

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

FAO No.3152 of 2011 (O&M)
Date of Decision: March 13, 2015

Surjit Kumar and others **Appellants**

VS.

General Public and others Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Ms. Ekta Thakur, Advocate for the appellants.

Respondent No.3- ex parte.

Kuldip Singh J.

The present appeal has been filed by the appellants against the judgment dated 12.01.2011 passed by learned Addl. District Judge, Chandigarh, dismissing the petition of the appellants for grant of probate in respect of registered Will dated 28.08.2002 executed by Jiwa Ram (deceased).

The facts of the case are that Jiwa Ram died on 04.02.2003 leaving behind the following legal heirs:

- | | | |
|--------------------------------------|---|-------|
| 1. Varinder Pal Singh (now deceased) | - | son |
| 2. Surjit Kumar | - | son |
| 3. Rajinder Kumar | - | son |
| 4. Smt. Bhagwanti | - | widow |

All residents of House No.646, Mohalla Mata Raj Kaur,
Mani Majra, UT, Chandigarh.

5. Smt. Manju Lata w/o Salam Singh - daughter

Resident of Mohalla Matagarh, Chilkana Adda, Kalsia
Road, Saharanpur (UP).

In addition to this, it came out that Smt. Ved Wanti, the earlier/first wife of Jiwa Ram has also been impleaded as party-respondent No.4. Varinder Pal died on 17.02.2003 and his four legal heirs are brought on record. It is stated that Jiwa Ram executed a registered Will dated 28.08.2002 in favour of the appellants bequeathing thereby his entire movable and immovable properties, compensation amount or bank balance etc. in favour of his three sons, namely, Varinder Pal, Surjit Kumar and Rajinder Kumar. It was also mentioned that Jiwa Ram had saving bank account Nos.E-268 and 00647 in Cental Bank of India, Manimajara and saving account No.024201 in Oriental Bank of Commerce, Manimajara, in which the amount mentioned in the probate petition is lying deposited.

General Public was served notice through newspaper but none appeared to contest the matter. Respondent Nos.2 and 4 were proceeded against ex parte. Only respondent No.3 contested the probate petition, in which she raised the objection that Ved Wanti, the earlier wife of Jiwa Ram (deceased) is still alive and is necessary party. The relationship was not denied. However, it was stated that Jiwa Ram was very weak and could not recognize his relatives. Therefore, the execution of the Will dated 28.08.2002 was fake.

From the pleadings, following issues were framed:

“1. Whether Jiwa Ram executed a legal and valid Will in favour of applicants on 28.08.2002?OPP.

2. Whether the application is bad for non-joinder of necessary parties? OPR3.

3. Relief.”

Learned Addl. District Judge, Chandigarh, while deciding issue No.1 held that the Will in question was suspicious document and therefore, the same was discarded. Issue No.2 was left as redundant and consequently the probate petition was dismissed vide order dated 12.01.2011.

I have heard learned counsel of the appellants and have also carefully gone through the case file.

In this case, the Will in question is a registered Will and the same was proved in accordance with law by examining the attesting witness Mr. Paramjit Singh Walia, Advocate. The Will in question was executed and attested by Mr. Paramjit Singh Walia, Advocate in the presence of Mr. Dev Raj Aggarwal, Advocate at Chandigarh. The Will was also drafted by Mr. Paramjit Singh Walia, Advocate. Mr. P.S. Walia, Advocate admitted that he was not practising in District Courts, Chandigarh. He was working in Estate Office and Jiwa Ram (deceased) came to him alone and on his (Jiwa Ram's) asking, he scribed the Will. The same was also got registered. He also proved that another advocate, namely Mr. Dev Raj Aggarwal, also attested the Will in question. There is no ground to discard the statement of Mr. Paramjit Singh Walia, Advocate, who was practising in the Estate Office, though he was not practising in the District Courts. The mere facts that Jiwa Ram (deceased) came alone to execute the Will and Mr. Parminder Singh Walia, Advocate did not know the other family members of the executant of the Will in question, is no ground to discard it. It is not disputed that Mr. Parminder Singh Walia, Advocate operates from the Estate Office

where the work of registration of documents is done. Jiwa Ram (deceased) contacted an advocate, who scribed the Will and the same was attested by two advocates. In this case, Jiwa Ram (deceased) bequeathed the entire property in favour of his three sons, while his daughter has been ignored. There is a tendency in this part of the country that a married daughter is ignored from inheritance. Moreover, the necessity to execute a Will arises only when some legal heir(s) is/are to be disinherited. The daughter of Jiwa Ram (deceased), namely, Manju Lata, respondent No.3 while appearing as RW1 had admitted the photograph of her father on the Will and she also admitted the signatures of her father/executant of the Will on the Will (Ex.A-3).

It being so, the finding of the learned Addl. District Judge, Chandigarh, that he had suspicion about the Will is unfounded. Thus, the registered Will dated 28.08.2002 (Ex.A-3) is proved to be genuine and natural. Therefore, issue No.1 stands decided in favour of the appellants.

In view the aforesaid, the present appeal is allowed. The probaton of the Will in question is ordered to be issued in favour of the appellants, in terms of the Will.

March 13, 2015
sarita

(KULDIP SINGH)
JUDGE