

In the High Court of Punjab and Haryana at Chandigar

R.S.A.No. 1751 of 2014 (O&M)

Date of decision: 6.10.2015

Satinder Kaur and others

.....Appellants

Versus

Jaswinder Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.C.S.Bakshi, Advocate,
for the appellants.

Mr.Vikas Mehesempuri, Advocate
for the respondents.

1. Whether Reporters of local papers may be allowed to see the judgment ?

2. To be referred to the Reporters or not ?

3. Whether the judgment should be reported in the Digest?

Raj Mohan Singh, J.

1. Plaintiffs are in second appeal against the concurrent findings of the Courts below.

2. Plaintiffs filed the suit for declaration to the effect that they were sole owners of house No. 2616, measuring 8 marlas, Phase 7, Mohali and for permanent injunction restraining defendants No.1 and 2 from getting the said house transferred in their names along with names of the plaintiffs. House in dispute was initially allotted to Mukhtiar Singh, who was grandfather of the plaintiffs i.e. father of Harinder Singh (now

deceased) and father-in-law of Satinder Kaur (widow of Harinder Singh). Subsequently conveyance deed was executed in favour of Mukhtiar Singh.

3. Mukhtiar Singh executed a registered Will dated 7.8.1997 in favour of his wife Sukhwinder Kaur regarding suit property. Mukhtiar Singh died in the year 1998. By virtue of aforesaid Will dated 7.8.1997, Ex.P-2, Mukhtiar Singh bequeathed all his properties in favour of Sukhwinder Kaur- wife. After the death of Mukhtiar Singh, Sukhwinder Kaur became absolute owner of the property in question. This Will was got registered on 14.8.1997 with Sub Registrar, Mohali. Member of Municipal Council and one Ashwani Kumar, Advocate attested the Will as marginal witnesses. The Will carried the photographs of the testator. The expert evidence also corroborated the factum of genuine signatures of Mukhtiar Singh appearing on this Will dated 7.8.1997. Testimony of PW-2 Kranti Kumar Sharma, handwriting expert, was on the record in this context. The standard signatures of Mukhtiar Singh, Mark S-1 and S-2 were found to be duly in consonance with questioned signatures on Will and the expert opinion found the same to have been written by the same person. The veracity of the Will could not be shattered by any evidence to the contrary. Even the Will was duly testified by Sh.J.S.Sohal, Advocate, who appeared as PW-5. Execution of this Will was not in dispute

and had been found on all legal parameters to be validly executed.

4. Sukhwinder Kaur was alleged to have executed un-registered Will dated 29.4.2002 in favour of Harinder Singh (deceased) i.e. father of the plaintiffs. This Will is the bone of contention in the present case.

5. The marginal witnesses, namely, Rajinder Kaur and Satwinder Kaur were alleged to have witnessed the said Will, which was also shown to have been signed by Sh. S.H.Chajj, Advocate. Firstly, the thumb impression of Sukhwinder Kaur was found to be very faint in terms of visibility and ridges etc. Even though the Will was allegedly executed in front of an advocate. No reasonable explanation is forthcoming for having affixed such type of thumb impression on the Will. The marginal witness Rajinder Kaur, while appearing as PW-1 could not explain the suspicious circumstance when she stated in her cross-examination that she did not know as to how many children were born to Sukhwinder Kaur. She stated in unequivocal terms that Sukhwinder Kaur used to sign but on the date of execution of Will, she was extremely ill and was not in a position to sign the Will. The Will was prepared on 29.4.2002 and Sukhwinder Kaur died on 1.5.2002 as per findings recorded by the trial Court. It means that Sukhwinder Kaur was ailed to such an extent that she could not sign the document rather her

thumb impressions were obtained in the manner as suggested in earlier part of the order. Further the witness has stated that the papers on which the Will was written was a stamp paper but the perusal of Will shows that it was not a stamp paper. The testator was to dispel the suspicious circumstances beyond all reasonable doubts. The Will dated 29.4.2002 was held to be surrounded with suspicious circumstances by the trial Court. The trial Court partly decreed the suit on the ground that since the Will dated 29.4.2002 has been found to be a genuine Will, entire property of Mukhtiar Singh went to his wife Sukhwinder Kaur. On the death of Sukhwinder Kaur, the property was inherited equally by Harinder Singh (deceased), who is father of the plaintiffs and defendant No.2.

6. The succession of Sukhwinder Kaur has to be governed by Section 15 of the Hindu Succession Act, according to which, property of a female dying intestate shall devolve according to procedure set out in Section 16 of the Hindu Succession Act. Firstly, the property shall devolve upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband. Therefore, on her death, the widow of pre-deceased son is not entitled to any share. In this way, the trial Court held that the plaintiffs are entitled to declaration to the extent of $\frac{1}{2}$ share but are not entitled to injunction restraining the defendants from seeking transfer of the

house in the name of plaintiffs and defendant No.2 as joint owners in equal shares. Lower Appellate Court in pith and substance, endorsed the findings of the trial Court.

7. Learned counsel for the appellant has vehemently contended that Will dated 29.4.2002 executed by Sukhwinder Kaur even though is an un-registered document, but non registration of Will is no ground to discard the same particularly when other evidence has come on record to corroborate the execution of Will. The non registration of part of the Will has to be considered in the light of findings recorded by the lower Appellate Court, wherein it has been recorded that from the testimony of PW-1 Rajinder Kaur, one of the attesting witness of the Will, the Will was executed in Tehsil complex. The reason for its non registration was that the Tehsildar was not sitting when they went to get it registered. Therefore, Will was not registered. No reason has come on record as to who prevented the parties to get the same registered later on. Therefore, even the lower Appellate Court discarded such pretext of non registration and the fact of non registration of Will was considered to be a suspicious circumstance along with other circumstances in view of appearance of faint thumb impression in place of signatures of the testator. The factum of testator being seriously ill on the date of execution of Will, sale deed dated 15.11.2001 has been placed on record by the defendants

showing that Sukhwinder Kaur had affixed her signatures instead of thumb mark. It means that Sukhwinder Kaur used to sign the documents and was not in the habit of putting her thumb impression. The very existence of thumb impressions on the Will dated 29.4.2002 that too very faint was considered to be the suspicious circumstance in view of ailing condition of the testator just before her death. Though, the lower Appellate Court has recorded that Sukhwinder Kaur had expired in the year 2006 i.e. after four years of the execution of the Will, the exact date of death of Sukhwinder Kaur has not been pleaded by the plaintiff nor exact date has come forth on record but the fact of obtaining thumb impression in view of serious condition of testator Sukhwinder Kaur as deposed by PW-1 was evident to show that condition of Sukhwinder Kaur was not good and she was not in a position to sign the documents.

8. Learned counsel for the appellant also highlighted that the house situated in village was allotted to the plaintiffs and the house in question situated in Mohali was given to the defendants in a family settlement. Surprisingly, no such pleadings have been made in the plaint or in the written statement. No such evidence has come on record. Learned counsel intended to project a case of additional evidence in the said context but on being asked, learned counsel could not explain as to how the proposed evidence would be read in the

absence of pleadings to that effect. This Court is not in a position to make any fishing inquiry as to the probable aspect of the case in the absence of any pleadings on record and also in the absence of any evidence to that effect.

Learned counsel for the appellant, while filing the present second appeal, has framed the following substantial questions of law:-

“A) Whether the judgment passed by the Courts below is unsustainable since the requirements as enumerated under Section 68 of the Indian Evidence Act, 1872 are duly fulfilled in the present case ?

B) Whether the judgment passed by the Courts below is unsustainable and contrary to Section 73 of the India Evidence Act, 1872 ?

C) Whether the judgment passed by the Courts below is unsustainable in the light of the law laid down in AIR 2008 SC 1541 Thiruvengada Pillai vs. Navaneethammal by the Hon'le Supreme Court of India ?

D) Whether the judgment passed by the Courts below is unsustainable and contrary to Section 45 of the Indian Evidence Act, 1872 ?

E) Whether the judgments passed by the Courts below are contrary to law and misreading of the

evidence?”

9. The questions as formulated in the grounds of appeal cannot be appreciated in the light of Will dated 29.4.2002 having not been proved in terms of its execution as well as the same having been found to be shrouded with suspicious circumstances. Question No.A does not arise inasmuch as that the first Will dated 7.8.1997 is fully proved on record. Question No.B is also a question of fact and no such issue involves in the present case. Question No.C to E cannot be taken for want of proper pleadings and evidence to that effect.

10. No law point worth consideration is involved in the present case. Hence, this appeal is dismissed.

(RAJ MOHAN SINGH)
JUDGE

October 06, 2015
anita