

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

RSA No. 3786 of 2015 (O&M)

Date of decision: 16.10.2015

BALWINDER SINGH & ANOTHER

... Appellants

versus

SUKHJEET KAUR & ORS

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. A.P. Kaushal, Advocate, for the appellants.

K.Kannan, J.

CM-13280-C-2015

CM is allowed.

Appeal is restored to file.

RSA No. 3786 of 2015

The plaintiffs are the brothers of the deceased Sukhmander Singh who died leaving behind his widow and two daughters. On his pre-decease his mother has a right to the property. The suit is with reference to the share in the estate inherited from the mother from his pre-deceased son. The brothers relied on the Will alleged to have been executed by the mother, a month before her death. The trial Court rejected the Will as suspicious setting forth the following facts:

1. The Will was said to have been attested by two persons and there was no explanation given as to why the 2nd witness could not be examined. The Court observed that though the legal requirement was only to examine any one of the witnesses, there must be atleast an explanation offered as to why the other witness could not be examined.
2. The property which was the subject matter of the alleged bequest was property with the mother obtained from her

son Sukhmandar Singh and there was simply no reason why the mother would have discarded the child and widow of Sukhmandar Singh for any form of bequest. The explanation given that the widow had remarried and grant of property again would amount to a curse on the grandchildren was a strange argument put forth by the plaintiff and the Court found that such a contention cannot be accepted.

3. The Court found that the Will was written by a person who was an unexperienced and had not written any Will previously and it was most unusual that the mother who was making a provision for transmission of her own right in the property to be entrusted to a person who was not well-versed in writing the Will. The choice of the scribe as a person who was not a professional was taken to be not properly explained.
4. The Court found that the witness was also not a person who was the close privy or an acquaintance by the person belong to their own caste. There was no particular reason why the deceased mother must have chosen such a person as a witness to solemn the document.
5. The Court also made an observation that the spacing in the Will was also not regular and the spacing in the 1st and 2nd page in the Will was different to fit in before the only thumb impression which was found in the document.

I have also seen the copy of the document which was filed in the Court and I would vouch for the observations made by the Judge, although the counsel wants me to believe that there was nothing unusual about the spacing. The spacing of the line is definitely not uniform in the manner it has been done in the first page. Curiously the

Will does not contain even a thumb impression on the 1st page which was an unusual instance. The Will is written in two pages but contains signatures only on the 1st page.

The suspicious circumstances as elicited in the judgment of the trial Court are on a conjoint reading made for proper appreciation of evidence. Taken singularly it might be possible for the parties who propound to contend that each one of them is not suspicious. That was the way the counsel presented the case before me that it was not necessary that scribe must be a professional; it is not necessary that both the witnesses must be examined; it is not necessary that the witness must be of the same caste; it is not necessary that the thumb impression must be taken on both the pages; it is not necessary if it is that the Will must make a bequest in favour of the grandchildren and the daughter-in-law as well. The case is never decided by taking each point as irrelevant. It is an overall consideration of every aspect that goes for diluting the assessment of the genuineness that is the hallmark of the judicial approach. The Court below has brought out all the relevant facts for discrediting the Will propounded by the plaintiffs. I find no error in the appreciation to doubt the ultimate decision taken dismissing the suit.

The 2nd appeal does not involve substantial question of law for consideration and is dismissed.

(K.KANNAN)
JUDGE

16.10.2015
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