

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

RSA No.747 of 1990

Date of decision: 26.8.2016

1. Waryam Kaur
2. Ajmer Kaur (dead) through her LRs.

...Appellants

Versus

Jagir Kaur (dead) through her LRs.

...Respondent

CORAM: HON'BLE MR.JUSTICE GURMIT RAM

Argued by: Mr. Avnish Mittal, Advocate
for the appellants.

Mr. R.N. Moudgil, Advocate
for the respondent.

GURMIT RAM, J.

This regular second appeal is preferred at the instance of above-said appellants, who were defendants before the learned trial Court, against the judgment and decree dated 20.2.1990 passed by the Court of learned Additional District Judge, Ropar vide which the appeal of the respondent – herein (plaintiff) was accepted and judgment and decree passed by the learned trial Court, Rupnagar were set aside and suit of the plaintiff was decreed with costs.

2. The case of the respondent – herein (plaintiff) before the learned trial Court briefly was that one Roor @ Roor Singh son of Bhagwan Singh, resident of village Alipur was owner in possession of the land measuring 30 Kanals 8 Marlas as detailed in para No.1 of the plaint. The land measuring 4

Kanals 6 Marlas out of this land was acquired by Punjab State for Thermal Plant, which has now vested in Punjab State Electricity Board. The remaining land was 26 Kanals 2 Marlas, which was in dispute in the instant suit.

It was the case of the plaintiff that said Roorra @ Roor Singh had died intestate. The plaintiff and defendants were his daughters. So, after his (Roorra's) death, the suit land vested in the plaintiff and defendants in equal shares. In this way, the plaintiff had become owner in possession of 1/3rd share of the land in dispute.

It was further case of the plaintiff that defendants who prepared a Will in their favour by way of fabrication, got the mutation wrongly entered and attested on the basis of this Will in their favour, in connivance with the revenue officials. The said Roorra never executed the said Will nor the same was executed with his free will and disposing mind. He was having immense affection with the plaintiff and as such there was no reason for him to disinherit her from his property. Further, she also served him till his demise. Further, he was also unable to understand and manage his affairs since he was bedridden and unable to move and ailing for about a year prior to his death. Since, the defendants refused to admit the right of the plaintiff in the suit land, which resulted into the filing of instant suit.

3. Notice of the suit was given to the defendants. Defendants in their joint written statement admitted that Roor Singh was the owner in possession of the land measuring 30 Kanals 8 Marlas, out of which a piece of land measuring 4 Kanals 6 Marlas was acquired by Punjab Government as mentioned in para No.1 of the plaint. Then, it was also admitted that plaintiff was real sister of the defendants, but they denied that their father Roor Singh had died intestate. In this connection, they took the plea that their father Roor Singh executed his

registered Will dated 7.5.1985 in their favour before his death. The plaintiff was deprived of her share in the property in dispute on account of her misbehaviour towards Roor Singh. Wife of Roor Singh had expired about 4 years prior to his death. The defendants who were married in nearby villages had been attending their father Roor Singh after the death of their mother, one by one by rotation at village Alipur. The plaintiff was stated to be married at village Khairpur, Tehsil Kharar, which was at a distance place. Since the plaintiff had been maltreating her father Roor Singh so on this account, she earned displeasure of her father. Their father Roor Singh had executed a natural Will with full conscious and disposing mind, in their (defendants') favour. Their father was hale and hearty and did not fall ill before his death. He was a sensible man and had also been attending his agricultural work till his death. It was denied that the plaintiff was having any share in the suit land. Rest of the averments made in the plaint were also denied by the defendants.

4. Replication was filed. From the pleadings of the parties, following issues were framed:

1. Whether Rur Singh executed a valid Will dated 7.5.1985 in favour of the defendants? OPD.
2. Whether the plaintiff is the owner in possession of the land as mentioned in the plaint? OPP
3. Who are the legal heirs of Rur Singh? OPP
4. Relief.

5. Learned trial Court after hearing the counsel for both the parties and perusing the record, recorded findings on issues No.1 and 3 in favour of the defendants and on issue No.2 against the plaintiff and dismissed the suit with costs vide judgment and decree dated 13.6.1988.

6. The respondent – herein (plaintiff) feeling aggrieved from the said judgment and decree, preferred an appeal which was accepted by the Court of learned Additional District Judge, Ropar vide judgement and decree dated 20.02.1990 whereby reversing the judgment and decree of learned trial Court and decreed the suit of the plaintiff with costs throughout.

7. The appellants – herein (defendants) being dissatisfied with the impugned judgment and decree dated 20.2.1990 passed by the learned Additional District Judge, Ropar has come up before this Court vide the instant appeal, notice of which was given to the respondent – herein (plaintiff). Records of both the Courts below were also requisitioned.

8. The counsel for both the parties were heard. Record was also minutely scrutinized with their eminent assistance.

9. The learned counsel for the appellants has contended that plaintiff herself did not appear in the witness box in the trial Court and rather examined her general power of attorney Harnek Singh as PW-1 who was her son-in-law. It is further his contention that this witness did not state anywhere that the executant Roora @ Roor Singh of the alleged Will Ex.D1 dated 07.05.1985 was not in sound disposing state of mind at the time of execution of this Will. Further he, as the attorney of plaintiff, can depose about the execution of the general power of attorney executed in his favour by the plaintiff and the acts, if any, done by him as her attorney and not more than that. As PW-1 he stated about the inter-se relation of the parties to the suit, besides, placing on record his original general power of attorney Ex.P1 and copy of *Jamabandi* Ex.P2.

PW2 Jagtar Singh was the resident of the village of Roora @ Roor Singh, the executant of the Will in question. His statement was to the effect that said Roora @ Roor Singh died at the age of about 95 years. 6/7 years prior

to his death he had a dislocation of thigh and as a result thereof, he was unable to move.

Then the further contention of learned counsel for the appellants is that appellant-defendant/Waryam Kaur was married at village Roul Majra which was at a distance of one kilometer from village Alipur, appellant-defendant/Ajmer Kaur was married at village Phidde which was at a distance of two kilometers from the abovesaid village Alipur, whereas respondent-plaintiff/Jagir Kaur was married at village Khairpur, Tehsil Kharar which was at a distance of about 25 miles from said village Alipur. Herein learned counsel for the appellants has contended that since in-laws' houses of abovesaid both the appellants-defendants were nearer to village Alipur where their father had been residing in his old age, so the appellants had been serving and looking after him in his old age by rotation, whereas respondent-plaintiff whose in-laws' house was at a considerable distance from village Alipur as aforementioned, so she took least interest in serving her father Roora @ Roor Singh in his old age particularly after the death of her mother.

Then it is further contention of learned counsel for the appellants that the alleged Will Ex.D1 was a duly registered document. Further, one of its attesting witnesses namely Tara Singh, Lamberdar was examined as DW-1 and as such, the execution of this Will was duly proved on the record as per the requirement of Section 68 of the Indian Evidence Act, 1872 and Section 63 of the Indian Succession Act, 1925. Hence, there was no ground of any kind to suspect its genuineness. A Will which is duly registered is to be taken as an act of sound disposing mind of testator. Then reference is also made to the cross-examination of PW-1 wherein he stated that he learnt from Lamberdar of village Alipur that Roora @ Roor Singh had executed a Will in favour of

Waryam Kaur and Ajmer Kaur defendants.

In support of his above contentions, learned counsel for the appellants has also cited certain case laws as mentioned below:-

- i. ***Man Kaur (Dead) by LRs vs. Hartar Singh Sangha, 2010(4) CivCC 792.***
- ii. ***Ramji Dass Ayudhia Dass @ Mahla Ram vs. Gurudawara Singh Sabha, 2000 (4) R.C.R. (Civil) 293.***
- iii. ***Daljinder Singh vs. Harbans Kaur, 2001 (2) R.C.R. (Civil) 294.***

Then it is also argued by learned counsel for the appellants that execution of Will Ex.D1 was disbelieved by the learned First Appellate Court on the plea that it had come in the cross-examination of DW-1 Tara Singh, one of the attesting witnesses of this Will, that it was not written in his presence. Then in the same breath though he stated that it was written as dictated by Roora @ Roor Singh. Herein, he has submitted that this approach of learned First Appellate Court in disbelieving the statement of this witness and also the due execution of this Will is quite erroneous since the attesting witness of any document like a Will is a witness of the fact of the execution of the Will and not the contents thereof.

Lastly, he has prayed for setting aside the impugned judgment and decree passed by the First Appellate Court and to restore the judgment and decree of the learned trial Court by accepting this appeal.

10. But on the other hand, the learned counsel for the respondent-herein (plaintiff) has contended that propounder of the alleged Will had not appeared in the witness box, while they were to prove not only the execution of the Will, but also to explain about suspicious circumstances, if any, appearing regarding its validity. Admittedly, in the case in hand, none of the

defendants/propounder had appeared as a witness before the trial Court and rather they examined their attorney Bawa Singh as DW3. His deposition was stereotyped to the pleas as taken in the written statement.

Further in support of his above contention, the learned counsel for the respondent has also relied upon the case law as laid down by the Hon'ble Apex Court in ***Smt. Indu Bala Bose and others vs. Manindra Chandra Bose and another, AIR 1982 SC 133***, wherein it was held as under:-

“The mode of proving a Will does not ordinarily differ from that of proving any other document except to the special requirement of attestation prescribed in the case of a Will by Section 63 of the Succession Act. The onus of proving the Will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the Will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the Court before the Court accepts the Will as genuine. Even where circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the Court. The suspicious circumstances may be as to the genuineness of the signatures of the testator, the condition of the testator's mind, the dispositions made in the Will being unnatural, improbable or unfair in the light of relevant circumstances, or there might be other indications in the Will to show that the testator's mind was not free. In such a case the Court would naturally expect that all legitimate suspicions should be completely removed before the

document is accepted as the last will of the testator. If the propounder himself takes a prominent part in the execution of the Will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the Court would grant probate, even if the Will might be unnatural and might cut off wholly or in part near relations. Any and every circumstance is not a 'suspicious' circumstance. A circumstance would be 'suspicious' when it is not normal or is not normally expected in a normal situation or is not expected of a normal person."

Then he has also relied upon another authority as delivered by this Court in ***Jarant Singh and others vs. Sukhjinder Singh and others, 2008(1) RCR (Civil) 434***. In this case it was held, in brief, that if the propounder of Will does not appear in the witness box to prove its due execution in his favour, it itself is a suspicious circumstance of its valid execution to ignore the same.

11. Now a bird's eye view of the evidence led by the defendants with regard to the execution of Will in question is needed. DW-1 Tara Singh was one of the attesting witnesses of this Will. In his examination-in-chief, he stated about execution of this Will, as an attesting witness of any Will usually states in a routine fashion. DW-2, Kamal Kishore, Deed Writer, scribe of this Will stated that he scribed this Will at the instance of its executant Roor @ Roor Singh as dictated by him in the presence of its witnesses. DW-3 Bawa Singh, attorney of defendants, stated that after the death of wife of Roor @ Roor Singh, both the defendants were looking after him, whereas Jagir Kaur-plaintiff did not come to

see him after the death of her mother. For this reason Roora @ Roor Singh was not happy with her (Jagir Kaur).

12. Now I want to have a brief glance of the cross-examination of abovesaid DWs.

DW-1 Tara Singh stated in his cross-examination that he was having no dealing either with the family of defendants or with Roora @ Roor Singh. The alleged Will was not written in his presence. There was no dispute between Jagir Kaur and Roora @ Roor Singh. He did not know if Roora @ Roor Singh had given gifts and other customary articles in the marriage of the daughter of Jagir Kaur. Then DW-3, Bawa Singh in his cross-examination stated that plaintiff and defendants never had any dispute nor they had any ill-will towards Roora @ Roor Singh. The marriage of daughter of Jagir Kaur, marriages of two sons and two daughters of Ajmer Kaur and of two sons of Ajmer Kaur were solemnized during the life time of mother of Jagir Kaur which were attended by both the parties to this litigation. These marriages were also attended by Roor Singh who gave '*Sakk Nanak*' in all these marriages. There was no inter-se dispute between the parties nor there was any dispute between plaintiff and Roora @ Roor Singh. There was no other cause of grievance in the mind of Roora @ Roor Singh against the plaintiff except for the reason that she did not come after the death of her mother. Defendants never shifted permanently to live with their father at any time though they were visiting him on intervals. Roora @ Roor Singh never lived with them. He always lived in his village Alipur. Roora @ Roor Singh had a fall and his waist was fractured during the life time of his wife i.e. two years before the death of his wife and remained confined to bed since then. He was not attended by any doctor, but some persons of village Makori treated him.

Then it came in the cross-examination of DW-2 Kamal Kishore that he did not know Roora @ Roor Singh or Tara Singh and Thakar Singh witnesses of Will Ex.D1, personally. Roora @ Roor Singh was not introduced to him by any person known to him. He was not accompanied by any member of his family.

13. The plea of appellants – herein (defendants) that plaintiff-Jagir Kaur did not come to see her father after the death of her mother is held to be a made up and coloured version. When her conduct towards her father Roora @ Roor Singh was normal during the life time of her mother, then there would have no occasion for her to earn annoyance of her father by showing him any disrespect/misbehaviour after death of her mother. In the Will Ex.D1, it is recorded that Roora @ Roor Singh was annoyed with the plaintiff due to her misbehaviour towards him, but no instance of such a behaviour is mentioned therein. If the in-laws' house of Jagir Kaur-plaintiff was at some distance from her parental village then it cannot be a valid reason to ignore her from inheriting the property of her father vide the alleged Will.

14. In the Will Ex.D1, the age of Roora @ Roor Singh is recorded as 80 years. Jagtar Singh (PW-2) as abovesaid deposed that this Roora @ Roor Singh died at the age of about 95 years. He suffered dislocation of thigh about 6/7 years prior to his death and hence he was unable to move. Then as abovesaid DW-3 (Bawa Singh) also admitted in his cross-examination that waist of Roora @ Roor Singh was fractured due to fall two years before the death of his wife and he remained confined to bed since then. So in these circumstances, the alleged Will is nothing but the handi-work of the appellants-herein (defendants) whose in-laws' houses were situated near to village Alipur where their father had been residing and by taking advantage of his old age and infirm health,

they prevailed upon Roora @ Roor Singh, their father, to execute the alleged Will in their favour.

15. Even if the respondent-herein (plaintiff) did not lead any evidence either in affirmative or in rebuttal to challenge the validity of the Will Ex.D1, then that does not mean that the execution of this Will has been duly proved or that the appellants-defendants were absolved to prove its execution. They were legally bound to prove its valid execution and further to dispel all the suspicious circumstances, if any, appearing on the record with regard to its validity. If they succeeded to discharge this onus properly and effectively, only then they could inherit the entire estate left by testator Roora @ Roor Singh and further to deprive the respondent-herein (plaintiff) from inheriting his estate. As abovesaid, both the parties had admitted their inter-se relation as mentioned in their respective pleadings.

16. In **Man Kaur's** case (supra), the matter with regard to the position of the attorney qua the facts of which he could depose as the attorney on behalf of his/her principal was discussed elaborately and in its para No.12, the matter was summarized as under:-

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“the position as to who should give evidence in regard to matter involving personal knowledge:

(a) An attorney holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney holder has done any act or handled any transactions, in pursuance of the power of attorney granted by

the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney holder, necessarily the attorney holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorised managers/attorney holders or persons residing abroad managing their affairs through their attorney holders.

(e) Where the entire transaction has been conducted through a particular attorney holder, the principal has to examine that attorney holder to prove the transaction, and not a different or subsequent attorney holder.

(f) Where different attorney holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney holders will have to be examined.

(g) *Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his 'state of mind' or 'conduct', normally the person concerned alone has to give evidence and not an attorney holder. A landlord who seeks eviction of his tenant, on the ground of his 'bona fide' need and a purchaser seeking specific performance who has to show his 'readiness and willingness' fall under this category. There is however a recognized exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or 'readiness and willingness'. Examples of such attorney holder are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad."*

17. In the case in hand, PW-1 Harnek Singh was the husband of Jagir Kaur-plaintiff, whereas DW-3 Bawa Singh was the husband of defendant-Waryam Kaur who brought on the record their respective general power of attorneys as Ex.P1 and Ex.DW3/A. In view of the exception recorded in *Clause-g* of abovesaid para No.12, both of them were competent to depose on behalf of their principal concerned being their husbands. So this case law is supporting equally to the cause of appellants-herein (defendants) as well as respondent-herein (plaintiff).

Another case law ***Janki Vashdeo Bhojwani vs. Indusind Bank***

Ltd. 2005(1) R.C.R. (Civil) 240 cited by the learned counsel for the appellants was also discussed in *Man Kaur's* case (supra). So there is no need to discuss the same separately.

18. In *Ramji Dass Ayudhia Dass @ Mahla Ram's* case (supra) plaintiff was alleging a registered Will dated 12.04.1971 in his favour stated to be executed by Smt. Sardhi qua her estate. On the other hand, the defendants were alleging an unregistered Will dated 23.12.1980 Ex.D1 stated to be executed in their favour by said Smt. Shardi qua her estate. Then it came on record that testator of the Will Ex.D1 expired on 19.01.1982 Will Ex.D1 being unregistered was discarded for the reason that there was enough time to get the same registered after its execution, since its testator expired on 19.01.1982. Each case is to be seen in the light of its own facts and the evidence led by the parties. This case law has no bearing on the facts of the case in hand and as such its ratio cannot be attracted to this case.

19. In *Daljinder Singh's* case (supra), the dispute was between Harbans Kaur, daughter of Khazan Singh, qua his estate being his natural heir and defendants who were alleging a registered Will stated to be executed in their favour by said Khazan Singh qua his estate. Suit was decreed by both the Courts below. It came on record that alleged registered Will Ex.DW8/A was executed by Khazan Singh in favour of Daljinder Singh while in sound disposing mind, who was his real brother's grandson. Khazan Singh started bringing him (Daljinder Singh) up in the wake of his father *Bhagat Singh's* (death) when he was 2/3 years old. Will alleged by Daljinder Singh was held to be valid one. Appeal was accepted and judgments and decrees passed by both the Courts below were set aside, while dismissing the suit of the plaintiff. So the facts of this case law are also on different footing and have no connectivity with the case in hand.

20. The mere fact that the Will in question is registered one is not the conclusive proof of its valid execution. If there appears some suspicious circumstances about its execution and validity, then in that eventuality, its propounder is legally bound to dispel the same. In the case in hand as above discussed, numerous suspicious circumstances came on record in the cross-examination of DWs as recorded in Para No.12 of the judgment. Appellants-defendants/propounder of Will Ex.D1 failed to give any reasonable explanation qua the same in order to satisfy the Court regarding its valid execution.

21. In the light of the above discussion, no merit is found in this appeal, consequently, it stands dismissed. The impugned judgment and decree passed by the learned First Appellate Court is upheld.

26.8.2016
Brij/Gaurav Sorot

(GURMIT RAM)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No