

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 870 of 2013 (O/M)
Date of decision : 24.4.2015

Dr. Amarjit Kaur

..... Appellant

Versus

Sewa Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Ms. Avnika Gupta, Advocate, for,
Mr. Hariom Atri, Advocate, for the appellant.

Mr. Parminder Singh, Advocate, for respondent No. 1.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J. (ORAL)

Appellant-Dr. Amarjit Kaur (respondent before the lower Court) has filed this appeal against judgment dated 22.11.2012, passed by the learned Additional District Judge, Chandigarh, vide which the petition filed by petitioner Sewa Singh (respondent No. 1 herein) under Section 276 of the Indian Succession Act, 1925, (in short 'the Act') for grant of probate in respect of Will dated 24.10.1988, executed by Bachan Singh Dhillon (father of the parties), was allowed.

The facts necessary for the purpose of disposal of this appeal are that Bachan Singh Dhillon was the owner of House No. 308, Sector-20-A, Chandigarh and also owned 10% share in the industrial plot and Shed No. D-148, Phase-VII, Mohali, District SAS Nagar. Bachan Singh Dhillon expired on 15.1.2003 at Chandigarh, leaving behind his wife Surinder Kaur (respondent No. 2 herein), his daughters Paramjit Kaur (respondent No. 3 herein), Dr. Amarjit Kaur (appellant herein) and a son Sewa Singh (respondent No. 1 herein). It is stated that Bachan Singh Dhillon during his life time in his sound disposing mind had executed Will dated 24.10.1988 as his last Will, whereby he bequeathed all his properties in favour of his son Sewa Singh (respondent No.1 herein). Kothi No. 163, Phase-3-B-1, Mohali, was transferred by the testator in favour of his son Sewa Singh (respondent No. 1 herein) during his life time by way of sale deed. Industrial Plot and Shed No. C-76, Phase-VI at Mohali, was disposed of by the testator during his life time.

Before the lower Court, respondent No. 2, namely, Surinder Kaur (mother of the present appellant and Sewa Singh) admitted the claim and respondent No. 2 stated that she has no objection if the probate of the Will is granted in favour of the petitioner (respondent No. 1 herein). Respondent No. 3, namely, Paramjit Kaur (daughter of the deceased) did not appear and was proceeded against ex-parte. However, respondent No. 4 (appellant herein) contested the petition and stated that the deceased did not

execute any Will in favour of Sewa Singh/petitioner (respondent No. 1 herein) and that the said Will is forged and fabricated.

From the pleadings, following issues were framed :-

1. Whether Sardar Bachan Singh Dhillon duly executed a valid Will dated 24.10.1988 ? OPP
2. Whether the petitioners are entitled to issuance of probate under Section 276 of the Indian Succession Act ? OPP
3. Relief.

The lower Court decided issue No. 1 in favour of petitioner (respondent No. 1 herein). Issue No. 2 was also accordingly decided in favour of the petitioner (respondent No. 1 herein).

I have heard learned counsel for the parties and have also carefully gone through the file.

The Will (Ex.P1) was executed on 24.10.1988. It was duly registered with the office of Sub Registrar, Chandigarh. The Will was scribed by Karam Singh Gill, Advocate, and signed by the testator Bachan Singh Dhillon in Urdu. Karam Singh Gill and Danvir Karan are attesting witnesses of the said Will. Admittedly, Bachan Singh Dhillon died on 15.1.2003 i.e. after 14¼ years of the execution of the Will.

A perusal of the Will shows that in the said Will, it was recited that he had married his both the daughters. Both the

daughters are well settled and in affluent circumstances. Sewa Singh is the only son of the deceased. He had also made a provision for his wife Surinder Kaur (respondent No. 2 herein) if she survives after his death. It was stated that in case, his wife survives after his death, she will be entitled to let out and receive rent of House No. 308, Sector-20-A, Chandigarh, for her livelihood and his son would not be entitled for any claim during the life time of his wife. However, his wife will have no right of alienation and transfer of the said property by way of sale, gift or exchange of the said house. It goes to show that the Will is well reasoned and expresses true intentions of the testator. It is also noticed that there is general tendency in this part of the country to exclude the daughters from succession. Therefore, the exclusion of the daughters from the Will is normal.

To prove the Will, Danvir Karan, who is aged about 81 years old, was examined on commission as PW2. He proved the execution of the Will and stated that the Will was read over. Bachan Singh Dhillon read the Will before signing it. He (PW2) also stated that he had also signed the Will and that he had also gone to Sector-17, Chandigarh, for registration of the Will. The endorsement of the Sub Registrar, Chandigarh, on the will shows that the Will was read over to the executant and he admitted its contents to be true and correct. The testator was identified by Shri Karam Singh Gill, Advocate. Before the Sub Registrar, Chandigarh also, the testator

signed at three places.

Learned counsel for the appellant has argued that it has been admitted by Sewa Singh in cross-examination that the deceased was 4th class pass, which shows that he did not know English. It has been argued that Danvir Karan (PW2) had stated that Bachan Singh Dhillon had read over the Will. The testimony of Danvir Karan (PW2) is to be examined in the background of his age and circumstances.

Danvir Karan (PW2) was of extreme old age at the time of his examination on commission and one or the other slip of tongue cannot be given strict interpretation. The overall reading of the statement of Danvir Karan (PW2) shows that the testator was made aware about the contents of the Will. Even the Sub Registrar, Chandigarh, had made him (Bachan Singh Dhillon) aware about the contents of the Will. Therefore, the Will (Ex.P1) is the true and correct expression of desire of Bachan Singh Dhillon about the way his property should go to his son and to be used by his wife during her life time, in case he predeceases his wife. Not only this, an official from the office of Sub Registrar, Chandigarh, was also examined, who brought the original record and proved the due registration of the Will.

Learned counsel for the appellant has further argued that the present appellant was not in job and was not well settled at the time of execution of the Will. Therefore, the contents of the Will in

this regard are incorrect.

I am of the view that admittedly, both the daughters of the testator were married. The circumstances indicate that they are married in well settled families. The appellant herself is a Ph.D. and Head of Department of Botany, Government College for Boys, Ludhiana. Therefore, there is no illegality or infirmity in the findings on issues No. 1 and 2, recorded by the learned Additional District Judge, Chandigarh.

It being so, I do not find any merit in the present appeal and the same is accordingly dismissed.

(KULDIP SINGH)
JUDGE

24.4.2015
sjks