



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(109)

RSA No.1511 of 1991
Reserved on: 04.02.2025
Pronounced on: 20.02.2025.

Gurmel Kaur

...Appellant

Vs

Gurbax Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Sanjay Majithia, Senior, Advocate with
Mr. Tarun, Advocate for the appellant.

Mr. V.K. Jindal, Senior Advocate with
Mr. Akshay Jindal, Advocate and
Mr. Satbir Singh Rathore, Advocate and
Mr. Pankaj Gautam, Advocate
for the respondents.

VIKRAM AGGARWAL, J (ORAL)

This is plaintiff's appeal against the judgment and decree dated 10.04.1991 passed by the Court of learned Additional District Judge, Hoshiarpur, dismissing the appeal filed by the plaintiff against the judgment and decree dated 21.09.1990 passed by the Court of learned Senior Sub Judge, Hoshiarpur, vide which the suit filed by the plaintiff for declaration was dismissed.

2. For the sake of convenience and clarity, parties shall be referred as per their original status.

3. The dispute revolves around a huge estate of one Harnam Singh s/o Dewan Singh, resident of Village Jhans, Teshil Dasuya, District Hoshiarpur. He was the owner in possession of four chunks of land (fully



described in the plaint) situated in Village Jhans and Budhipind, Tehsil Dasuya, District Hoshiarpur (hereinafter referred to as the suit land).

4. The plaintiff-Gurmel Kaur is the daughter of Harnam Singh, through his wife Jagir Kaur. Jagir Kaur had pre-deceased Harnam Singh. She filed a suit for declaration that she was the only legal heir of Harnam Singh and was, therefore, entitled to succeed to the suit property. It was her case that the defendants had no right, title or interest in the suit property and Mutations No.931 and 2721 in favour of the defendants was illegal and void and was inoperative on the rights of the plaintiff and were liable to be set aside.

4.1. It was averred that Harnam Singh had expired on 10.07.1986 and since Jagir Kaur had pre-deceased Harnam Singh, the plaintiff-Gurmel Kaur was the sole legal heir, being his only daughter. It was averred that after the death of Jagir Kaur, she had served Harnam Singh and he had great love and affection for her. It was pleaded that one Joginder Kaur, mother of defendants No.1 to 3 was a very clever woman and she, in connivance with the revenue authorities had got Mutation No.931 of Village Jhans and mutation No.2727 of Village Tanda sanctioned on the basis of some forged and fictitious Will. On the basis of the said mutation and the forged Will, the defendants were denying the title of the plaintiff as a result of which the suit was filed.

5. The suit was resisted by the defendants. In the written statement, certain preliminary objections as regards cause of action, *locus standi*, maintainability etc. were raised. On merits it was admitted that Harnam Singh was co-owner of the suit property and that he had expired and further that Jagir Kaur had pre-deceased him. It was, however, averred that



Harnam Singh had got re-married to Joginder Kaur about 12-13 years ago and six children namely Gurbax Singh, Gurdit Singh, Mandeep Kaur, Daya Singh, Karam Singh and Kulwant Singh were born to Joginder Kaur from her wedlock with Harnam Singh. It was averred that Harnam Singh had spent a lot of money in the marriage of the plaintiff and had given her lot of gold and other valuables but after her marriage, she and her husband became greedy and physically assaulted Harnam Singh number of times. They became jealous when Harnam Singh was blessed with sons. It was averred that Harnam Singh had severed all relations with the plaintiff and she never came to the house of Harnam Singh.

5.1. It was averred that Harnam Singh had executed a Will which was registered on 29.06.1982. This Will was executed in favour of his sons Gurbax Singh and Gurdit Singh as also in favour of Daya Singh, who, at the time of execution of the Will, was in the womb. It was averred that the mutation had rightly been sanctioned. Dismissal of the suit was prayed for.

6. In the replication, averments made in the written statement were denied and those made in the plaint were reiterated.

7. From the pleadings of the parties, following issues were framed:-

- (1) Whether Harnam Singh deceased executed a valid will in favour of the defendants on 29.06.82? OPD***
- (2) Whether Harnam Singh married Joginder Kaur during his life time and the defendants are the sons of Harnam Singh from Joginder Kaur? OPD***
- (3) If issue No.1 is not proved, to what share the plaintiff is entitled to claim from the inheritance of Harnam Singh deceased? OPP***



- (4) *Whether the plaintiff is entitled to seek the relief of declaration and possession as prayed for ? OPP*
- (5) *Whether the plaintiff has got no cause of action for filing the present suit? OPD*
- (6) *Whether the plaintiff has no locus-standi to file the present suit by his act and conduct? OPD*
- (7) *Whether the suit is not maintainable in the present form? OPD*
- (8) *Relief.*

8. Parties led their respective evidence. The trial Court dismissed the suit filed by the plaintiff and the appeal was also dismissed leading to the filing of the present Regular Second Appeal.

9. I have heard learned counsel for the appellant.

10. Learned Senior counsel representing the plaintiff strenuously urged that the decisions rendered by both the Courts are not sustainable. While referring to the Will Ex.D1, learned Senior counsel submitted that the Will is shrouded by suspicious circumstances as there was no reference in the Will to the marriage of Harnam Singh with Jagir Kaur and about his daughter Gurmel Kaur. Learned Senior counsel submitted that it was not stated in the Will as to why no property was being given to Gurmel Kaur. He further did not name even his second wife in the Will or that he had contracted marriage with her. Learned Senior counsel further submitted that the Will refers to services being rendered to Harnam Singh by Gurbax Singh and Gurdit Singh who were 3-4 years old at the time of execution of the Will and, therefore, were not in a position to render any kind of service to Harnam Singh.



10.1. Learned Senior counsel referred to the testimony of Joginder Kaur-DW4 and submitted that a very reading of the statement of Joginder Kaur makes it abundantly clear that she was not the legally wedded wife of Harnam Singh and that she was in fact some lady whose own identity was unknown. Learned Senior counsel further submitted that it is quite unbelievable that after the death of Harnam Singh, he got four more children whereas in the Will, there is reference of his wife being pregnant and, therefore, at best one child would have been born but there is no explanation as regards the other children.

10.2. Learned Senior counsel then referred to the deposition of the plaintiff while she is stepped into the witness-box as PW-2. Learned Senior counsel submitted that if the case of the defendant is to be believed, it would mean that Harnam Singh begot children almost till the age of 90 years which is even biologically not possible.

10.3. Learned Senior counsel submitted that the onus to prove the Will was on the beneficiary and it was on the beneficiary to dispel the suspicious circumstances which the defendants were unable to do. Accordingly, learned Senior counsel submitted that the impugned judgments and decrees are not sustainable and are hence liable to be set aside and the suit filed by the plaintiff deserves to be decreed. In support of his contentions, learned Senior counsel placed reliance upon the judgments of Hon'ble the Supreme Court of India in *M/s Shivali Enterprises Vs. Smt. Godawari (deceased) through LRs and others, 2024(4) RCR(Civil) 325*, *Satyender and others Vs. Saroj and others, 2022(8) WLC 103 and Civil*



Appeal Nos.186-187 of 2025 [@ Special Leave Petition (C) Nos.10908-10909 of 2024].

11. *Per contra*, learned Senior counsel representing the defendants submitted that the judgments under challenge do not call for any interference as no re-appreciation of evidence is permissible in second appeal.

11.1. Learned Senior counsel submitted that the execution of the Will was duly proved before the Courts and the same has not even been challenged by learned Senior counsel for the appellants during the course of arguments. He submitted that as regards the marriage of Harnam Singh with Joginder Kaur and the birth of six children, sufficient evidence was led on the record to prove the said facts and documents and apart from the oral testimonies, documents Ex.D-1 to D-6 were produced on record in rebuttal to which, no documents were produced by the plaintiff. Learned Senior counsel submitted that the Will duly mentioned about the wife of Harnam Singh being pregnant. He submitted that the Will was executed on 21.06.1982 and the child who was in the womb namely Daya Singh was born on 22.11.1982 and after him two more children Karam Singh and Kulwant Singh were born on 17.09.1984 and 05.03.1986. He submitted that Harnam Singh expired on 10.07.1986 after the birth of all children and, therefore, there is nothing suspicious in the Will and Harnam Singh got children after the execution of the Will and before his death and not after his death as has been projected during the course of arguments.

11.2. Learned Senior counsel submitted that the fact that the name of the plaintiff did not find mention in the registered Will is also not a suspicious circumstances and that even the name of daughter from Joginder Kaur, namely Mandeep Kaur who was born on 12.02.1981 did not find



mention in the Will. He submitted that it is, therefore, clear that Harnam Singh did not mention the name of his daughters in the Will. Learned Senior counsel submitted that under the circumstances there would be no suspicious circumstance in the Will.

11.3. As regards rendering of service by the two sons which was mentioned in the Will, learned Senior counsel submitted that this is a result of drafting of the Will by a deed writer who normally use a specific language in Wills. He submitted that even otherwise, the love and affection of children is also akin to service rendered. Learned Senior counsel submitted that it is the intent of the document which is to be seen and a document has to be read as a whole and not in isolation.

11.4. Learned Senior counsel submitted that under the circumstances, the present appeal deserves to be dismissed. In support of his contentions, learned counsel placed reliance upon the judgments of Hon'ble the Supreme Court of India in *Dhannulal and others Vs. Ganeshram and another, 2015 AIR(SCW) 2839, Rur Singh (D) through LRs and others Vs. Bachan Kaur, 2009(11) SCC 1 and judgment of this Court in Nachhattar Kaur Vs. Amarjit Kaur, 2010(85) AIC 668 and Damandeep Vs. Jaspal Kaur and others, 2016(1) R.C.R.(Civil) 730.*

12. I have considered the submissions made by learned Senior counsel representing the parties and have perused the record.

13. Three issues primarily arose for consideration before the trial Court and the First Appellate Court namely:-

- (i) Whether Harnam Singh had solemnized marriage with Joginder Kaur after the death of his first wife Jagir kaur.



- (ii) Whether Harnam Singh had executed Will dated 21.06.1982 thereby bequeathing his property to his two sons namely Gurdit Singh and Gurbax Singh and to the child in the womb of his wife, if the said child was a male.
- (iii) If the execution of the Will was proved, whether the Will was shrouded by suspicious circumstances.

14. Though, learned Senior counsel representing the appellant only touched upon points No.1 and 3 and did not address any argument as regards the execution of the Will, I will briefly touch upon the said issue as well.

15. Both Courts held that after the death of his first wife Jagir Kaur, Harnam Singh had solemnized marriage with Joginder Kaur. The evidence led before the Courts were discussed threadbare which included not only the statements of the witnesses examined by the defendants but also the cross-examination of the plaintiff-Gurmel Kaur while deposing as PW-2. The Courts also discussed the documentary evidence produced on record to prove that from the marriage with Joginder Kaur, six children were born. Though, being pure findings of facts based upon the evidence led on the record of the case, this Court would not go into the issue in second appeal. However, lest any doubt remains, this Court finds that the evidence led on the record of the case clearly proved that after the death of his first wife Jagir Kaur, Harnam Singh solemnized marriage with Joginder Kaur and he got five sons and one daughter from the said marriage. While appearing as PW-2, the plaintiff-Gurmel Kaur admitted in her cross-examination that Jagir Kaur was living in Village Jhans and was receiving the *Batai* of the suit land after the death of Harnam Singh. She stated that she had been seen Joginder Kaur at Village Jhans for about six years and that Joginder Kaur was paying



land revenue of the suit land as well. In fact, she admitted that her father-in-law had engaged a counsel for her and her got the suit filed on her behalf and also that her thumb impression had been obtained on blank papers and the plaint was typed thereafter. DW-1 Jarnail Singh who was a witness to the Will also stated that the marriage of Harnam Singh with Joginder Kaur had taken place in his presence. DW-4 Joginder Kaur also stepped into the witness-box and deposed in detail about the whole matter. DW-5 Darshan Singh who was the nephew of Harnam Singh also stated about the marriage of Harnam Singh with Joginder Kaur and that six children were born from the wedlock. The birth certificates of his children were also produced on records which show that they were born to Joginder Kaur and Harnam Singh. There was some issue raked up as regards whether *Anand Karaj* had been performed or the marriage had taken place by way of *Chaddar Andazi*. In the considered opinion of this Court, this would not be a relevant fact. It is a well known custom in Punjab that after the death of the wife of a person, sometimes his marriage is solemnized with either the young unmarried sister of the wife or some other relative only by way of putting a *Chaddar* on the lady. The ceremony is known as *Chaddar Andazi* and *Anand Karaj* is the regular ceremony of marriage. As to whether the marriage was performed by way of *Chaddar Andazi* or *Anand Karaj* would not, therefore, be of any significance or relevance. The fact remains that marriage was solemnized.

16. Learned Senior counsel had pointed out the cross-examination of Joginder Kaur and had tried to make out a case that her antecedents were not known and it was orally argued that she was in-fact some lady from Bihar who was there to do agricultural work in the fields of Harnam Singh.



This argument is devoid of merit for the antecedents of Joginder Kaur would not be a relevant factor in these matters.

17. Coming to the issue of the Will, its execution was duly proved by DW-1 Jarnail Singh and DW-2 Bawa Singh, who were both attesting witnesses as also DW-3 Karam Singh, who was the deed-writer. I have had a look at the Will as well. The manner in which the Will is written and the places at which the signatures/thumb impressions have been affixed does not raise any kind of suspicion that the document was a forged or fabricated document. From the evidence of DW-1 to DW-3, the ingredients of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872 stood complied with and, therefore, it was rightly held by both the Courts that the Will was duly executed by Harnam Singh.

18. Coming to the third and final issue of as to whether the Will was shrouded by suspicious circumstances, we shall examine the Will itself which is on record as Ex.D1. Though, the Will is in Punjabi language, a translated copy was produced on record at the time of final of the appeal and the Will reads as under:-

“I, Harnam Singh son of S. Deva Singh son of S. langal Singh, aged 70 years, am the resident of village Jhans, Tehsil Dasuya, District Hoshiarpur. I am the owner of land, houses and Taur, etc., situate in village Jhans, Budhi Pind and Tanda, etc. in Tehsil Dasuya, both ancestral and self acquired. I have become old and am sick since long. My life is now in danger. Therefore, I want to execute this will in lieu of the services rendered, so that lateron no dispute arises. Whereas Gurbax Singh and Gurdit Singh my sons residents of village Jhans, Tehsil Dasuya are rendering great service and are obeying my order. They also have a great love for me



and I am happy with them. Therefore, I execute this will with pleasure for their service and make this writing that after my death, Gurbax Singh, Gurdit Singh my sons will be the owners of my entire property, moveable and immovable, all types, ancestral and self acquired, total money, shares in the Mill, Bank, etc., amount deposited in the Bank and Post Office, all assets and liabilities moveable and immovable, as they are residents of village Jhans. Besides them no body will have any right. My last rites will also be performed by the afore-said. My wife is pregnant if any male issue is born, he will be succeeding in equal share with the above-said Gurbax Singh and Gurdit Singh.”

19. Notable parts of the Will are that Harnam Singh mentions that his life in danger as a result of which he wanted to execute the Will. He mentions that Gurbax Singh and Gurdit Singh are his sons and that they were rendering service to him and were obeying his orders. He, therefore, willed that after his death, Gurbax Singh and Gurdit Singh would become owners of his entire movable and immovable property and that besides them, nobody else would have any right. He also stated that his last rights would also be performed by the said two sons. Then a very important part of the Will comes with says that his wife was pregnant and if any male issue was born, he would also succeed to the properties of Harnam Singh along with Gurbax Singh and Gurdit Singh.

20. Now, certain very important issues depicting the mindset and frame of mind of Harnam Singh is concerned arise. Firstly, he does not make any mention of his first marriage and second marriage. This is probably because he did not want to create any confusion in the Will which would again become a reason for dispute. Then, he did not make any mention of his



daughter-Gurmel Kaur. Though this is little odd but, at the same time, he did not make any mention of his daughter from his marriage with Joginder Kaur also. Admittedly, at the time of execution of the Will, Mandeep Kaur who was born on 12.02.1981 was also there but no mention about her was also made. Two things arise from this. The first thing is that since he did not wish to give anything to his daughters, he did not make a mention about them. Not giving anything to the daughter and giving the entire property to the sons is not uncommon and merely because no mention of the daughters was made would not be a suspicious circumstances. Reference in this regard can be made to the judgments of this Court in the cases of *Damandeep Vs. Jaspal Kaur and others (supra)* and *Nachhattar Kaur Vs. Amarjit Kaur (supra)*. In the case of *Damandeep Vs. Jaspal Kaur and others (supra)*, a Coordinate Bench has held as under:-

“4. It is not the requirement of the statute that every time when the Will is propounded, all the persons who are likely to be adversely effected by the said Will, are required to be mentioned in the said Will. Mere non-mentioning of or about the person would not itself be a ground for coming to the conclusion that the Will is illegal. The contention of the counsel for the appellant-plaintiff that the Will is shrouded with suspicious circumstance also cannot be accepted in the light of the fact that the relevant and required evidence has been produced on record dispelling all the suspicious circumstances which are sought to be projected. Thus, finding recorded by the Courts below on this aspect cannot be faulted with.”

21. Still further, in the case of *Nachhattar Kaur Vs. Amarjit Kaur (supra)*, a Coordinate Bench has held as under:-



“13. Will is deviation from natural succession. Merely because the daughters of the executant had been dis-inherited vide the Will in itself is no ground to hold that the Will in question was a suspicious document in the facts and circumstances of the present case. The R.S.A. No. 962 of 1997 12 executant has categorically deposed that the son of his deceased sister Ram Singh was residing with him and was looking after him. Sister of the executant i.e. Ram Singh's mother was already dead. Hence, it would natural for the executant to have executed the Will in favour of his nephew by excluding his daughters. Moreover, three daughters of the executant were already married and the executant was apparently satisfied that in case of his death, his nephew would perform the marriage of his un-married daughter. Although it has not been so specifically stated in the Will but it appears that the executant must have trusted his nephew to perform his moral duties after his death. Jarnail Kaur, one of the daughters of Sarwan Singh, admitted in her written statement that Sarwan Singh had executed the Will in favour of his nephew Ram Singh. Shanti, widow of Sarwan Singh and the plaintiffs placed reliance on Will dated 29.6.1976 executed in favour of Shanti and Ram Singh. A perusal of the said Will reveals that vide the same, the executant had revoked his earlier registered Will dated 8.7.1974 and had executed the new Will in favour of his wife regarding some land and in favour of Ram Singh regarding his remaining land. The execution of the said Will was not held to be proved by the Courts below and the said finding has not been challenged by the learned senior counsel for the appellants during the course of arguments. However, the fact remains that in the said Will set up by Shanti and the plaintiffs, the execution of the earlier Will was duly admitted.”



22. The second thing is that he did not wish to make any mention of his two marriages. The factum that Gurmel Kaur was living in her matrimonial home and she admitted in her cross-examination that it was her father-in-law who was pursuing the litigation also shows that Harnam Singh was practically not in touch with the plaintiff-Gurmel Kaur and that accordingly he did not make any mention about her.

23. Another thing which arises from the Will is that Harnam Singh made a mention about a child in the womb also and here also, he stated that if the child was a male child, he would be an equal share holder in the property. This also shows that he was not willing to give any property to his daughters. Therefore, the non-mentioning of the name of Gurmel Kaur in the Will is not a suspicious circumstance.

24. The argument that it was unacceptable that Harnam Singh begot children till the very end of his life is irrelevant for the purposes of the present dispute because the issue is not as to whether he could have begotten children at that age or not. This argument is, therefore, devoid of merit and is rejected out rightly. The argument that Gurbax Singh and Gurdit Singh were small children when the Will was executed and, therefore, Harnam Singh could not have been happy with their services because they were incapable of rendering any services is also devoid of merit. No doubt, it seems and sounds little odd. However, it has to be borne in mind that we are dealing with rustic villagers and the Will had been written by a deed-writer. They have set and specific languages for all documents. It is probably on this account that these lines were added. It does not necessarily mean that since it was so written, the Will was shrouded by suspicious circumstances.



25. I have gone through the judgments relied upon by both sides. In so far as the judgments referred by learned Senior counsel representing the appellant are concerned, they do not come to her aid. All judgments talk about specific circumstances and, therefore, lay down as to what would constitute suspicious circumstances. It is settled law that there can be no specific definition of suspicious circumstances and it cannot be exhaustively laid down as to what would constitute a suspicious circumstance and what would not. It has to be determined in the facts and circumstances of each case.

26. The cumulative result of the aforesaid discussion is that there is no illegality in the judgments passed by the trial Court as also by the First Appellate Court and that the suit filed by the plaintiff-Gurmel Kaur was rightly dismissed.

In view of the same, finding no merit in the present appeal and the same is dismissed..

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

Pronounced on :20.02.2025

Rekha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No