of the defendants by the revenue authorities who relief upon will dated 23.12.80. in favour of the defendants. Through this will, Smt. Sardhi bequeathed her property to the defendants in equal shares and it was her last will. On these pleadings of the parties, the following issues were framed:-

1. Whether Sardhi deceased made a valid will dated 12.4.71 in favour of the plaintiff, if so, its effect? OPP

2. Whether Sardhi deceased made a valid will dated 23.12.1980 in favour of the defendants, if so, its effect ? OPD

3. Relief

3. Additional Senior Sub Judge, Zira vide order dated 21.5.84 dismissed the plaintiffs suit, in view of his finding that Smt. Sardhi had executed registered will Ex.P3 in favour of the plaintiff dated 12.4.71 while in sound disposing mind but the execution of this will was of no consequence when she had executed another will Ex.D1 dated 23.12.80 in favour of the defendants while in sound disposing mind whereby she had cancelled the previous will.

4. Not satisfied with this judgment and decree of Additional Senior Sub Judge, Zira dated 21.5.84, plaintiff went in appeal which was dismissed by Additional District Judge, Ferozepur vide order dated 4.11.85. Still not satisfied, plaintiff has come up in appeal to this Court.

5. Ramji Dass plaintiff (PW1) stated that Smt. Sardhi was putting up with him for 50-60 years. He used to serve her. She was the wife of Harnam Singh alias Harnama. Harnama died 40-45 years ago. No child was born to Smt. Sardhi from Harnama. After the death of Harnama, Smt. Sardhi put up with him. He was her Mukhtar and was managing her property. She was recorded as voter with him in his house. Ex.P.1 is the certified copy of the relevant extract of the voter list. He further stated that he performed the last rites of Smt. Sardhi. She was recorded on the ration card

obtained by him. It was joint ration card. On ration card (certified copy Ex.P2), she is recorded with him. Ration card relates to two members of the family and Mahant Ramji Dass was shown as head of the family. He further stated that Smt. Sardhi executed will in his favour while in sound disposing mind. She was of sound disposing mind till her death. She used to go to temple (Mandir) for paying respects. She never went to Gurdwara. She was known as his wife among the people. She was residing in Ward No. 8, Municipal Committee Dharamkot. Ajit Singh is the Municipal Commissioner of that Ward. He immersed the last remains of Smt. Sardhi. Pandit Hans Raj performed the Garud Path. In his cross examination, he stated that Smt. Sardhi was a Brahmin. He is also a Brahmin. He was never married to Smt. Sardhi. He had no child from Smt. Sardhi. Harnama died 45-50 years ago. He was not aware what was the age of Smt. Sardhi at the time of the death of Harnama but she was 80-85 years old at the time of her death. Ajit Singh PW4 stated that she was resident of Dharamkot. He had known Smt. Sardhi. Earlier she resided in Agwar Sidhwan. After the death of her husband Harnama, she was putting up with Ramji Dass in the same house. She put up with Ramji Dass till her death. Ramji Dass put up in the house of Harnama with Smt. Sardhi. Smt. Sardhi executed will (Ex.P3 certified copy) in favour of Ramji Dass. Ramji Dass used to serve her. It was scribed by Mohan Lal Arji Navis at Zira. Smt. Sardhi was in sound disposing mind at the time of execution of this will. Will was read out to Smt. Sardhi who thumb marked the same in his presence and in the presence of Narain Singh Lambardar. He and Narain Singh Lambardar attested the Will in the presence of Smt. Sardhi. Smt. Sardhi executed this will of her free will and volition. There was no brother of Sardhi. This will was presented before the Sub Registrar. Smt. Sardhi admitted this will to be correct before the Sub Registrar in the presence of Narain Singh and Ajit Singh. Before the Sub Registrar Smt. Sardhi thumb marked the endorsement while Narain Singh and Ajit Singh attested the endorsement. Sub Registrar registered the will. Ajit Singh PW4 further stated that Smt. Sardhi was believer in Sanatanist faith. She did not visit Gurdwara. In his cross examination, he stated that he had social terms with Smt. Sardhi. Smt. Sardhi was 60-70 years old at the time of execution of the will. He went to the Mandir and paid respects there. He went to Thakurdwara and paid his respects there. He had seen Smt. Sardhi going to Thakurdwara some times. She had never gone to Gurdwara. He had not known Harnama's sister. He has no knowledge whether she was married at village Lohgarh. Harnama was owner of 20-25 kilas of land. He denied the suggestion that Smt. Sardhi executed this will not of free will and volition but under the pressure, of Ramji Dass. Brij Mohan PW5 is the scribe of this will. He supported the " execution of this will by Smt. Sardhi on 12.4.71. He stated that after he had scribed this will, he made an entry with regard to this will in his petition writer's register the photocopy of which is Ex.P4. That day, Smt. Sardhi executed some sale deed, he made an entry with regard to that sale deed in his register, the photocopy of which is Ex.P5. Smt Sardhi was of sound disposing mind. There can be no manner of doubt that Smt. Sardhi executed will dated 12.4.71 in favour of Ramji Dass while in sound disposing mind. Bant Singh DW1 stated that he

is Sarpanch of the village. He has been member of the Block Samiti for 15 years. He has been Chairman of the Land Mortgage Bank, Zira for the last. 12 years. Bant Singh DW 1 further stated that about 3-1/4 years ago, Smt. Sardhi executed will Ex.D1 in favour of Gurdwara Singh Sahba, Dharamkot and Dera Baba Raindha, Lohgarh in equal shares. Will was recorded in the proceedings book of Gram Panchayat, Lohgarh. It was an ordinary meeting of the Gram Panchayat under his chairmanship when Smt. Sardhi executed Will D1. It was scribed by Mastan Singh, Secretary., Gram Panchayat. It was read out to Smt. Sardhi who thumb marked it in his presence and in the presence of Sarban Singh, Joginder Singh Lambardar, Chand Singh, Municipal Commissioner, Dharamkot and many others. He stated that he had known Smt. Sardhi because Harnama's sister is married in his village Lohgarh and Kishan Singh is her son and Sardhi had been visiting Kishan Singh and staying with him for two months at a stretch. He further stated that Smt. Sardhi used to serve at Dera Baba Ramdhan. Mastan Singh, Panchayat Secretary also supported the execution of this will by Smt. Sardhi. He is the scribe of this will. Chand Singh DW3 who is the other attesting witness of this will supported the execution of this will by Smt. Sardhi. He stated that Smt. Sardhi executed this will at Lohgardh because at Dharamkot, she was under pressure of Ramji Dass. She took him to Lohgarh. He stated that he is President of Municipal Committee, Dharamkot. At the time of execution of will, he was Municipal Commissioner. Smt. Sardhi used to go to Gurdwara and pay her respects there. She had full faith in Dera Baba Ramdhan Lohgarh since beginning. She had her own house at Dharamkot. She was resident of his ward. He stated that he attended the last rites of Smt. Sardhi. He did not see the plaintiff performing her last rites. He could not tell who immersed the remains of Smt. Sardhi. He could not tell the place where her last remains were immersed. Plaintiff had been sometimes to the house of Smt. Sardhi but they were not putting up together. When it was suggested to him that the plaintiff and Smt. Sardhi were holding joint ration card and they had been recorded as voters together, he could not deny this suggestion.

6. Shri Satwant Puri, Document Expert, Patiala compared the disputed thumb impression mark "C" bearing on will Ex.D1 with the standard thumb impressions of Smt. Sardhi appearing on will dated 12.4.71 mark "A" and thumb impressions mark A1 appearing on endorsement of the Sub Registrar on the will and mark "B" on mukhtar nama dated 3.6.60. In his opinion, the disputed thumb impression i.e. "C" was either shaken or superimposed and in the central portion the ridges show circular nature as in the whorl type of pattern. The standard thumb impressions A and B are of the left hand and of loop type. The standard thumb impression A1 on the endorsement of the registered will dated 12.4.71 is of right hand and of loop type. He stated that whatever comparison was possible with the disputed thumb impression considering the condition of the disputed thumb impression, disputed thumb impression does not show identity with the standard thumb impression of both left and right hand. In nut shell, he stated that the disputed thumb impression

mark C appearing on will- dated 23.12.80 purportedly that of Smt. Sardhi was neither of her right hand nor of left hand as if it were of left hand, it would have been identical with thumb impression A or B. He has stated in his report Ex.PW6/A that after considering the above, though in all fairness, the condition of the thumb impression is such that definite opinion is not possible but whatever comparison could be done does not show identity of the disputed thumb impression with the standard thumb impressions. He stated that the disputed thumb impression was incidentally or deliberately shaken at the time of affixation or was super-imposed as direct contours are visible and marked on the photograph. According to Shri Puri, the thumb impression mark C was not that of Smt. Sardhi either of her right hand or of her left hand. His statement thus ruled out the execution of will Ex.D1 by Smt. Sardhi in favour of Gurdwara Singh Sabha, Dharamkot and Dera Baba Ramdhan, Lohgarh.

7. Will Ex.D1 is attended by suspicious circumstances. Will Ex.D1 is unregistered. Smt. Sardhi died on 19.1.82. Will Ex.D1 could be got registered. Fact that the will Ex.D1 was attested by a number of persons suggests that Bant Singh Sarpanch and others were under the impression that if they procure the attestation of a number of persons, the Court will think that the will was genuine and was executed by Smt. Sardhi. Fact that the will bears the attestation of a number of persons in different ink also suggests that the attestation of the will by them did not take place at one and the same time. It appears that Bant Singh etc. could not reconcile to the execution of earlier will by Smt. Sardhi in favour of Ratnji Dass and they converged together and manipulated this will. When the earlier will was registered, to lend assurance to the factum of cancellation of that will and the execution of another will instead, it would have been desirable if the later will had also been got registered and also the deed of cancellation. It is true that there is no difference between a registered will and an unregistered will so far as their genuineness and authenticity are concerned but it is equally true that a registered will stands on a better footing than an unregistered will inasmuch as about a registered will it is taken that it was the act of a testator of a sound disposing mind. About an unregistered will, it is not taken that it was the act of a testator of sound disposing mind.

8. Learned counsel for the respondent submitted that Ramji Dass plaintiff had no concern with Smt. Sardhi. It was submitted that in" the extract of the voters list Ex. P2, she is recorded as voter with one Ramji Dass son of Ishar Dass. There is no evidence that it is this Ramji Dass who is shown as voter with her in the same house. It was submitted that in the ration card Ramji Das Chela Badri Dass is shown recorded. This ration card is for two members of the family. Who was the other member of the family is not mentioned. It was submitted that it cannot be assumed or presumed that the other member of the family with. Ramji Dass was Smt. Sardhi. Ramji Dass was her mikhtar. She appointed him her mukhtar because of some affinity. Smt. Sardhi was not married to Ramji Dass. After the death of her husband Harnama, he started putting up with Smt. Sardhi in that house. Harnama died 40-50

years ago. He remained associated with her all through till her death. Due to his constant association with her, he developed affinity with her. Due to that affinity she executed will Ex.P3 in his favour. She was Brahmin by casts. No wonder, she did not have faith in Gurdwara or Thakurdwara. She did not have faith in Gurdwara or Thakurdawara to the extent that she could think of depriving Ramji Dass of her inheritance who had been serving her for decades together. Learned counsel for the respondent submitted that thought Smt. Sardhi was a Brahmin but as she was married to a Jat, she developed faith in Gurdwara and Thakurdwara and she was visiting Gurdwara and Thakurdwara, paying her respects there and as such she cancelled the earlier will and executed the later will.

9. Later will appears on the last pages of the Karvai register of the panchayat. After 23.12.80, there is no resolution of the panchayat. This register was not checked by Block Development and Panchayat Officer or by any other functionary of the Department ,of Panchayats neither at the beginning of the register nor at the close of the register. Where is the assurance that later will was not ante-dated and was really written on 23.12.80. It lay upon the propounder of the will to prove genuineness and authenticity of the will and further that the will was executed by the testator in sound disposing mind. Will is required to be proved to the satisfaction of the conscience of the court. Conscience of the court should be satisfied that the testator wanted to bequeath in favour of the propounder and he really bequeathed in his favour. If there are any suspicious circumstances attending the execution of the will impinging upon its genuine-ness,it would be for the propounder to dispel those suspicions and satisfy the conscience of the court about the genuineness and authenticity of the will. In this case, the conscience of the court is not satisfied that Smt. Sardhi executed any will in favour of Gurdwara Singh Sabha, Dharamkot and Dera Baba Ramdhan, Lohgarh and revoked the earlier will which she had executed a number of years before her death in favour of Ramji Dass with whom she had association of a number of years and who was her constant companion, looking after her and her property.

10. Learned counsel for the respondent submitted that both the courts below have found in favour of the later will and this court sitting in second appeal cannot find otherwise on appreciation of evidence over again. It was submitted that the finding of fact, however, erroneous it may be, cannot be interfered with in second appeal. Suffice it to say, finding of fact arrived at by the courts below can be interfered with in second appeal, if there is no evidence to sustain the finding of fact arrived at by the two courts below. There is no evidence in support of the later will. Later will was not shown to have been thumb marked by Smt. Sardhi. Later will was not shown to have been executed really on 23.12.80. Possibility of the later will having been anti-dated and fabricated was required to be dispelled by the beneficiaries thereunder but the same was not done. Such a finding of fact which works havoc to the cause of justice can be set aside by this court in second appeal.

11. For the reasons given above, this appeal succeeds and is accepted. Judgment and decrees passed by the courts below are set aside. Plaintiff appellant's suit is decreed for possession as owner of land measuring 49 kanal 18 marla as detailed in the heading of the plaint against the defendant-respondents with costs.