

(2003) 04 P&H CK 0154

High Court Of Punjab And Haryana At Chandigarh**Case No:** Regular Second Appeal No. 1440 of 2003

Amar Kaur

APPELLANT

Vs

Paramjit Kaur

RESPONDENT

Date of Decision: April 3, 2003**Acts Referred:**

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

Citation: (2003) 3 CivCC 645 : (2003) 3 RCR(Civil) 213**Hon'ble Judges:** M.M. Kumar, J**Bench:** Single Bench**Advocate:** Chetan Mittal, for the Appellant;**Final Decision:** Dismissed

Judgement

M.M. Kumar, J.

This is plaintiffs second appeal filed u/s 100 of the Code of Civil Procedure, 1908 (for brevity, "the Code") challenging concurrent findings of facts recorded by both the Courts below. The suit of the plaintiff-appellant has been dismissed by both the Courts below wherein she has sought declaration to the effect that she along with defendant-respondents 4 to 9 were owners in equal shares and are in joint possession of the suit land which fell to the share of Assa Ram alias Assa Singh son of Sawan. Further relief restraining the predecessors of defendant-respondents from alienating the suit land by way of sale, gift or mortgage etc. was also sought. To understand the controversy raised before the Courts below a reference to the pedigree table is necessary and the same reads as follows:-

2. Assa Ram alias Assa Singh (for brevity, "Assa Ram") was unmarried and was issueless. It is also obvious that Amar Kaur plaintiff-appellant and Jit Singh defendant-respondent (since dead represented by his legal heirs respondents 1 to 3) (for brevity, "Jit Singh defendant") are real sisters and brother. According to the findings recorded by both the Courts below, Assa Ram executed a registered will

Ex.DI dated 3.6.1987 and also suffered a decree dated 17.8.1989 in favour of Jit Singh-defendant. It has further been found that on the basis of decree, the mutation was sanctioned in favour of Jit Singh defendant on 1.8.1981. Still further it has further been found that Assa Ram was of sound disposing mind at the time of his death. This fact has been admitted by the plaintiff-appellant in her statement. She conceded that at the time of his death, she was present and Assa Ram was of sound disposing mind. The learned Additional District Judge after discussing the entire evidence at a considerable length has recorded categorical findings which read as under:-

"As noticed above, the relationship between the parties is admitted. It is admitted fact that Assa Singh was one time owner of 196K-17M, out of that 1/2 share was given to all the defendants. The dispute is only with regard to the remaining 1/2 share i.e. 65K-12M. Ex.P1 is the copy of the plaint of previous suit No.469 dated 6.10.1988 decided on 17.8.1989. Ex.P2 is the copy of the decree sheet. Ex.P3 is the mutation dated 12.9.1991 which was sanctioned on the basis of the decree in Suit No.469 dated 6.10.1988 decided on 17.8.1989. It is also recorded in Ex.P3 that Assa Singh was owner of 196K-17M. Ex.P4 is the copy of the Jamabandi for the year 1993-94.

Ex.D 1 is the Will executed by Assa Singh. This is a registered Will as is clear from the Endst. Ex.DI/A. This Will has been proved by the DWs mentioned above. The entry in the register is found mentioned in Ex.DW3/A. The ashes of Assa Singh were immersed by Jit Singh nephew of Assa Singh. Ex.DW6/A. The ashes of Assa Singh were immersed by Jit Singh nephew of Assa Singh. Ex.DW6/A is the copy of the W.S.filled by Assa Ram in the previous suit and Ex.DW6/B is the copy of the plaint. (Similar copy was placed on record by plaintiff Ex.P1). Ex.DW6/C is the copy of the statement of Assa Ram in that suit. Ex.DW7/F is the copy of the judgment decided on 17.8.1989 vide which the suit of the plaintiff was decreed. Ex.DW7/G is the copy of the decree sheet. Ex.DW8/A is the detailed report of the Forensic Science Expert who had compared the questioned thumb impression with the admitted thumb impression and had given the opinion that Assa Singh had affixed his thumb impression on the Will.

As is evident, the Will Ex.D I is a registered one, which has been duly proved by the DWs. Even at the time of his death Assa Singh was in sound disposing mind as is also admitted by plaintiff herself as PWI in her concluding part of cross-examination. The Will is dated 3.6.1987 whereas the decree is dated 17.8.1989. It is correct that there is no mention of the Will in the plaint Ex.P I in that suit but that will not affect the judgment and decree in that way. It was rightly argued by Shri T.C.Gupta, Adv., that the Will operates only after the death of a person and in this case the death of Assa Ram took place in February, 1993 after 6-7 years of the execution of the Will and also after 4-5 years from the date of decree. It is not worthy that at no stage of time, Assa Singh had ever challenged the decree nor he had got cancelled the Will. It

is further noteworthy that the mutation Ex.DW7/E was sanctioned on the basis of the judgment and decree dated 17.8.1989 and this fact is also admitted by the plaintiff. According to her version, she came to know about the judgment and decree at the time of partition proceedings as per her cross-examination as referred to above. She was well informed and she was talking with her other brothers outside the Court room. It is not possible that she would not be knowing about the judgment and decree previously. It is also a matter of record that the other brothers (defendants other than Jit Singh) had filed a suit challenging the decree dated 17.8.1989 and were unsuccessful. The copy of the plaint produced by the defendant is Ex.DW7/A in which they had challenged the decree passed in Civil Suit No.469 dated 6.10.1988 decided on 17.8.1989. The said suit was dismissed in default.

The plaintiff had challenged this decree as well as Will vide suit dated 1.8.1997 beyond the period of limitation. The learned lower Court has taken into consideration the entire record placed before it and has rightly held that the Judgment and decree dated 17.8.1989 and the Will are valid and legal documents. The learned Lower Court had further rightly held that the suit is barred by limitation."

A perusal of the above findings would show that the decree dated 17.8.1989 and the will dated 3.6.1987 as well as mutation dated 1.8.1981 sanctioned in favour of Jit Singh, defendant have been challenged by the plaintiff-appellant in the civil suit. The suit of the plaintiff-appellant has been found to be beyond limitation as it was filed on 11.8.1987. It has been found that the plaintiff-appellant would certainly be aware of the decree dated 17.8.1989 because defendant-respondents 4 to 9 had challenged the same decree in an earlier civil suit. The true copy of the plaint has been placed on record as Ex.DW-7/A. The suit was dismissed in default. Even the will dated 3.6.1987 has been found to be a genuine will validly and legally executed by testator Assa Ram in favour of Jit Singh-defendant.

3. Mr.Chetan Mittal, learned counsel for the plaintiff-appellant has argued that the exclusive decree dated 17.8.1989 suffered by Assa Ram in favour of Jit Singh defendant cannot transfer any proprietary rights to Jit Singh-defendant. Learned counsel has pointed out that such a document is required to be registered under sub-section (2) of Section 17 of the Registration Act, 1908 (for brevity, "the Act"). In support of his submission, the learned counsel has placed reliance on a judgment of the Supreme Court in the case of [Bhoop Singh Vs. Ram Singh Major and others](#), . The learned counsel has further referred to the statements of certain witnesses to argue that testator Assa Ram was not in sound and disposing mind so as to understand the implications of executing a will or suffering a decree.

4. After hearing the learned counsel, I am of the considered view that this appeal is devoid of merit and is thus liable to be dismissed. Both the Courts below have concurrently found that the will which is a registered document has been validly executed by the testator Assa Ram in favour of Jit Singh-defendant. The relationship

of Assa Ram is the same with the plaintiff-appellant and Jit Singh-defendant who are real sister and brother. It has also come in evidence that the ashes of Assa Ram were immersed by Jit Singh-defendant. Assa Ram was in sound disposing mind at the time of execution of the will and the will has been duly proved by producing the expert. The will is a registered document. There is no suspicious circumstance surrounding the will. Even the decree dated 17.8.1989 has been proved on record. It has also been convincingly explained as to why the will dated 3.6.1987 has not been disclosed in the written statement Ex.DW-6/ A filed by Assa Ram in Civil Suit No.469 dated 16.10.1988 by observing that the will was to come in operation only after the death of testator and no useful purpose would have been served by referring the same in the written statement filed by Assa Ram in the aforementioned suit. Thereafter, the mutation was sanctioned on 1.8.1991. Civil Suit No.296 from which the present appeal has arisen was filed by the plaintiff-appellant on 1.8.1997. Therefore, I do not find any legal infirmity. In the findings of facts recorded by both the Courts below.

5. It was well settled that this Court would not in exercise of its jurisdiction u/s 100 of the Code interfere in the findings of facts unless the findings are without evidence or are so perverse that no reasonable person would record those findings.

6. It is also well settled that deprivation of a natural heir by the testator would not itself be a suspicious circumstance. Jit Singh-defendant has proved the will which is a registered document on record by overwhelming evidence of unimpeachable character. On the aforementioned issue, the observations of the Supreme Court in the case of [Rabindra Nath Mukherjee and another Vs. Panchanan Banerjee \(dead\) by L.Rs. and others](#), can be quoted with advantage:-

"As to the first circumstance, we would observe that this should not raise any suspicion, because the whole idea behind execution of will is to interfere with the normal line of succession. So natural heirs would be debarred in every case of will; of course, it may be that in some cases they are fully debarred and in others only partially.

As in the present case, the two executors are sons of a halfblood brother of Saroj Bala, whereas the objectors descendants of a full blood sister, the disinheritance of latter could not have been taken as a suspicious circumstances, when some of her descendants are even beneficiaries under the will.

As to the identification by a lawyer of Calcutta, it may be stated that this could have been regarded as a suspicious circumstance if a wrong person would have been identified as Saroj Bala. That, however, is not the case of the objectors. So, there is no bane in this circumstance.

(Emphasis added)

7. It is significant to observe that the will in the present case is a registered document which would go a long way, to prove its authenticity as has been observed by their Lordships in [P.P.K. Gopalan Nambiar Vs. P.P.K. Balakrishnan Nambiar and others](#), and in Rabindra Nath Mukherjee's case (supra). The observations of their Lordships in this respect in Rabindra Nath Mukherjee's case (supra) read as under: -

Insofar as the third circumstance is concerned, we may first observe that witnesses in such documents verify whether the same had been executed voluntarily by the concerned person knowing its contents. In case where a will is registered and the Sub-registrar certifies that the same had been read over to the executor who, on doing so, admitted the contents, the fact that the witnesses to the document are interested lose significance. The documents at hand were registered and it is no record that the Sub-registrar had explained the contents to the old lady. So, we do not find the third circumstances as suspicious on the facts of the present case.

(Emphasis added).

8. When the above mentioned principles are applied to the facts of the instant case, it transpires that Assa Ram was owner of 196 kanals 17 marlas of land. He has given 1/2 share out of that land to the defendants. It is not that he has not given anything to others and bequeathed his whole property to Jit Singh-defendant to the exclusion of others. An exclusion of a natural heir alone cannot be regarded as a suspicious circumstance. Similarly, will is a registered document which is proved by the statements of DW-2 Surinder Singh, D W-3 Baldev Singh and DW-4 Paramjit Singh who is son of the scribe of the will. These witnesses have proved the genuineness of the will stating that Assa Ram used to live with Jit Singh-defendant. They have also proved its due execution, disposing state of mind of the testator and affection, between the testator and beneficiary Jit Singh-defendant. Therefore, no fault can be found in the concurrent findings of facts.

9. The argument of the learned counsel for the plaintiff-appellant that the decree dated 17.8.1989 has created new rights for Jit Singh-defendant and, therefore, required registration under sub-section (2) of Section 17 of the Act would not require any serious consideration because conferment of proprietary rights on Jit Singh-dependant is not dependant on the decree dated 17.8.1989 alone. It is also dependant on the will Ex.D I. There is no quarrel with the proposition that the transfer of property by will would not require any registration as is patent from sub-section (1) of Section 17 of the Act. The provisions of sub-section (1) of Section 17 of the act read as under:-

"17. Documents of which registration is compulsory. - (1) The following documents shall be registered if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No.XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1971, or the Indian

Registration Act, 1877, or this Act came or comes into force, namely:-

(a) instruments of gift of immovable property

(b) other non-testamentary instruments, which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

[(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:]

Provided that the [State Government] may, by order published in the [Official Gazette], exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees."

In the present case even the will was registered and has been proved by overwhelming evidence adduced by Jit Singh-defendant. Both the Courts have concurrently found the will to be valid.

10. I am further of the view that once the suit of the plaintiff-appellant has been dismissed as barred by time by both the Courts below, then the plea raised on the basis of the judgment in Bhoop Singh's case (supra) would also not be available to the plaintiff-appellant. A suit which is hit by the law of limitation does not require to be decided on merits. Therefore, for that reason also I am not impressed with the arguments raised by learned counsel for the plaintiff-appellant.

For the reasons recorded above, this appeal fails and, the same is dismissed.