

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: August 13, 2015

(1) Regular Second Appeal No. 1658 of 2010 (O&M)

Anil Malhotra

.. Appellant

v.

Dr. Chander Malhotra and others

.. Respondents

(2) Regular Second Appeal No. 1795 of 2010 (O&M)

Anil Malhotra

.. Appellant

v.

Dr. Chander Malhotra and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

**Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. B. B.S. Randhawa, Advocate for the appellant.**

**Mr. Puneet Jindal, Senior Advocate with
Ms. Sakshi, Advocate for respondents No. 1 to 3.**

...

Rajesh Bindal J.

1. This judgment will dispose of two appeals bearing RSA Nos. 1658 and 1795 of 2010, as common questions of law and facts are involved.

2. In RSA No. 1658 of 2010, the suit was filed by Anil Malhotra against Dr. Chander Malhotra and others for possession of 1/6th share of the suit property by way of partition by metes and bounds. In this case, the trial court passed preliminary decree in favour of the plaintiff holding him

entitled to 1/6th share in the suit property. In appeal, the judgment and decree of the trial court were reversed and the suit filed by Anil Malhotra for 1/6th share in the suit property was dismissed. The judgment and decree of the lower appellate court have been impugned in appeal before this court.

3. In RSA No. 1795 of 2010, the suit was filed by Dr. Chander Malhotra and others against Anil Malhotra and others for mandatory injunction seeking revocation of license for living in the suit property. The same was dismissed by the trial court. In appeal, the judgment and decree of the trial court were reversed and the suit was decreed. The judgment and decree of the lower appellate court has been impugned in appeal before this court.

4. Both the suits were clubbed and were decided by a common judgment by the trial court and even the appeals were also consolidated and decided by a common judgment, as the suit property is same. Both the appeals have been preferred by Anil Malhotra, as the suit filed by him seeking partition of the property was dismissed and the suit filed against him for mandatory injunction and possession was decreed.

5. Learned counsel for the appellant submitted that Beli Ram Malhotra was father of the parties. Vidya Rani was their mother. Vidya Rani acquired the property in dispute, i.e., B-XIX-160, Colonel Gurdial Singh road, near Activity School, Civil Lines, Ludhiana, on 22.1.1973. She had five sons (one of the sons- Surinder Mohan Malhotra had pre-deceased her) and one daughter. Vidya Rani expired on 9.10.1997. The suit was filed by the appellant claiming share in the property left by Vidya Rani who, according to the appellant-plaintiff, died intestate. The appellant claimed 1/6th share in the property. Written statement was filed by brothers and father of the appellant pleading that in terms of the registered Will executed by Vidya Rani on 11.8.1995, the property was to be given to only three brothers of the appellant. The sister of the appellant filed separate written statement praying that the property be partitioned. She was supporting the case of the appellant. The appellant disputed the Will in the replication claiming that the same was forged and fabricated document.

6. The submission is that the primary question in the present litigation is as to whether the Will projected by the brothers of the appellant is a valid document and in case it is not, the property will have to be shared amongst all the legal heirs, Vidya Rani having died intestate. If the appellant succeeds, then automatically the second suit filed by the brothers of the appellant will have to be dismissed as the appellant will not remain in possession of the property merely as a licensee, rather, in his own right. Even if for arguments' sake, the Will is upheld, still the appellant, being in possession of part of the suit property since long and having made substantial improvements by spending huge amount, even if he is a licensee, the same cannot be revoked. He submitted that following two substantial questions of law would arise in the present appeals:

- “1. Whether the alleged Will dated 11.8.1995 is forged and fabricated document which is also not proved in accordance with Section 63 of the Indian Succession Act, 1925 and Sections 68 and 69 of the Indian Evidence Act, 1872 and is shrouded with suspicious circumstances ?
2. Whether the license is revoked merely on the death of owner, as alleged ?”

7. Assailing the findings of the learned lower appellate court on the validity of the Will, learned counsel for the appellant submitted that the same was shrouded with suspicious circumstances. As per the contents of the Will, widow of the pre-deceased son of Vidya Rani re-married and her share in the family property was given in cash to her. After re-marriage, she did not have any relations with the family, hence, not given any part of the property. The appellant in lieu of his share in the family property was earlier given a plot measuring one kanal at Faridabad, hence, the house in question was given only to other three brothers of the appellant. Regarding sister, it was mentioned that at the time of marriage, she was given gifts and other things in terms of her share in the property at that time.

8. The submission is that the Will has not been proved as required in terms of the provisions of the Indian Succession Act, 1925 (for short, 'the

1925 Act') as well as the Indian Evidence Act, 1872 (for short, 'the 1872 Act'). There are two attesting witnesses to the Will. Balbir Singh, son of Gurbachan Singh, one of the attesting witnesses of the Will, had appeared in the witness-box. He stated that his father has died and he identified his signatures. As far as the other witness to the Will is concerned, regarding him only DW3-Amarjit Singh, Deed Writer, had stated that as per the information available with him, he had expired. There was no other evidence produced by the respondents to show that the second witness to the Will had expired, hence, none of the two witnesses to the Will had appeared in the witness-box to prove the execution thereof. None of the witnesses were known to the executant. Even the scribe was not known to the executant. The mother of the appellant was bed ridden when the Will was executed. There is nothing on record to suggest how she had gone to the scribe and appeared before the Sub Registrar for registration of the Will. There is difference in the entry made in the register of the scribe if compared with the date mentioned on the Will. In fact, onus to prove the Will was on the respondents, however, in the case in hand, though the appellant had produced expert witness, who opined that the signatures on the Will were not of the executant if compared with her admitted signatures in the bank, however, in rebuttal, the respondents did not lead any evidence. The mother of the appellant always used to sign as "Vidya Rani" and not as "Vidya". On the Will, she allegedly appended her signatures as "Vidya" only. When the plot at Faridabad was given to the appellant way back in the year 1984, none of the family members had raised any objection. In fact, it was given as the appellant, who was employed in the Bank, had given ₹ 65,000/- to his father for marriage of his sister and in lieu thereof, the plot was given. The transaction being within family, the appellant did not keep any receipt of the payment. Though the amount was withdrawn from the bank, but the proof thereof also could not be produced. There is no plea raised by the respondents-defendants in the written statement regarding the plot at Faridabad. In the absence thereof, no evidence in support thereof can be considered.

9. He further submitted that though a stand was sought to be taken by the respondents that late -Vidya Rani was accompanied by her husband at the time of execution of the Will, however, this fact could not be proved as the scribe specifically denied the same. He stated that none accompanied Vidya Rani at the time of execution of the Will. The Registration Clerk could not even identify the signatures of the Sub-Registrar on the Will. It was further submitted that the Will should contain a certificate by the scribe that it was read over and explained to the executant, but there is none. Strict proof was required to prove the Will. In the absence thereof, the same deserved to be rejected. Vidya Rani was living in the same house in which the appellant was living. Two brothers of the appellant were also living there. One brother was settled at Jalandhar. In fact, the appellant used to take care of day-to-day needs of his mother and taking her to the doctor, whenever there was any requirement. He even produced certain prescription slips on record. As a consequence, the appellant would be entitled to 1/6th share in the property.

10. As far as revocation of license is concerned, learned counsel for the appellant, while referring to Section 62 of the Indian Easements Act, 1882 (for short, 'the 1882 Act'), submitted that the license granted to the appellant by his mother for living in the suit property cannot be revoked on account of her death, as he had made substantial changes in the house by making huge investment.

11. In support of his arguments, reliance was placed upon judgments of Hon'ble the Supreme Court in Benga Behera and another v. Braja Kishore Nanda and others, 2007(3) RCR (Civil) 240; Anil Kak v. Kumari Sharada Raje and others, 2008(2) RCR (Civil) 918 and Babu Singh and others v. Ram Sahai @ Ram Singh, 2008(3) RCR (Civil) 154.

12. On the other hand, learned counsel for the respondents submitted that Vidya Rani died on 9.10.1997. The conduct of the appellant is evident from the fact that just after one month thereof on 26.11.1997, he filed the suit seeking share in the family property claiming that Vidya Rani died intestate. Though immediately after the death of Vidya Rani, the appellant had come to know in October, 1997 that she had executed a Will

bequeathing her property in favour of her three sons, but still at the time of filing of the suit, he was smart enough not to challenge the Will and the plea was raised that she died intestate. In the evidence led by the appellant, challenge to the Will cannot be looked into being beyond pleadings.

13. While countering the arguments raised by learned counsel for the appellant on the validity of the Will, it was submitted that the appellant is primarily relying on the evidence of the expert witness. In fact, what has been stated by him in his cross-examination demolishes the case set up by the appellant. He admitted that change in signatures in old age is a normal feature. The signatures of late-Vidya Rani on the Will were compared with her admitted signatures in the bank, which were nine years' old. No efforts were made to take the latest standard signatures. If signatures from the bank were to be taken, the same could be taken from the latest transaction made by Vidya Rani. That shows the intention of the appellant, who himself was working in the bank and very well knew that the signatures appended on the Will are of his mother. In fact, in his cross-examination, he admitted this fact, however, later on continued denying the same. The manner in which Vidya Rani had signed clearly establishes the fact that those were her normal signatures. Otherwise, if the Will had to be forged, the respondents could very well copy the signatures from her standard signatures. Considering the age of Vidya Rani, there is little bit difference even in all signatures appended by her on the Will, as on account of tremors, her hand was not stable. If the intention was to forge the signatures, a person will not append the signatures twice at one place as had been done in the present case. That shows that the Will is not forged.

14. He further submitted that there is nothing on record to suggest that Vidya Rani was bed ridden. No doubt, she got hip fracture on 31.3.1995 but was discharged from the hospital after she was cured on 18.4.1995. Thereafter, she was able to move, may be with some help. She had been regularly going to the hospital for check up. The Will was executed by her on 11.8.1995. She lived for more than two years thereafter, as she died on 9.10.1997. It is not the case set up by the appellant that Vidya Rani remained bed ridden after she got fracture in her hip, hence to claim that

Vidya Rani had never gone to the scribe or appeared before the Sub Registrar for execution of the Will is to be rejected.

15. It was further submitted that Beli Ram Malhotra, husband of Vidya Rani, was employed with Indian Railways. He was also impleaded as one of the defendants in the suit filed by the appellant. He filed his written statement joining his three sons reiterating whatever was stated in the Will. He could not appear in the witness-box as before the evidence of the defendants started, he expired on 23.12.2002. However, affidavit dated 4.4.2001 executed by him and duly attested by Notary Public, which was produced by Dr. Chander Malhotra in his evidence, clearly establishes this fact. As a father, there was no good reason for him to have supported the Will, if the same was a forged document. There is nothing on record produced by the appellant to suggest that the parties were having inimical relations. Vidya Rani was his wife. The property was purchased in her name. Similar is the position with regard to the property at Faridabad. The appellant has not disputed the fact that he was given one kanal plot at Faridabad, though he claimed that he had paid ₹ 65,000/- to the father at the time of marriage of his sister and in lieu thereof, the plot was transferred in his favour, but there is no material produced on record in support thereof. The transaction seems to be highly improbable, rather, it shows the conduct of the appellant that even if he had given some money for the marriage of his sister to the father, he claimed that he had taken a plot in lieu thereof. That shows how greedy the appellant is. Though it is claimed by the appellant that he had paid a sum of ₹ 65,000/- to the father at the time of marriage of his sister and at the time of his cross-examination on 9.8.2000, he submitted that he has proof of that payment and can produce the same, but despite the fact that he was further cross-examined on 9.3.2004, but could not produce any material in support of his stand. As the appellant withheld material evidence, adverse inference is to be drawn against him. This is to be considered in the light of the fact that the appellant had produced number of receipts/bills/slips showing expenses allegedly made by him for renovation of the property in his possession and further for treatment of his mother. Even Dr. Chander Malhotra, the other son of late-

Beli Ram Malhotra and brother of the appellant had also contributed ₹ 20,000/- for the marriage of his sister, but never claimed anything in lieu thereof, considering his to be moral duty. Even he is also unable to prove the same at this late stage.

16. Responding to the arguments raised by learned counsel for the appellant that husband of late Vidya Rani accompanied her at the time of execution of the Will, learned counsel for the respondents submitted that no doubt, the scribe stated that no one accompanied Vidya Rani at the time of execution of the Will, however, the fact cannot be lost sight of that the scribe was a professional. He had been preparing number of documents during the course of day and after 11 years of execution of a document, he is not expected to remember that who had accompanied the executant of a document. All what he had stated was from the record. The entries in his register suggested that Vidya Rani was accompanied by two witnesses. All three had signed on the register as well in addition to the document. It establishes that he was not a tutored witness. No one can re-call an incidence, which took place 11 years back during his professional career with minute details.

17. As regards difference in date in the register and on the Will, learned counsel for the respondents submitted that even as per the statement of scribe, register being old had been torn out from sides and as a result thereof, complete date may not be visible, nothing hinges on that as a Will is a registered document, registration of which is duly proved. As regards the plot at Faridabad is concerned, it was submitted that no details were required to be pleaded in the written statement. All what had been stated by the defendants was that late Vidya Rani had executed a Will and in terms thereof, the appellant did not have any right in the property. Vidya Rani had clearly mentioned the reasons in the Will as to why she had not given share in the property to the appellant, family of his pre-deceased son and the daughter. It was further submitted that merely because Numberdar, who had signed as a witness, was not known to the family is not fatal once it is established that he had signed the Will as a witness and executant signed in his presence. Numberdars are appointed by the Government for rural areas.

The parties to the dispute are living in urban area at Ludhiana. Regarding death of the second witness, it was submitted that the scribe-Amarjit Singh, while appearing as DW3, had specifically stated that as per his knowledge, second witness to the Will, namely, Jagdish Rai had expired. That is why he was not produced in the witness-box. It was not the statement made by any party interested in the case, rather, an independent witness. Thereafter, in case the appellant sought to dispute this fact, he could very well summon that witness or produce any material on record to show that in fact, he had not expired. Only then the appellant could add some weight to his arguments and not otherwise. It was further submitted that the appellant had not even put a suggestion to that witness that he is deposing falsely regarding death of second witness to the Will, namely, Jagdish Rai.

18. It was further submitted that a certificate has been appended on the Will that the same was read over to the executant by the Deed Writer and thereafter she had appended her signatures, hence, to raise a plea that there is no certificate on the Will is factually incorrect. Under the circumstances, when the witnesses to the Will have died, even the scribe, who signs the Will at the same time, can also be considered as a third witness. He further submitted that in the suit filed by the appellant, he claimed 1/6th share in the property. The admitted facts on record are that Vidya Rani was survived by her widower, four sons, family of a pre-deceased son and a married daughter. In terms of Section 15(1)(a) of the Hindu Succession Act, 1956, all the above persons are entitled to share in the property left by a female. In terms thereof, the share of the appellant could be 1/7th and not 1/6th, which he sought to claim.

19. He further submitted that the registered Will is certainly to be given more authenticity and to prove the same being forged and fabricated document on the plea that it is being shrouded with suspicious circumstances is quite heavy on the person assailing the same. The appellant had not been able to discharge that burden. He is trying to raise some irrelevant issues here and there. In support of his plea, reliance was placed upon Palanivelayutham Pillai and others v. Ramachandran and others, (2000) 6 SCC 151; Pulipati Rajarao v. Gondrala Sithamahalakshmi and

others, 2000 (1) CCC 318 (AP); Smt. Rami v. Sohan Singh, 1991(2) RRR 437 (P&H); Kartar Kaur v. Bhagwan Kaur, 1993(1) RRR 246 (P&H); Prithi Singh v. Saran Singh, 2006(4) RCR (Civil) 66 (P&H); Bhim Sain v. Kaushalya Devi alias Prem Lata and others, 2009(4) RCR (Civil) 48 (P&H) and Raj Kumar and another v. Kailon Devi, 2009(4) RCR (Civil) 189 (P&H). It was further submitted that the judgments, referred to by learned counsel for the appellant, are not applicable in the facts and circumstances of the case.

20. As regards the suit filed by the respondents for mandatory injunction claiming possession of part of the property in possession of the appellant on account of revocation of license is concerned, it was submitted that Section 62 of the 1882 Act is not applicable in the facts of the case. In fact, Section 59 of the said Act will apply, which provides for deemed revocation of license in case of transfer of property as on the death of Vidya Rani, who was admittedly the grantor of the license to the appellant, the license was automatically revoked as the property in terms of the Will executed by her is to be transferred in the names of the beneficiaries. In support, reliance was placed upon judgment of Allahabad High Court in Krishna New Hindusthan Transport Co. and others v. Kapuri Devi and another, 1980 All. LJ 131.

21. It was further submitted that CM No. 11716 of 2011 was filed by the respondents claiming mesne profits on account of occupation on part of the suit property by the appellant despite being not entitled to it, the same also deserve to be granted. The property is located in prime area of Civil Lines, Ludhiana and the rent of the portion in possession of the appellant would not be less than ₹ 20,000/- per month.

22. Heard learned counsel for the parties and perused the paper book as well as the relevant referred record.

23. The learned trial court framed the following issues in the suit filed by the appellant claiming 1/6th share in the property:

- “1. Whether plaintiff is entitled to separate possession by way of partition on the suit property to the extent of 1/6th share? OPP

2. Whether plaintiff has no locus standi to file the present suit? OPD-1,2,3 and 5.
3. Whether plaintiff is estopped by his own act and conduct to file the present suit? OPD-1,2,3 and 5.
4. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD
5. Whether this court has no pecuniary jurisdiction? OPD
6. Relief.”

24. In the suit filed against the appellant by the respondents claiming possession on revocation of license, the trial court framed the following issues:

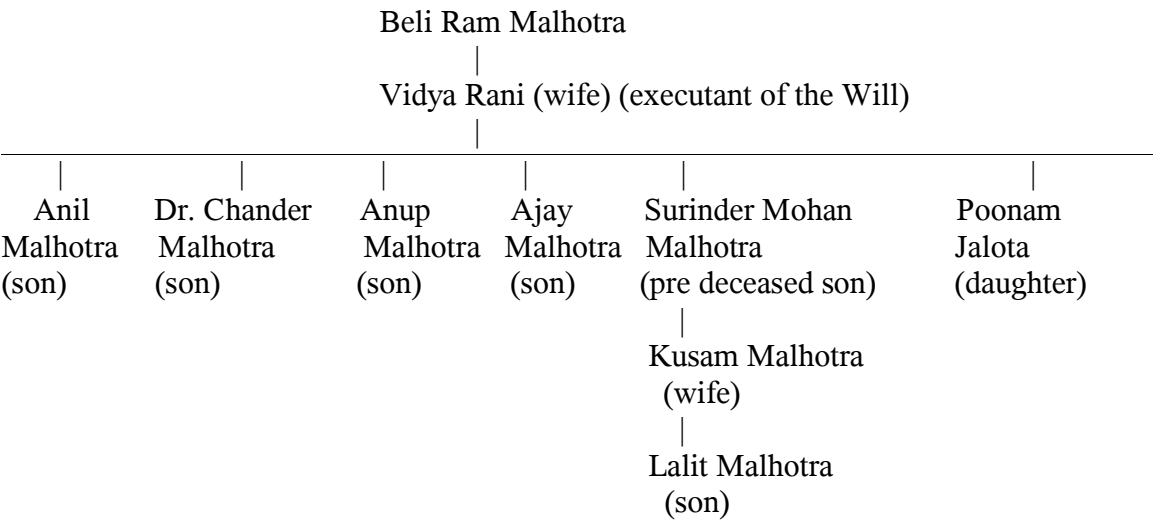
- “1. Whether plaintiffs are entitled to the relief of mandatory injunction? OPP
2. Whether present suit is not maintainable? OPD
3. Whether plaintiffs have no locus standi to file the present suit? OPD
4. Whether suit is liable to be stayed u/s 10 CPC? OPD
5. Whether suit is not properly valued for the purpose of court fee and jurisdiction? OPD
6. Relief.”

25. As agreed between the parties, the following substantial questions of law arise for consideration by this court in the present appeals:

- “1. Whether the alleged Will dated 11.8.1995 is forged and fabricated document which is also not proved in accordance with Section 63 of the Indian Succession Act, 1925 and Sections 68 and 69 of the Indian Evidence Act, 1872 and is shrouded with suspicious circumstances ?
2. Whether the license is revoked merely on the death of owner, as alleged ?”

Question No. 1

26. Before the case of the parties is considered on merits, it would be relevant to notice the relations between them, which are extracted below:



27. The appellant filed the suit seeking 1/6th share in the suit property impleading all other legal heirs of deceased-Vidya Rani.
28. The suit for mandatory injunction seeking possession of part of the suit property from the appellant was filed by Dr. Chander Malhotra, Anup Malhotra, Ajay Malhotra, three surviving sons of late-Vidya Rani, against Anil Malhotra (4th son), their father-Beli Ram Malhotra, married sister-Poonam Jalota, widow and son of Surinder Mohan Malhotra, pre-deceased son of Vidya Rani.
29. The property in dispute is a residential house bearing No. B-XIX-160, Colonel Gurdial Singh road, near Activity School, Civil Lines, Ludhiana. Besides this, late-Vidya Rani was also owning one plot measuring 500 square yards bearing No. 606, Sector 16-A, Faridabad.
30. Late-Beli Ram Malhotra, husband of late-Vidya Rani was employed with Indian Railways, whereas she was a housewife.
31. The registered Will in question was executed by Vidya Rani on 11.8.1995, whereas she expired more than two years thereafter on 9.10.1997. At the time of execution of the Will, Vidya Rani was 75 years of age. Late-Beli Ram Malhotra (husband of Vidya Rani), who was alive at the time of execution of the Will, died in the year 2002. The Will was registered with Sub Registrar, Ludhiana on 11.8.1995.
32. Late-Vidya Rani specifically mentioned in her Will regarding each and every member of her family, namely, husband, sons, family of pre-deceased son and daughter. She had also mentioned about two properties

owned by her, namely, the one in dispute and another at Faridabad. It has been mentioned in the Will that her son-Surinder Mohan Malhotra expired in the year 1976 and his widow had taken her share in the family property in the form of cash and re-married, hence, nothing was to be given to her. There is no dispute about this as despite being party to the litigation, she has not contested the statement made by the executant in the Will. Vidya Rani further mentioned that one plot measuring one kanal bearing No. 606, Sector 16-A, Faridabad was given to Anil Malhotra, her son, in lieu of his share in the family property, therefore, nothing more was to be given to him. She further mentioned that her daughter-Poonam Jalota was given share in the family property in the form of dowry at the time of her marriage, hence, she is also not to be given anything. She even deprived of her husband any share in the house while stating that he has enough sources and money for his maintenance. It was further mentioned in the Will that her three sons, namely, Dr. Chander Malhotra, Anup Malhotra and Ajay Malhotra had been taking good care of her, hence, she wants to give equal shares to them in the house at Ludhiana. She even defined the shares.

33. One of the issues sought to be raised by the appellant is that the Will having not been proved in terms of Section 63 of the 1925 Act and Sections 68 and 69 of the 1872 Act should be discarded. Section 63 of the 1925 Act provides that the Will has to be signed by testator at such a place that it appears that it was intended to give effect to the writing as a Will. It had to be attested by two or more witnesses. Section 68 of the 1872 Act provides that at least one of the attesting witnesses has to be produced to prove a document, which is required by law to be attested. In case of non-availability of the attesting witnesses, it is to be proved that attestation by one attesting witness at least is in his handwriting and signature of the person executing that document is in the handwriting of that person. In the case in hand, the Will has been duly signed by executant-Vidya Rani. She had appended her signatures twice on first page and once on the second page. The apparent reason for appending signatures more than once at one place is that her hand was not stable because of old age. It has come in evidence of the expert produced by the appellant. The Will was scribed by

Amarjit Singh Ahuja. It was witnessed by Gurbachan Singh Numberdar and Jagdish Rai. Registration of a Will certainly adds credence to it. In the Will, a certificate has been appended by the Deed Writer that the same was read over to the executant. It has come on record that both the witnesses to the Will had expired. Balbir Singh son of Gurbachan Singh Numberdar was produced as DW1 on 11.2.2006, who stated that his father was Numberdar of village Haibowal Kalan, Ludhiana. He expired about 5 years back. He had been seeing him signing and writing. He identified signatures of his father at two places on the original Will dated 11.8.1995 (Ex. D1). He further stated that he sometimes had been accompanying his father at the time of execution or registration of document. The said witness satisfied the requirement of law under the condition where both the attesting witnesses to the Will had expired.

34. Amarjit Singh Ahuja, scribe to the Will, appeared as DW3. He specifically stated that the Will (Ex. D1) bears his signatures and the same was drafted by him. The Will has been entered in his register maintained in regular course. He further stated that the same was executed by Vidya Rani and attested by Gurbachan Singh Numberdar and Jagdish Rai. He identified the signatures of the executant on the Will with the one available in his record. He further stated that as per his knowledge, both the attesting witnesses have expired. He further stated that the executant as well as the attesting witnesses had signed the Register.

35. Learned counsel for the appellant sought to refer to certain facts stated by the aforesaid witness in his cross-examination, which do not, in any way, put a dent in his statement, such as that Vidya Rani was not accompanied by any member of the family. The same being normal, as the Will was executed way back in the year 1995, whereas his statement was recorded 11 years thereafter. Whatever he stated was from the record. He is a professional.

36. In his cross-examination, the appellant himself admitted that though his mother, namely, Vidya Rani was ill, however, she used to go to hospital for various tests. Meaning thereby, to claim that she was incapable of moving, hence could not go to the scribe or to the office of the Sub

Registrar for execution of the Will is totally misconceived. Though he sought to claim that Vidya Rani was mentally ill since March, 1995 after the death of her brother, however, nothing was referred to from record in support thereof. He admitted that last rites of Vidya Rani were attended by all sons and daughters. He identified the photograph of his mother on the Will (Ex. D1).

37. The signatures appended by Vidya Rani on the Will were sought to be compared with her standard signatures in the bank, which were taken from account opening form dated 21.6.1986. The Will was executed nine years thereafter. The appellant was a banker. The signatures had to be compared with sample signatures taken from any document close to the document in dispute. If Vidya Rani had the bank account, her latest signatures from any transaction should have been got compared with the signatures on the Will. The expert witness-Dr. Inderjit Singh (PW2) in his cross-examination admitted that in old age because of tremors, the writing of a person may deteriorates. In old age, there occurs weakness in the muscles. He admitted that he did not ask for any admitted signatures of Vidya Rani close to the date of disputed signatures. This coupled with the fact that Vidya Rani had appended signatures more than once at a place where even one signature was enough, clearly establishes that the Will was not being forged. Had this been the intention, the signatures would have certainly been copied from any standard signatures. It is apparent from the signatures appended by Vidya Rani on the Will that her hand was not stable because of old age.

38. Though father of the appellant and husband of Vidya Rani had expired during the pendency of the suit, however, he had filed written statement along with other defendants admitting execution of the Will. Had the Will not been executed, he would have certainly taken a different stand even in the written statement. He claimed that he was present at the time of execution of the will. In addition, an affidavit of Beli Ram Malhotra was produced on record, which was prepared and got attested by him before his death endorsing what he stated in the written statement. No doubt, independently there is no value of the affidavit as he did not appear in the

witness-box, however, if read along with entire evidence, that supports the case set up by propounder of the Will.

39. For the reasons mentioned above, question No. 1 is answered in negative holding that the Will dated 11.8.1995 executed by late-Vidya Rani was not forged and fabricated document.

Question No. 2

40. The second question arises in the suit filed by Dr. Chander Malhotra and others for mandatory injunction seeking possession of part of the property, which is in possession of Anil Malhotra as a licensee of late-Vidya Rani. The stand of the appellant is that he being a licensee and having made additions and construction of permanent character spending huge amount, the license cannot be revoked, whereas the stand of the respondents is that after the death of Vidya Rani, the license automatically stood revoked as title of the property is transferred from Vidya Rani to other sons in whose favour she had executed the Will.

41. Section 59 of the 1882 Act provides that when the grantor of the license transfers the property, the transferee is not as such bound by the license. Section 60(b) of the said Act provides that if a licensee acting upon the license has executed work of a permanent character and incurred expenses in the execution, the license may not be revoked. Section 61 of the 1882 Act provides that revocation can be express or implied. In the case in hand, after the death of Vidya Rani, the property could devolve on her legal heirs either by way of natural succession or to the persons in whose favour she may have executed a Will. Meaning thereby, the title of the property is transferred in favour of the persons other than the grantor, who was no more. In terms of Section 59 of the Act, the transferee of such property is not bound by the license and the same stands revoked. Section 60(b) of the 1882 Act also does not come to the rescue of the appellant for the reason that it talks about revocation by the grantor. The case is not where the grantor revoked it, rather, it is revocation after the death of the grantor. Hence, question No. 2 is answered in positive holding that the license is revoked on the death of owner/grantor. Still in terms of Section 63 of the 1882 Act, where a license is revoked, a licensee is entitled to reasonable

time to vacate the premises. As in the case in hand, the appellant had been living in a portion of the property in dispute for quite some time, he is granted six months' time to hand over its vacant physical possession to the respondents.

42. For the reasons mentioned above, both the appeals are dismissed.

(Rajesh Bindal)
Judge

August 13, 2015
mk

(Refer to Reporter)