

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

RSA No. 245 of 1988(O&M)

Date of decision: 24.02.2016

Raghbir Singh(died) thr. LRs

...Appellant(s)

Versus

Khushyal Singh and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. S.K. Pipat, Sr. Advocate with
Mr. Sherry K Singla, Advocate,
for the appellant(s).

Mr. Rajeshwar Singh, Advocate,
for the respondent(s).

Mr. B.P.S. Virk, Advocate,
for the applicant-respondent.

JITENDRA CHAUHAN, J.

1. This regular second appeal has been filed by the defendant against the judgment and decree dated 04.11.1987 passed by Additional District Judge, Patiala vide which the appeal filed by the plaintiff was allowed and the suit of the plaintiffs was decreed.

2. In brief, the plaintiff-respondents No. 1, 2 and 3 filed suit for declaration that Khushal Singh, the plaintiff No. 1 was the owner in possession of 1/4th share and plaintiffs No. 2 and 3 were owners in possession of 1/4th share out of the share of Gian Singh in the land

measuring 288 Kanals 4 Marlas situated in the area of Village

Machhrai Kalan and land measuring 122 Kanals 11 Marlas situated in the area of Village Goverhanpur as detailed in the head note of the plaint. The suit was filed on the allegations that the suit land was owned by Khushal Singh, Harnam Singh, Gian Singh, Bahadur Singh and Diwan Singh, sons of Punjab Singh @ Punjab Mal in equal shares. Gian Singh died issueless on 08.11.1977. He was unmarried and his share was inherited by his real brothers, namely, Khushal Singh, Harnam Singh, Bahadur Singh and Diwan Singh. Bahadur Singh and Diwan Singh had also died. The property of Bahadur Singh including the property which he inherited from Gian Singh was inherited by defendant no. 3 to 5 and the property of Diwan Singh including the property which he inherited from Gian Singh was inherited by his son Kishan Singh and daughter Amarjit Kaur, which were plaintiffs no. 2 and 3 on the basis of natural succession. In this way, plaintiff no.1 was owner of 1/4th share, plaintiffs no. 2 and 3 were owners of 1/4th share, defendant No. 3 to 5 were owners of 1/4th share out of 1/5 share in the property in suit which were previously owned by Gian Singh. After the death of Gian Singh, defendant No. 2 represented before the Revenue Authorities that Gian Singh executed a Will in his favour and got mutation attested in his name. The alleged Will was a forged document. Gian Singh never executed any Will nor he was of a sound disposing mind to execute such document. The alleged Will was forged document and result of fraud and misrepresentation.

admitting the claim of the plaintiffs. However, defendant No. 1 was proceeded ex parte.

4. The contesting defendant No. 2 appeared and filed written statement. He denied all the allegations made by the plaintiff and set up the Will dated 14.10.1977.

5. From the pleadings of the party, following issues were framed:-

1. Whether the plaintiffs are the owners in possession of the land in suit as alleged?
2. Whether Gian Singh deceased executed a valid Will dated 14.10.1977 in favour of defendant No. 2?
3. Relief.

6. Issues No. 1 and 2 were taken up together being inter-connected. Under Issues No. 1 and 2, the learned trial Court held that the deceased Gian Singh had executed a valid Will Ex. D1 in favour of Raghubir Singh defendant No. 2. Consequently, the suit of the plaintiff was dismissed vide judgment and decree dated 19.09.1986 passed by Sub Judge, First Class, Amloh.

8. Feeling dissatisfied, the plaintiffs filed an appeal before the Additional District Judge, Patiala. The learned Additional District Judge, Patiala, vide judgment and decree dated 04.11.1987, accepted the appeal filed by the plaintiffs and set aside the judgment and decree passed by the trial Court. As a result, the suit filed by the plaintiffs was

decreed.

9. Being aggrieved, the defendant has preferred the present appeal laying challenge to the judgment and decree passed by the lower Appellate Court whereby, the Will was held to be not genuine. The lower Appellate Court observed that when the evidence of attesting witnesses i.e Jaswinder Singh, DW-1 and Dalwinder Singh, DW-2 is read as a whole, the same inspires little confidence and therefore, the same was not relied upon. The learned lower Appellate Court went on to observe that though the attesting witness Diwan Singh belonged to the Village of the executor, yet Diwan Singh claimed that he was not asked either by Gian Singh or his brother to accompany him to Amloh for witnessing the Will. The witness claimed to have met Gian Singh per chance. This circumstance was viewed with suspicion by the lower Appellate Court. As per the lower Appellate Court, normally, only a person who is in the confidence of the testator is asked to accompany and the availability of witness at the place of execution is not left to chance. The other attesting witness i.e. Jaswinder Singh was a tempo driver and he met the testator per chance at Amloh and was asked to be a witness. When the testator had come all the way from his village to Amloh to get the Will scribed from a licensed deed writer, it was natural for him to get the Will registered. The other ground for rejecting the Will taken by the lower Appellate Court is that there was no reason for the executor to exclude his other brothers from inheriting his property as the deceased Gian Singh used to live with his brothers

Raghubir Singh and Harnam Singh. It was further observed that the

register of the scribe was not produced by his son Takhwinder Singh to show that an entry was made with regard to the scribing of Will Ex. D1. There was no explanation for withholding such material document.

10. The learned Senior Counsel while unfolding the claim of the rival parties contended that in fact, Punjab Singh @ Punjab Mal had five sons and one daughter. Out of them, Bahadur Singh and Gian Singh died issueless. Bahadur Singh executed Will in favour of sons of Khushal Singh, the other brother, whereas, Gian Singh executed Will in favour of son of Harnam Singh i.e Raghbir Singh. The Will of Gian Singh is in question in the present case. It is contended that to equalise the share amongst the brothers, Gian Singh executed a Will in favour of the son of one of the brother, Harnam Singh whereas, Bahadur Singh executed a Will in favour of sons of other brother Khushal Singh. It is further contended that the lower Appellate Court committed grave error in reversing a well reasoned judgment passed by the trial Court. The lower Appellate Court assigned flimsy grounds in rejecting the Will. The observation of the lower Appellate Court that since the executor went to the Tehsil Amlah, it was expected of him to get the Will registered, runs counter to the provisions of the Indian Registration Act. Further, it is contended that prior to the filing of present suit, the matter was agitated before the Revenue Authorities and genuineness of the Will was upheld up to the Financial Commissioner vide orders Ex. D2 and D3.

11. Per contra, it is contended on behalf of respondent No.1-

plaintiff that the lower Appellate Court has rightly decreed the suit of the plaintiff and set aside the judgment passed by trial Court. The Will is alleged to have been executed on 14.10.1977, whereas, the deceased Gian Singh died on 08.11.1977. The execution of the Will one month prior to the death raises a suspicion regarding the genuineness of the Will. The Will was not registered despite the fact that the executor went to the tehsil and got executed the Will in tehsil.

12. I have heard the learned counsel for the parties and with their able assistance, I have gone through the case.

13. The controversy in the present case revolves around the genuineness of the Will Ex. D1 executed by Gian Singh in favour of Raghubir Singh. On the one hand, Khushal Singh, the brother of Gian Singh claims to have inherited the 1/4th share in property left by Gian Singh on the basis of natural succession whereas, Raghubir Singh, the defendant No. 2 lays his claim to the suit property left by Gian Singh on the basis of Will Ex. D1. This Court does not concur with the view taken by the lower Appellate Court that the Will is required to be registered. Section 17 of Indian Registration Act, which deals with documents which are required to be compulsorily registered. The Will being a testamentary instrument does not require registration as envisaged under Section 18 of the Registration Act.

14. As per the provisions of Section 68 of the Indian Evidence Act, one attesting witness is sufficient to prove the execution of a document. In the instant case, the propounder of the Will has examined

both the attesting witnesses i.e. Jaswinder Singh as DW-1 and Dalwinder Singh as DW-2. DW-1 stated that the Will was executed by Zora Singh at the instance of deceased Gian Singh which was read over and he thumb marked the same in token and its correctness in the presence of other attesting witness, Dalwinder Singh. The deceased Gian Singh was of sound disposing mind at that time. To the similar effect is the statement of DW-2, Dalwinder Singh. The scribe of the Will had died. Takhwinder Singh, a deed writer, identified the hand writing of Zora Singh on the Will, Ex. D1. Raghubir Singh, the beneficiary of the Will has deposed that he used to look after Gian Singh. Bhog ceremony was performed by him and he also took the last remains of Gian Singh to Haridwar. The meeting of witnesses per chance is not a suspicious circumstance to exclude the Will from consideration. The executor of the Will has specifically mentioned in the Will Ex. D1 that he had been living along with his brother Harnam Singh who had been looking after him and that his son Raghubir Singh was also serving him and therefore, he wanted to leave the property to him. It has come in the statement of Dalwinder Singh, DW-2 that the deceased Gian Singh used to reside with Harnam Singh and not with Diwan Singh. This being so, the finding recorded by the lower Appellate Court that since Gian Singh used to live with his other brother and no reason was given for excluding the other brothers is against the record. The non-production of register of scribe is not such a circumstance to view the Will Ex. D1 with suspicion. It is worth to

mention that prior to filing of the present suit, the parties litigated before the Revenue Authorities over the issue of sanction of mutation. The genuineness of the Will Ex. D1 was upheld upto the Financial Commissioner, Punjab vide orders Ex. D2 and D3. Though the orders of Revenue Courts are not binding upon the civil Court yet the same lends support to the case of the appellant/defendant that the Will in question is genuine. This Court is of the opinion that the Will has been proved by the defendants in accordance with the provisions of law. The requirement of law is that the only one attesting witness is sufficient to prove the genuineness of the Will. The defendant had examined two attesting witnesses who identified the signatures of deceased Gian Singh and deposed that the Will was executed in their presence and they attested to the genuineness of the Will at the time of execution. The Will Ex. D1 cannot be said to be surrounded by any suspicious circumstance. The lower Appellate Court has ignored the material evidence produced on the record and has committed grave error in discarding the genuineness of the Will.

15. In view of the observations made above, the present appeal is allowed. The judgment and decree passed by the lower Appellate Court are set aside and that of the trial Court are restored. The suit of the plaintiff remains dismissed.

24.02.2016
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(JITENDRA CHAUHAN)
JUDGE