

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

Regular Second Appeal No.4396 of 2011 (O&M)

Date of decision:03.09.2015

Gurbachan Kaur and another

.... Appellants

versus

Gurdeep Kaur @ Deepo and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Tarundeep Kumar, Advocate,
for Mr. D.S. Pheruman, Advocate,
for the appellants.

1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

K.Kannan, J. (Oral)

CM No.14094-C of 2014

Impleadment ordered, subject to all just exceptions.

Registry to carry out necessary amendment in the memo of parties.

Exemption granted as sought for. Annexures A/1 and
A/2 are taken on record.

Application stands disposed of.

Regular Second Appeal No.4396 of 2011

1. The appeal is brought at the instance of a son who is
disinherited through a Will alleged to have been made by the

mother. The mother had 3 sons and 2 daughters. The disposition was in favour of only 2 sons to the exclusion of the plaintiff. The Will was alleged to have been executed on 19.08.2002 and registered on the same day and the mother died on 20.08.2002. At the time of trial, it appears the plaintiff wanted to contend that the mother had died even prior to the date when the Will was shown to have been executed on 19.08.2002. The defendant complained that the plaintiff had with the connivance of village officials fabricated the death certificate antedating her death and this was a subject of a criminal complaint. The defendant, who propounded the Will, stated it was duly executed but did not produce the original and applied to the court for reception of secondary evidence. The court received the document subject to proof of the loss of original and in the course of judgment after trial, held that the defendant had not established the reason for non-production of the original and declined to accept the defence and granted the plaintiff decree of 1/5th share of the mother's estate.

2. The defendant contended that the execution of the Will had been proved by examination of 2 witnesses and the non-production of the original was explained with reference to an accidental loss and the trial court ought not to have rejected the bequest. The appellate court confirmed the judgment and dismissed the appeal but not merely on the ground that the original Will had

not been produced but she had died on 13.08.2002 by relying on the death certificate produced by the plaintiff and that the Will could not have been executed on 19.08.2002.

3. The learned counsel for the appellants states that the appellate court had completely allowed itself to be misled by a forged death certificate fabricated by the plaintiff only to discredit the genuineness of the Will. I was prepared to examine the case on the assumption that the mother had died only on 20.08.2002 and sought the assistance of the counsel to inform as to why the mother was making the bequest to the exclusion of the plaintiff and the daughters. The counsel reads to me in vernacular and translated it in open court that the mother had expressed that the plaintiff had not taken good care of him and he had been given other properties. As for the exclusion of daughters was concerned, the reference was that they had been married off in respectable families and there was no need for making any bequest for them.

4. A Will is invariably to deflect from the normal line of succession. There is nothing unusual about a testator to choose the bequest to any person whom she liked. That is precisely the reason why it is called even the 'Will' signifying that it could be a Will which could even be eccentric but must conform to principles of law engrafted commencing from the decision of the Supreme Court in

H. Venkatachala Iyengar Versus B.N. Thimmajamma and others-

AIR 1959 Supreme Court 443. The Courts have examined the issue of whether a solemn document of a dead person is natural in disposition and there is court's duty to examine the genuineness from the point of view of whether the propounder had dispelled every suspicious circumstance that may be attendant on it. The disinheritance to one heir itself is not suspicious, if it is properly explained. A solemn act does not begin even with a suspicion by a Court. However, the propounder, who has participated actively in securing the execution, shall take upon himself the burden of explaining the circumstances under which the choice of disposition was made to the exclusion of others. It should even be possible for evidence to be led on an aspect which a document is silent to the extent which Section 92 of the Evidence Act provides. Consequently, if there was ever a reference that the plaintiff was being excluded because he had been given other properties, it would bound to be stated at the evidence of the propounder on what the other properties were. If no such attempt is made, then it would lead to an inevitable inference that the recital of grant of other properties to a son for exclusion itself is false and, therefore, the Will cannot be stated to be that of a person who was alleged to have executed it. It is not the issue of suspicion of unnatural disposition but it is an issue of lack of proof of what the document recites and makes the Will itself to be unreliable. The counsel for the appellants is unable to

inform the court of any particular evidence as available about what was the nature of benefit which the plaintiff was given in order that he was disinherited. The counsel would state that even if the benefit to the plaintiff was not proved through some other manner of disposition, the plaintiff was not taking care of the mother and, therefore, he was disinherited. It is too wide a statement to merit acceptance, for, I cannot believe that a mother would disinherit a son without any adequate reason.

5. The non-production of the original also is eminently an important factor which the trial Court has correctly considered. It is a light hearted attempt on the part of the defendant to state that he was coming in a bus and he lost it on the way. A precious document which transmits right to the property could not have been so easily lost unless the defendant has something to hide and that he was not prepared to bring a document in open. Unlike a sale deed or lease or any other registered document where the original could be destroyed but the contents cannot be. In a Will the manner of cancellation as contemplated under Section 72 includes destroying the document. It is, therefore, exceedingly relevant that the original is produced and there is bound to be strong and adequate evidence for the loss of the original. The trial Court had held that there was no valid proof for non-production of the original and was not willing to accept the theory of the document having been lost during a bus transit. The

appellate court did not upset that finding. I am not prepared to reopen a pure finding of fact on why the defendant could not produce the original that excited the suspicion of the trial court.

6. There is nothing substantial for consideration in second appeal as a point of law in favour of the appellant and hence, I decline to make interference. Second appeal is dismissed.

(K.KANNAN)
JUDGE

03.09.2015
sanjeev