

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

R.S.A No. 900 of 2015 (O&M)

Date of decision:- 29.05.2015

Jatinder Pal Singh and others

...Appellants

Versus

Krishan Lal Bansal and anr.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Arun Luthra, Advocate
for the appellants

Mr. Aman Bansal, Advocate
for the caveator/respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J.

This regular second appeal is directed against the judgment dated 16.10.2014 passed by learned Addl. District Judge, Chandigarh, which was filed against the judgment and decree dated 19.07.2012 passed by learned Civil Judge (Jr. Divn.), Chandigarh, whereby the suit filed by the plaintiff-appellants (herein after to be referred as 'the appellants') was dismissed.

Brief facts of the case are that the appellant No. 1 and 2 are sons, appellant No. 3 is daughter and appellant No. 4 is widow of late Sh. Tarlochan Singh of Gurdial Singh and present suit was filed by

appellant Nos. 2 to 4 through appellant No. 1 who have executed special power of attorney in his favour. The Industrial Press Site No. 63 measuring 132.59 Sq yards, Industrial Area, Phase I, Chandigarh was allotted to late Sh. Tarlochan Singh on lease hold basis vide allotment letter dated 14.07.1988 by the Chandigarh Administration. Sh. Tarlochan Singh died on 21.10.2004 leaving behind the appellants as his only legal heirs. Tarlochan Singh never executed any will much less in respect of site in question. The alleged will dated 09.09.1988 is a result of fraud being played upon the rights of the appellants as it being false and fabricated document completely surrounded with suspicious circumstances. A notice was received by the appellants from the Estate Officer, Chandigarh dated 26.03.2007 with regard to transfer of ownership in respect of Press site in question, informing that respondent No. 1 has applied for transfer of lease hold rights on the basis of registered will executed by late Sh. Tarlochan Singh. Late Sh. Tarlochan Singh never apprised the appellants about execution of any will in respect of the press site and after a period of good two years of his death, the notice was received. To the said notice, the appellants gave objections on 05.07.2007 asking for a copy of will stating that a fraud has been played and requested for an opportunity to clarify their stand. Respondent No. 2 vide his letter dated 27.04.2004 asked the appellants to appear before him on 15.05.2007. On receipt of the

said letter, the appellants requested respondent No. 2 to supply them the copies of documents on the basis of which respondent No. 1 was seeking transfer of ownership rights of the property. Vide letter dated 22.05.2007, respondent No. 2 again asked the appellants to appear before him on 29.05.2007 which they received on 30.05.2007. The appellants further requested respondent No. 2 to give some more time to explain their position. Again a letter was issued by respondent No. 2 to the appellants to appear before him on 21.06.2007. The appellants appeared before respondent No. 2 on 21.06.2007 and the matter was adjourned to 19.07.2007 telling that he will transfer property in the name of respondent No. 1. Despite objection by the appellants, respondent No. 2 transferred the property in favour of respondent No. 1 in haste on the basis of forged and fabricated will.

On notice, respondent No. 1 appeared and filed written statement raising preliminary objections that he suit is not maintainable as the deceased Tarlochan Singh has executed a lawful, valid and registered will dated 09.09.1988 in favour of respondent No. 1 bequeathing Industrial Press Site in question. The said will was got duly registered and the same was done in the presence of witnesses and testator. Respondent No. 1 has been in the possession of the plot in the question since the year 1988 and has applied for the transfer of his site in his name on the strength of valid registered will. One of the

attesting witness has filed his affidavit in the transfer proceedings before respondent No. 2 authenticating the genuineness of the will. The appellants were not even aware of the existence of the said plot.

Respondent No. 2 filed its separate written statement and raised preliminary objection that Press Site in question was originally allotted to M/s Taxila Art Printing Press, sole proprietorship of late Sh. Tarlochan Singh on lease hold basis for 99 years vide allotment letter dated 14.07.1988. Further the suit being bad for want of service of notice under Section 80 CPC. On merits, the issuance of notice dated 26.03.2007 to the appellants with regard to transfer of ownership of the press site on the basis of will dated 12.09.1988 was admitted. After affording various opportunities to the appellants and going through the records, the case regarding transfer of ownership on the basis of the will was adjourned sine die.

From the pleading of the parties, the trial Court framed the following issues:-

“1. Whether the plaintiff is entitled for declaration as prayed for? OPP

2. Whether the will dated 9.9.1988 executed in favour of defendant is null and void and having no effect on the rights of the plaintiff? OPP

3. Relief.”

Before the trial Court, appellant No. 1 himself stepped in the witness box as PW1 and deposed by way of his affidavit Ex PA. In his cross examination, he admitted that he cannot produce the documents of the property as the same were lost. His father expired on 21.10.2004. He never communicated the Estate Officer from that date till 26.03.2007. He does not have payment receipts regarding the site in question as the same were in the name of his father. He did not accompany his father when his father visited Krishan Lal while obtaining friendly loan. He does not show any document that he or his father was the member of the Press Site Association.

On the other hand, respondent No. 1 examined D.W.1 Inderjit Singh Thakur who deposed by way of affidavit Ex DW1/A which is regarding execution of will by late Tarlochan Singh on 12.9.1988 and proved the will as Ex D1/1 after perusing the original. In his cross examination he admitted that he does not know the family of late Tarlochan Singh nor does not know his legal heirs. He admitted that respondent No. 1 is not related to family of late Tarlochan Singh. The will was executed in Sector 17. He volunteered that the will bears his signatures as an attesting witness. He admitted that no such will was executed by late Tarlochan Singh in favour of respondent No. 1 and there was no relation with the deceased.

D.W.2 Dinesh Devgan, clerk from the office of Sub-

Registrar, Chandigarh deposed regarding production of registered will as Ex D1/1. In his cross examination, he stated that the will in question does not bear the photograph of the executants and he does not know if the photograph was necessary to be affixed in the year 1988.

D.W.3 Balwant Singh deposed regarding transfer of the site in question on the basis of will vide transfer letter dated 4.4.2008. In his cross examination, he admitted that he does not have any personal knowledge of the case and had not personally dealt with the file at any stage.

D.W.4 Krishan Lal Bansal stepped himself into witness box as DW4 and deposed by way of affidavit Ex DW4/A which is in consonance with his pleadings. He deposed that late Tarlochan Singh was running a printing press from a rented accommodation and used to spend time with him and Raghbir Singh. Respondent No. 1 was running a crockery house in Sector 15, Chandigarh. Tarlochan Singh was not doing well in his business and had taken numerous loans. He had applied and remained successful in draw of lots and was allotted the site in question vide allotment letter dated 14.03.1988. Tarlochan came to respondent No. 1 and Raghbir Singh and stated that he did not have the money to pay for the site and needed the money to repay his loans. Respondent No. 1 agreed to give money to Tarlochan Singh for the Press site and Tarlochan Singh thus executed a Special Power of

Attorney on 09.09.1988 and general power of attorney in favour of respondent No. 1 granting him powers to take site in question. He also executed a registered will in favour of respondent No. 1. In his cross examination, he admitted that he does not have any blood relation with Tarlochan Singh who died on October 2004. He deposed that original will was handed over to him by Tarlochan Singh 4-5 years before his death. He admitted that he is not legal heir of deceased Tarlochan Singh. He admitted that he is in possession of the property in question for the last 15-20 years. He admitted that he was illegally and unlawfully occupied the suit property. He admitted that the transfer of property in the name of respondent No. 1 has been challenged in a separate suit.

The trial Court after going through the entire evidence led by the parties observed that there is no doubt that execution of will as well as its registration has been proved. However, this document cannot be and should not be termed as will as it was the outcome of a loan transaction and the alleged will is nothing but a token of existence of said loan and as such it cannot be termed as a true will of the testator so as to give effect to the desire of the testator after his death. The mere fulfillment of Section 68 of the Indian Evidence Act and 63 of the Indian Succession Act, 1925 does not require the Court to act in stereotype manner. The entire testimony of DW4 clearly

points out that the will was executed under the compulsion of circumstances and was on account of loan transaction. Thus, the will dated 09.09.1988 was held to be null and void. Further the relief of permanent injunction had become infructuous, as respondent No. 2 transferred the property in favour of respondent No. 1. Moreover, the appellants had filed suit for mere declaration and had not sought relief of possession under Section 34 and 35 of the Specific Relief Act. The suit was held to be not maintainable and issue No. 1 was decided against the appellants and issue No. 2 was decided in their favour. The suit was dismissed by the trial Court.

On appeal, the lower Appellate Court affirmed the findings of the trial Court and dismissed the appeal filed by the appellants. However, reversed the findings of the trial Court on issue No. 2 with regard to the validity of the will dated 9.9.1988.

D.W.1 Inderjit Singh Thakur filed his affidavit Ex DW1/A regarding execution of will by late Tarlochan Singh on 12.9.1988 and proved the will as Ex D1/1 after perusing the original. He was one of the attesting witness of the will and had categorically stated regarding the execution of the will by late Tarlochan Singh in favour of Krishan Lal Bansal. He stated that the will had been signed in his presence and other witnesses. Thereafter, he and one Hari Singh had signed the will in presence of Tarlochan Singh. He has also deposed regarding the

registration of this will was got effected by Tarlochan Singh by appearing himself before the Sub Registrar, U.T. Chandigarh on 12.09.1988. He stated that he also accompanied him along with other witness Hari Singh who had since died as stated by cross objector. Thus, the issue No. 2 was decided in favour of the respondents and it was held that they had led sufficient evidence to prove the execution of the will, which had been executed within the lifetime of Tarlochan Singh and he never challenged the will. The respondents had proved the will, therefore, the onus was shifted upon the appellants to rebut the evidence. Neither appellants stepped in to the witness box in rebuttal to rebut the evidence nor any evidence was brought on record. Apart from the deposition of P.W.1 Jatinder Pal Singh, no evidence was led by the appellants to show that the will was result of fraud. On the other hand, respondents had led sufficient evidence to prove the will by examining D.W.1 Inderjit Singh Thakur who prove the execution of will as Ex D1/1 by late Tarlochan Singh on 12.9.1988. D.W.2 Dinesh Devgan, clerk from the office of Sub-Registrar, Chandigarh deposed regarding production of registered will as Ex D1/1. D.W.3 Balwant Singh deposed regarding transfer of the site in question on the basis of will vide transfer letter dated 4.4.2008. D.W.4 Krishan Lal Bansal stepped himself into witness box and deposed by way of affidavit Ex DW4/A which is in consonance with his pleadings.

Thus, the will was duly proved by the respondents by examining D.Ws and thus the onus was shifted upon the appellants to rebut the evidence, in view of the settled law by Hon'ble the Supreme Court in a case of **Naresh Charan Das Gupta v. Paresh Charan Das Gupta and another 1955 AIR (SC) 363**. In para 4 and 9, it has been observed as under

*"4. The main question that arises for our decision is whether the will in question was executed under the undue influence of the first respondent. "When once it has been proved", observed Lord Cranworth in **Boyse v. Rossborough 1857 6 HLC 2** "that a will has been executed with due solemnities by a person of competent understanding and apparently a free agent, the burden of proving that it was executed under undue influence is on the party who alleges it". Vide also **Craig v. Lamoureux, AIR 1919 PC 132**. In the present case, it is not in dispute that the testator executed the will in question, and that he had the requisite mental capacity at that time. The burden, therefore, is on the appellant to establish that the will was the result of undue influence brought to bear on him by respondent No. 1.*

9. *It was also argued that the dispositions in the will*

were unnatural in that the appellant had been practically disinherited and his children altogether ignored. This by itself cannot lead to any inference of undue influence on the part of the first respondent. Having regard to the character of the testator and his feelings in the matter it is not a matter for surprise that he should have cut off the appellant with a small legacy. It must also be mentioned that the net value of the assets as given in the probate petition is Rs. 23,865-10-9, and if the other legacies and charges are deducted, what was bequeathed to the first respondent cannot be said to be very considerable. It also appears that at that time his salary was Rs. 60 per mensem and that he had a number of children, whereas the appellant is stated to have had a basic salary of Rs. 250 per mensem then. The first respondent, his wife and children have all along been dependents of the testator, whereas the appellant had lived apart from him from 1920. And it is not unnatural for the testator so to order the distribution of his estate as to secure the continuance of the existing state of affairs. The terms of the will, therefore, cannot be relied on as intrinsic evidence of undue influence, as contended for by the appellant.”

The execution of the will could not be rejected on the ground that it was under the compulsion of circumstances and was on account of loan transaction. The appellants have not stepped into the witness box to rebut the evidence led by the respondents, thus they have failed to prove any kind of force, fraud or undue influence as allegedly applied by cross objector-respondents to affect the free consent of Tarlochan Singh at the time of execution of the will. Tarlochan Singh died on 21.10.2004 and the will was executed during his life time i.e on 09.09.1988. During his life time, he had never challenged the said will as well as the transfer made in favour of Krishan Lal Bansal. After the death of Tarlochan Singh, the property has been mutated in favour of Krishan Lal Bansal on 04.04.2008. No fraud has been committed by Krishan Lal Bansal. Tarlochan came to respondent No. 1 and Raghbir Singh and stated that he did not have the money to pay for the site and needed the money to repay his loans. Respondent No. 1 agreed to give money to Tarlochan Singh for the Press site and Tarlochan Singh thus executed a Special Power of Attorney on 09.09.1988 and general power of attorney in favour of respondent No. 1 granting him powers to take site in question and since then respondent No. 1 is in possession of the property, as was evident from the execution of the will and thus, no fraud was committed by Krishan Lal Bansal.

The judgment passed by the lower Appellate Court, calls for no interference. No substantial question of law arises for adjudication by this Court.

Accordingly, regular second appeal is dismissed.

29.05.2015

G Arora

(***RITU BAHRI***)
JUDGE