

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

RSA No.4355 of 2010 (O&M)

Date of decision : 08.08.2016

Salvinder Kumari

...Appellant

Versus

Devinder Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Arun Jain, Sr. Advocate with
Mr. Arjun Veer Sharma, Advocate for the appellant.

Ms. Sarika Gupta, Advocate for respondent No.1.

AMIT RAWAL, J.

The appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby the claim in the suit seeking possession of the residential plot measuring 10 marlas bearing 2515, Sector-69, SAS Nagar, Mohali on the basis of the registered Will dated 13.03.1996 executed by Ram Lal in her favour and for mandatory injunction directing the defendant No.5 namely Punjab Urban Planning and Development Authority, Mohali to transfer the aforementioned plot in her name, has been dismissed by both the Courts below.

Mr. Arun Jain, learned Senior Counsel assisted by Mr. Arjun Veer Sharma, learned counsel appearing on behalf of appellant submits that Ram Lal son of Sharda Ram was the owner of the house bearing No.202, Sector-38-A, Chandigarh and as well as aforementioned plot. He had two sons namely Raj Kumar and Om Parkash. Om Parkash pre-deceased as he died in the year 1990. Ram Lal executed a Will dated 03.09.1991 bequeathing some share in House No.202, Sector-38A, Chandigarh in favour of her daughter-in-law. The said aforementioned Will was cancelled vide Cancellation Deed dated 06.11.1991. Parties became at loggerhead and are involved in series of litigation. The respondent-defendant filed suit challenging the cancellation of the Will. Ram Lal filed written statement by pleading vindictive behavior and the nature of the respondent-defendant. He also executed a Will dated 13.03.1996 bequeathing the aforementioned plot in favour of the appellant-plaintiff. The aforementioned Will has been proved through the attesting witnesses namely Paramjit Singh Walia PW2 and Jagdip Singh PW3. Courts below erroneously disbelieved the statement of the witnesses by treading on path which is unknown to the Indian Evidence Act, 1872. It is a registered Will and as per the endorsement, the contents of the Will in original was explained to the testator by the Registrar. The other sister and brothers have also filed written statement admitting the claim of the appellant-plaintiff.

Both the Courts below have not appreciated the fact that the Will was of the year 1990 and the litigation started only after the cancellation of the Will i.e. in the year 1991 and the present Will is of the year 1996 whereas litigation is of the year 1998, therefore, there is no

occasion of execution of 1996 Will and the litigation of the defendants is with respect to the other Will and in respect of share in the house bearing No.202, Sector-38A, Chandigarh. Jagdip Singh PW3, in examination-in-chief deposed in terms of provision of Section 63(c) of the Indian Succession Act, so, is the statement of Paramjit Singh Walia, PW2. Litigation with regard to the house No.202, Sector-38A, Chandigarh, initiated by defendant, had come to an end upto this Court vide judgment and decree dated 17.03.2009. Once Will in question has been proved that it was signed by Ram Lal and the other two witnesses have proved the execution, there was no occasion for the Courts below in declining the relief.

The approach of the Courts below holding that the Will registered by Sub-Registrar in proforma manner is conjectural, thus, urges this Court for setting aside of the judgment and decree by formulation of the following substantial questions of law arises for determination:-

- i) Whether in the facts and circumstances of the instant case, the approach of the learned courts below in discarding the registered Will by misreading and misinterpreting the statements of attesting witnesses and other overwhelming documentary as well as oral evidence on record, while dismissing the suit filed by the appellant, can be sustained in law?
- ii) Whether in the facts and circumstances of the instant case, the approach of the learned courts below in proceeding on conjectures and surmises in rejecting the registered Will,

proved to have been duly executed, is not perverse?

- iii) Whether in the facts and circumstances of the instant case, the approach of the learned Courts below is misreading and misconstruing Section 63(c) of the Indian Succession Act and Section 68 of the Indian Evidence Act in discarding a registered Will in question, can be sustained in law?

Ms. Sarika Gupta, learned counsel appearing on behalf of respondent No.1-defendant has drawn the attention of this Court to the findings rendered by the trial Court and submit that there were many suspicious circumstances weighed in the mind of the Court in discarding the execution of the Will in question relating to bequeathing of the plot/suit property. The age column of the Will was left blank. Once Will was already scribed by Paramjit Singh Walia PW2, on the asking of Ram Lal, it proves that the testator was not present at the time of drafting of the Will. The deviation of the natural succession of other LRs is also of a suspicious circumstance. The appellant-plaintiff has put up in Phase-10, Mohali In-laws house. She is well to do as her husband is Chief Engineer in Punjab Mandi Board. From the cross-examination of Jagdip Singh PW3, Court found that the Will was already typed. All these factors were noticed by the Courts below in discarding the Will, much less, dismissing the suit and thus urges this Court for upholding of the findings rendered by both the Courts below.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is merit and force in the submission of Mr. Arun Jain, as Paramjit Singh Walia PW2, in examination-in-chief,

deposed in terms of provision of Section 63(c), so, is the statement of Jagdip Singh PW3. The same for the sake of brevity, reads thus:-

Statement of Paramjit Singh Walia PW2:-

“Evidence by way of affidavit of Paramjit Singh Walia, Advocate, Estate Office, Chandigarh.

I, the above noted deponent do hereby solemnly affirm and declare as under:-

1. That I knew Sh. Ram Lal son of Sharda Ram resident of House No.202, Sector 38-A, Chandigarh. He executed a Will dt. 13.3.96 in favour of Smt. Salvinder Kumari his daughter pertaining to residential plot no.2515, Sector 69, Mohali in my presence. I have seen the original Will. It was drafted by me on the instructions of Sh. Ram Lal. It bears my signature as scribe. I also witness the said Will. It was read over and explained to Sh. Ram Lal, he put his signature on the Will in my presence after admitting its correctness. The other witness was Jagdip Singh. I have seen the original Will. The photo copy of Will is Ex.P1. It was registered before Sub Registrar, Chandigarh. Endorsement to this effect is Ex.P1.”

Statement of Jagdip Singh PW3:-

“Evidence by way of affidavit of Jagdip Singh son of Joginder Singh, resident of H.No.424, Phase 7, Mohali.

I, the above named deponent do hereby solemnly affirm and declare as under:-

1. I knew Sh. Ram Lal son of Sharda Ram, resident of H.No.202, Sector 38-A, Chandigarh. He executed a Regd. Will dated 13.3.96 in favour of his daughter Smt. Salvinder Kumari pertaining to plot No.2515, Sector 69, Mohali. The Will was scribed by Sh. Paramjit Singh Walia, Advocate, Estate Office, Chandigarh. The first witness was also Sh.

Paramjit Singh Walia. I have seen the original Will, which bears my signature. The photocopy of the same is Ex.P1. Endorsement before the Sub Registrar Chandigarh is Ex.P1/A. The Will was read over and explained to Sh. Ram Lal by Sh. Paramjit Singh Walia, Advocate and Sh. Ram Lal signed the Will after admitting the same to be correct. The Will was scribed on the asking of Sh. Ram Lal."

To a specific question put in cross-examination, he gave description of the testator being small person who was wearing spectacles and was wheatish in colour. He drafted the Will on the wishes and instructions of Ram Lal and got it typed from the typist. The Will was read over to the testator and after understanding and reading the same, he founded it to be correct and signed the same. He further submitted that when the Will was drafted, the age, he gave was 67 years and filled the same in the Will. The endorsement was also typed at the back of the Will. As regards the other witness, Jagdip Singh PW3 was extensively cross-examined but the defendants have not been able to shatter his testimony. He candidly stated that he knew second witness namely Paramjit Singh Walia. He also gave the description of the testator. He along with witness appeared before the Sub-Registrar. In my view once testator i.e. Ram Lal had a litigation with defendant No.1-his daughter-in-law, and the litigation reached up to this Court, he would not have any cause or reason to bequeath his any part of the property. Salvinder Kumari is none else but his daughter.

It is a matter of record that another house has been given to the brother who is living in the house. The Court cannot sit over the mind of testator to re-appreciate the intention he had at the time of execution of

Will. I am of the view that appellant-plaintiff has been able to prove the execution of the Will as per the provision of Section 68 as witness also deposed as per provision of Section 63(c) of the Indian Succession Act and the Will is registered one which has been proved. All these factors have not been noticed by the Courts below and thus there is illegality and perversity in the findings.

Courts below has not seen the cross-examination of both the aforementioned witnesses minutely rather tenor and cross-examination has proved the cause of the appellant-plaintiff.

For the foregoing reasons, the judgment and decree of the Courts below are set aside. Suit of the appellant-plaintiff is decreed. Decree sheet is ordered to be prepared.

Substantial questions of law as noticed above are answered in favour of the appellant-plaintiff and against the respondents-defendants.

Appeal is resultantly allowed.

08.08.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes

Whether reportable:-

Yes/No