

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**RSA No. 1657 of 1988 (O&M)
Date of Decision: 02.02.2015**

Surjit Kaur & Ors.

... Appellants

vs.

Dalbara Singh & Ors.

... Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

**Argued by:- Mr. Harsh Aggarwal, Advocate
for the appellants.**

**Mr. I.S. Vimal, Advocate
for the respondents.**

ANITA CHAUDHRY, J.

The dispute in the instant regular second appeal revolves around the Will dated 22.08.1979 executed by Jagir Singh. Before dilating on the controversy, it is relevant to first refer to relationship between the parties, as culled from the records.

Jagir Singh and his wife Harnam Kaur(defendant No.1) had four sons, namely, Dalbara Singh(plaintiff No.1), Jarnail Singh, Karnail Singh and Nahar Singh. Jarnail Singh and Nahar Singh died prior to 1979. Jarnail Singh left behind Surjit Kaur, his widow and five daughters namely Harbans Kaur, Gurcharan Kaur, Jaswant Kaur, Surinder Kaur and Kartar Kaur (defendants No.4 to 9) as his legal

representatives. Likewise, Nahar Singh was survived by his widow Gurcharan Kaur(defendant No.2), son Manjit Singh(plaintiff No.2) and daughter Sukhjivan Kaur(defendant No.3). Karnail Singh died in 1982 leaving behind his widow Dalip Kaur, son Amarjit Singh and daughters Amar Kaur, Harbans Kaur and Mohinder Kaur (plaintiffs No.3 to 7).

Jagir Singh died on 02.11.1983.

Stacking claim on the land measuring 25 *bighas* 03 *biswas* and 12 *biswas*, on the basis of Will dated 22.08.1989 claimed to be executed by deceased Jagir Singh, his son Dalbara Singh, to the extent of $\frac{1}{3}^{\text{rd}}$ share, grandson Manjit Singh son of Nahar Singh, $\frac{1}{3}^{\text{rd}}$ share and widow, son and daughters of Karnail Singh, equal share in remaining $\frac{1}{3}^{\text{rd}}$ share, filed a suit seeking declaration that they are owners in joint possession of the suit land on the basis of said Will. It was their case that Jagir Singh, during his lifetime, in sound disposing mind and out of free consent, executed a registered Will in their favour and they were entitled to inherit the suit land. A challenge was also laid to the mutation dated 22.02.1984 vide which the suit land was mutated in favour of all the legal heirs in total ignorance to the registered Will executed by the deceased.

Upon notice, widow of Jagir Singh, namely, Harnam Kaur and Gurcharan Kaur and Sukhjivan Kaur, widow and daughter respectively of deceased Nahar Singh(defendants No.1 to 3) admitted the claim of the plaintiffs in toto and asserted no objection in case the mutation was sanctioned in favour of the plaintiffs by dint of Will

dated 22.08.1979.

The suit was mainly contested by widow and daughters of Jarnail Singh (defendants No.4 to 9). They took the stand that the Will in question was never executed by Jagir Singh. Jagir Singh was having cordial relations with them and there was no reason to exclude them from inheriting the suit land being class-I legal heirs. It was further averred that owing to his love and affection for all he divided the house in four equal shares. It was claimed that the Will was a forged and fictitious document and not voluntary and free testamentary disposition. The Will was pleaded to be suspicious because the rights of Class-I heirs had been ignored without cogent reason. According to them, all the natural heirs of the deceased were equally entitled to the estate of the deceased. It was claimed that the mutation was rightly entered by the revenue authorities as the Will was found to be forged and fake.

Replication controverting the averments made in the written statement filed by defendants No.4 to 9 and reiterating those of suit was filed. On the basis of pleadings of the parties, following issues were framed:-

- “1. Whether deceased Jagir Singh executed a valid will dated 22.8.1979 in his sound disposing mind in favour of the plaintiffs?
2. Relief”

On the basis of evidence led by the parties, the trial Court

vide judgment dated 22.08.1985 dismissed the suit and observed that the Will dated 22.08.1979 was not a valid document. It was held that neither the Will was proved on record by cogent and convincing evidence nor plausible explanation was given for excluding the female heirs.

Aggrieved by the same, an appeal was filed by the plaintiffs, which was allowed by the lower Appellate Court vide judgment dated 20.05.1988. The judgment of the trial Court was set aside and the suit was decreed. The lower Appellate Court found that the Will was a registered document; it was duly proved as per Evidence Act by examining one attesting witnesses; it was held that mutation proceedings were not binding upon the plaintiffs and a right was created in favour of the plaintiffs by virtue of the registered Will and the exclusion of the female heirs was a natural corollary.

Dis-satisfied with the judgment and decree of the lower Appellate Court, defendants No.4 to 9 have preferred the instant regular second appeal.

The following substantial questions of law are sought to be raised on behalf of the appellants:-

- “1. Whether the findings given by the lower Lower Appellate Court are perverse to evidence on record, illegal and suffers from material irregularities?
2. Whether the will is proved as per the provisions of Indian Succession Act read with Indian Evidence Act, particularly the same is surrounded by suspicious

circumstances?

3. Whether if the beneficiary of the will pre-deceases the executor of the will, the share sought to be bequeathed to the deceased beneficiary would revert to the executant to be inherited as per natural succession?

It was urged on behalf of the appellants that the Will, which otherwise remained unproved on record, is surrounded by suspicious circumstances, as Class-I heirs have been ignored for no reason. It has been urged that the trial Court rightly discarded the Will and dismissed the suit but the lower Appellate Court was wrong in law as well as facts while reversing the well reasoned judgment of the trial Court.

On the other judgment, the respondents have supported the judgment rendered by the lower Appellate Court.

I have duly considered the submissions made on behalf of the parties and perused the record.

The first and foremost question now is whether the Will propounded by Jagir Singh and attested by Gurdev Singh (PW2) and Inder Singh had been proved.

The execution of a Will is required to be proved in terms of the provisions of Section 63(c) of the Indian Succession Act and Section 68 of the Indian Evidence Act. The statutory requirements to prove a Will in terms of the aforementioned provisions have been laid down in **Janki Narayan Bhoir Vs. Narayan Namdeo Kadam, 2003**

(1) RCR(Civil) 409, wherein the Hon'ble Apex Court held as under:-

“To say will has been duly executed the requirements mentioned in clauses (a), (b) and (c) of Section 63 of the Succession Act are to be complied with i.e., (a) the testator has to sign or affix his mark to the will, or it has got to be signed by some other person in his presence and by his direction; (b) that the signature or mark of the testator, or the signature of the person signing at his direction, has to appear at a place from which it could appear that by that mark or signature the document is intended to have effect as a will; (c) the most important point with which we are presently concerned in this appeal, is that the will has to be attested by two or more witnesses and each of these witnesses must have seen the testator sign or affix his mark to the Will, or must have seen some other person sign the Will in the presence and by the direction of the testator, or must have received from the testator a personal acknowledgment of signature or mark, or of the signature of such other person, and each of the witnesses has to sign the Will in the presence of the testator.”

As regards compliance of the provision of Section 68 of the Evidence Act, it was opined:-

“Section 68 of the Evidence Act speaks of as to how a document required by law to be attested can be proved. According to the said Section, a document required by law to be attested shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving an evidence. It flows from this Section that if there be an attesting witness alive capable of giving evidence and subject to the process of the Court, has to be necessarily examined before the document required by law to be attested can be used in an evidence. On a combined reading of Section 63 of the Succession Act with Section 68 of the Evidence Act, it appears that a person propounding the will has got to prove that the will was duly and validly executed. That cannot be done by simply proving that the signature on the will was that of the testator but must also prove that attestations

were also made properly as required by clause (c) of Section 63 of the Succession Act. It is true that Section 68 of Evidence Act does not say that both or all the attesting witnesses must be examined. But at least one attesting witness has to be called for proving due execution of the Will as envisaged in Section 63. Although Section 63 of the Succession Act requires that a will has to be attested at least by two witnesses, Section 68 of the Evidence Act provides that a document, which is required by law to be attested, shall not be used as evidence until one attesting witness at least has been examined for the purpose of proving its due execution if such witness is alive and capable of giving evidence and subject to the process of the Court. In a way, Section 68 gives a concession to those who want to prove and establish a will in a Court of law by examining at least one attesting witness even though will has to be attested at least by two witnesses mandatorily under Section 63 of the Succession Act. But what is significant and to be noted is that that one attesting witness examined should be in a position to prove the execution of a will. To put in other words, if one attesting witness can prove execution of the will in terms of clause (c) of Section 63, viz., attestation by two attesting witnesses in the manner contemplated therein, the examination of other attesting witness can be dispensed with. The one attesting witness examined, in his evidence has to satisfy the attestation of a will by him and the other attesting witness in order to prove there was due execution of the will. If the attesting witness examined besides his attestation does not, in his evidence, satisfy the requirements of attestation of the will by other witness also it falls short of attestation of will at least by two witnesses for the simple reason that the execution of the will does not merely mean the signing of it by the testator but it means fulfilling and proof of all the formalities required under Section 63 of the Succession Act. Where one attesting witness examined to prove the will under Section 68 of the Evidence Act fails to prove the due execution of the will then the other available attesting witness has to be called to supplement his evidence to make it complete in all respects. Where one attesting witness is examined and he fails to prove the attestation of the will by the other witness there will be deficiency in meeting the mandatory requirements of Section 68 of the Evidence Act.”

From the above legal proposition and conjoint reading of both the provisions, it is abundantly clear that execution of a Will must conform to the requirement of Section 63 of the Succession Act, in terms whereof a Will must be attested by two or more witnesses. Execution of a Will, however, can only be proved in terms of Section 68 of the Indian Evidence Act. In terms of said provision, at least one attesting witness has to be examined to prove execution of a Will.

Plaintiff No.1 Dalbara Singh entered into the witness box as PW1. He deposed that his father was in sound disposing mind at the time of the execution of the Will. Gurdev Singh, the marginal witness of the Will in dispute was examined as PW2. He deposed that the Will (Ex.P1) was scribed by Jasmer Singh in his presence. The contents thereof were read over to the testator and Jagir Singh signed the same in his presence and before other attesting witness Inder Singh. The tenor and manner in which the Will was scribed, rules out any doubt about indisposition state of the testator. Moreover, no evidence in this regard has been led by the appellants before the trial Court to prove that the testator was of unsound mind. Gurdev Singh in clear and in unambiguous terms has stated that he and Inder Singh were present at the time the testator affixed his signatures.

On a careful reading of the deposition of PW2 Gurdev Singh this Court is satisfied that the requirement of attestation of the Will by two witnesses each of whom has seen the testator signing or affixing his mark has been satisfied in the present case. Non-examination of other attesting witness of the Will, is not in any

manner fatal to the case of the legatees. Thus, the appellant cannot derive any benefit from **Parkash Kaur Vs. Gurmukh Singh 2003(4) RCR(Civil) 857** and **Gopal Swaroop Vs. Krishna Murari Mangal & Ors. 2011 AIR SC(Civil) 76**.

It is also true that deprivation of share to the natural heir by itself may not be held to be a suspicious circumstance but it is one of the factors which can be taken into consideration by the Courts. But in the case in hand when the Will has been duly proved on record and is a registered document, it cannot be said that deprivation of female heirs was a circumstance to view it as suspicious. Further, the perusal of statement of PW2 Gurdev Singh, reveals that Jagir Singh was not interested in giving share to the heirs of Karnail Singh because his widow was receiving pension and was possessing good financial position. This can also be one of the reasons for excluding them from inheriting share in the suit land. Even otherwise it is a matter of common knowledge that in villages especially the agriculturists do exclude the female heirs. Support can be drawn from **Rur Singh(D) through LRs & Ors. Vs. Bachan Kaur, 2009(11) SCC-1**.

Karnail Singh died prior to the death of testator. Jagir Singh, who died later in point was well aware of this fact. Still he did not change the Will. The Will is found to be legally and validly executed. All the male heirs have been given equal share in the property in dispute. In that eventuality, it cannot be said that the share that would have fallen to the beneficiary would revert back to the executor. It is the wish of the testator which prevails.

So far as sanctioning of mutation in favour of all the legal heirs are concerned, the same has rightly been set aside by the lower Appellate Court. It is relevant to highlight the observations made in this regard by the lower Appellate Court:-

“8. A great stress was laid by the learned trial court and also by the learned counsel for the respondents that it was recorded in the order of the revenue officer Ex.D1 in the mutation proceedings that Inder Singh had publically declared that he had not attested any will and that his signatures were obtained on an application only. However, no statement of Inder Singh was recorded in the mutation proceedings and in recital made in Ex.D1 all the record of the revenue officer cannot take place of positive statement of Inder Singh.”

No ground is made out to take a different view. The order passed by the revenue officer was on the basis of some statement which was not recorded. Even otherwise, a registered Will can be discarded if there are strong suspicious circumstances, which are conspicuously missing in this case.

In view of the above discussion, there remains no doubt that the registered Will executed by Jagir Singh was not surrounded by any suspicious circumstances and was proved to have been duly executed. The findings recorded by the lower Appellate Court are affirmed. The substantial questions of law are answered against the appellants. The appeal is dismissed.

02.02.2015

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**(ANITA CHAUDHRY)
JUDGE**