

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

**RSA No.1848 of 2012 (O&M)
Decided on: 25.04.2016**

Ravinder Singh

....Appellant

Versus

Darshan Kaur and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Ms. Baljit Mann, Advocate for the appellant.

Mr. S.S. Siao, Advocate for respondent No.1.

Mr. Nitish Garg, Advocate for respondent No.2.

- 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?*

REKHA MITTAL, J.

The present appeal has been directed against consistent findings recorded by the Courts below whereby suit filed by Darshan Kaur and another was decreed by the learned trial Court vide judgement and decree dated 29.07.2010 and the appeal preferred by Sh. Ravinder Singh through his mother and next friend Smt. Jasbir Kaur did not find favour with the First Appellate Court of District Judge, Shaheed Bhagat Singh Nagar and as a result, the findings recorded by the learned trial Court were affirmed.

The present litigation pertains to inheritance to the estate

left behind by Sh. Bakhshish Singh who passed away in May, 1999. Admittedly, Sh. Bakhshish Singh left behind his widow namely Darshan Kaur, Buta Singh, father of Ravinder Singh (son), Jasbir Kaur (daughter) plaintiff No.2 and children of a pre-deceased daughter of Bakhshish Singh. Darshan Kaur and Jasbir Kaur filed the suit claiming themselves to be co-owner in possession of the suit property on the basis of natural succession. Ravinder Singh minor sued through his mother and next friend Smt. Jasbir Kaur contested claim of the plaintiffs/respondents on the basis of testamentary succession and has propounded the registered Will dated 22.10.1998 purported to be executed by Sh. Bakhshish Singh in his sound disposing mind whereby Sh. Bakhshish Singh bequeathed his entire estate in favour of Sh. Ravinder Singh to the exclusion of all his class one heirs though provision was made for maintenance of Smt. Darshan Kaur out of 02 killas of land and income of another 02 killas being available to Sh. Buta Singh, his son till the lifetime of Darshan Kaur and Buta Singh, respectively.

The learned trial Court, on consideration of the materials on record discarded the Will by holding that the same is surrounded by suspicious circumstances detailed in Paras 21 to 31 of the judgment and the Court has taken into consideration as many as 9 to 10 suspicious circumstances. The First Appellate Court culled-out two legal points for its determination detailed in Para 14 of the judgment and both these Issues were answered against the appellant and eventually, the appeal preferred by Ravinder Singh was ordered to be dismissed.

The substantial questions of law that arise for adjudication are:-

1. Whether the appellant has successfully proved the Will in question in accordance with the provisions of Section 68 of the Indian Evidence Act read with Section 63(c) of the Indian Succession Act?

2. Whether the suspicious circumstances taken into consideration by the Courts below are the result of misconstruing and misinterpretation of the evidence rendering the judgments perverse?

Counsel for the appellant has submitted that the testimony of Ajit Singh-DW3 and Amar Chand, Deed Writer-DW5 of the Will is more than sufficient to discharge the onus in accordance with the provisions of Section 68 of the Indian Evidence Act. It is further argued that the First Appellate Court failed to appreciate the evidence in right perspective by holding that propounder of the Will failed to discharge the initial onus of proving the Will as required under Section 68 of the Indian Evidence Act. In addition, it is submitted that the Will in question is a registered document and a presumption of correctness is appended to the endorsement made by the Sub-Registrar in discharge of his official/public functions. Further dilating, it is argued that as soon as the propounder has discharged the onus of proving the Will in compliance with the relevant provisions in law, the onus is shifted upon the other side to prove that the Will is the result of fraud, misrepresentation or undue influence, etc. In support of her contention, she has relied upon judgments of Hon'ble the Supreme Court of India

“Babu Singh and others vs Ram Sahai @ Ram Singh”, 2008(3) RCR

(Civil) 154, “*Daulat Ram and others vs Sodha and others*”, 2005(1) Civil Court Cases 471, “*Pentakota Satyanarayana and others vs Pentakota Seetharatnam and others*”, 2006(1) Civil Court Cases 563, “*Gurdev Kaur and others vs Kaki and others*”, 2006(4) Civil Court Cases 625, “*Savithri and others vs Karthyayani Amma and others*”, 2007(4) RCR (Civil) 749.

With regard to the findings of the Courts that the Will in question is surrounded by suspicious circumstances, it is argued that a careful reading and due consideration of the recitals in the Will would indicate that the Will in question represents a true and genuine expression of wish of the deceased as to how his estate is to be dealt with after his departure from the world. It is argued that deprivation of natural heirs cannot be said to be a suspicious circumstance as the whole idea to execute a Will is to interfere with a natural succession. For this purpose, she has referred to judgment of Hon'ble the Supreme Court “*Jaswinder Singh and others vs Kartar Singh and others*”, 2004(3) Civil Court Cases 80.

Counsel would submit that the testator has given detailed reasons for his intention to exclude his daughters and their children from succession as he being from an agriculturist family did not wish that his estate should be shared by his daughters or their children with his grandson, the only male child of his only son Buta Singh. Buta Singh has been disinherited from succession as he is accustomed to bad habits, therefore, he should not be able to fritter away the land left behind by the deceased. The deceased made adequate provision for his

wife and son by giving them usufruct of two fields each till their life.

Counsel for the contesting respondent-Jasbir Kaur has supported the judgments passed by the Courts below with the submissions that factual findings recorded by the Courts below in regard to the Will are not amenable to challenge in the regular second appeal. It is further argued that the Courts below have rightly taken into consideration various suspicious circumstances surrounding the Will in order to hold that the land in question is to be inherited on the basis of natural succession. The appellant has failed to prove the Will in compliance with the provisions of Section 68 of the Indian Evidence Act and this fact alone is sufficient to discard the Will set up by Ravinder Singh who was barely 4-5 years' old in the year 1998.

Counsel representing Darshan Kaur widow of Bakhshish Singh has submitted that he has got no objection if the appeal preferred by Ravinder Singh is allowed in view of affidavit filed by her and taken on record.

I have heard counsel for the parties, perused the paperbook and the records of the learned trial Court.

Before advertng to the submissions made by counsel for the parties, it is appropriate to take note of relevant provisions of Section 63(c) of the Indian Succession Act and Section 68 of the Indian Evidence Act.

Section 63(c) of the Indian Succession Act reads as follows:-

“63(c). The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

An extract from Section 68 of the Indian Evidence Act reads, quoted thus:-

“68. Proof of execution of document required by law to be attested – If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence.”

The question that arises for consideration is whether testimony of Ajit Singh-DW3 an attesting witness of the Will and Amar Chand-DW5 scribe of the Will is sufficient to comply with the requirements in law to prove the Will.

Ajit Singh son of Chuhar Singh resident of Taharpur, Tehsil and District Nawanshahar, tendered into evidence his affidavit Ex.DA by way of examination-in-chief. A relevant extract from his testimony by way of affidavit reads as follows:-

“The Will dated 22.10.1998 was got executed by

Bakhshish Singh whose photograph and signatures I identify on the Will Ex.D1 and the same was scribed by Deed Writer Amar Chand. The Will was read over to the parties and in token of its correctness the same was signed by the deponent as well as second witness Dhanna Ram Lamberdar now deceased and was signed and thumb marked by Bakhshish Singh. The Will was produced before the office of Sub Registrar where the same was read over to the parties by the Sub Registrar and in token of its correctness the same was signed by Bakhshish Singh and both the witnesses and the endorsement of the same is Ex.D2. I have seen the endorsement in the original Will and in the second original Will lying in the proceedings of mutation of AC I and in the record of Sub Registrar Banga. I personally know Bakhshish Singh and his family.”

His cross-examination in regard to execution, attestation as well as registration of the Will is extracted hereinbelow for ready reference:-

“Bakhshish Singh might be between the age of 70 to 80 years and was educated. The Will was dictated by Bakhshish Singh to the Deed Writer. Three copies of the Will were prepared. The deceased was not accompanied by Boota Singh or any relatives at the time of execution of the Will. He died about 6-7 months after the execution of the Will.

The signatures on the face of the Will on point Mark A, Mark B and Mark C were obtained in front of Sub Registrar. Similarly, thumb impression and signature on the face of second leaf of the Will and Mark D and Mark E were also obtained before Sub Registrar. When the Will was presented before the Sub Registrar, he endorsed the same, to present the same before Registration Clerk, in the

room of Registration Clerk. The room of Sub Registrar and Registration Clerk are differed and opposite directions.

The signatures of the deceased, that of Dhanna Ram and my self on the registration endorsement was made in the room of Sub Registrar and then in front of Sub Tehsildar and then it was sent to Registration Clerk for registration. We did nothing in the office of Registration Clerk except signing in the register. First of all Bakhshish Singh signed the Will and then Lamberdar attested the same and then myself.

Bakhshish Singh signed on the Will in front of Tehsildar also.”

Amar Chand, Deed Writer also filed his affidavit Ex.DW5/A by way of examination-in-chief and a relevant extract therefrom reads as follows:-

“I have seen the original Will and also the second original copy of the Will in the Court today. The Will was read over to the parties and the witnesses and after admitting the contents of the same to be correct the Will was signed by Bakhshish Singh, and witnesses and also thumb marked by witnesses. I am licence deed writer. The endorsement of the Will was made in my register at Sr. No.1087. The Will dated 22.10.1998 is Ex.D1 was also got registered by Bakhshish Singh in the presence of the witnesses. Original register, seen and returned.”

In his cross-examination, he has candidly admitted in the opening lines that deceased Bakhshish Singh and witnesses were not personally known to him meaning thereby that testimony of Amar Chand cannot be used to advantage of the appellant to prove that the

Will in question was executed by Sh. Bakhshish Singh or attested by Dhanna Ram, Lambardar and Ajit Singh son of Chuhar Singh of village Taharpur.

This brings the Court to analyze the statement of Ajit Singh son of Chuhar Singh, the alleged attesting witness of the Will examined in the case. His testimony in examination-in-chief does not refer to the sequence in which the Will was signed/thumb-marked by the testator and/or the attesting witnesses in order to prove that the attesting witnesses attested the Will after the same was signed or thumb-marked by the testator or after seeing the testator signed or affix his mark to the Will as is mandatorily required under Section 63(c) of the Indian Succession Act. In his cross-examination, he has deposed that signatures on the face of the Will on point Mark A, Mark B and Mark C were obtained in front of Sub-Registrar. The signatures Mark A are the signatures of Ajit Singh, Mark C that of Dhanna Ram and Mark B of Bakhshish Singh on the first page of the Will in question. He has further deposed that thumb-impression and signature on the face of second leaf of the Will and Mark D and Mark E were also obtained before the Sub-Registrar. The signatures Mark D and Mark E on the second page of the Will are the purported signatures of Sh. Bakhshish Singh. If all the signatures Mark B, Mark D and Mark E of Bakhshish Singh, Mark A and Mark C of the attesting witnesses were obtained before the Sub-Registrar in view of testimony of Ajit Singh, it remains a mystery as to which signatures of Bakhshish Singh or that of the attesting witnesses were obtained when the Will was allegedly read-

over by the scribe and admitted to be correct by its executant. Further, this fact falsifies and belies the testimony of the scribe that the Will was signed by the testator and the attesting witnesses in his presence when the same was read-over to them and admitted to be correct. Ajit Singh in his cross-examination has deposed that *“signatures of the deceased, that of Dhanna Ram and himself on the registration endorsement was made in the room of Sub-Registrar and then in front of Sub-Tehsildar.”* He has further deposed that first of all Bakhshish Singh signed the Will and Lamberdar attested the same and then myself. It is not clear as to which signatures of Bakhshish Singh he is referring to by deposing that firstly Bakhshish Singh signed the Will and then Lambardar attested the same and then he himself. Even otherwise, if the Will was signed by Bakhshish Singh first and then by Lamberdar and Ajit Singh-DW3 it does not prove that Bakhshish Singh signed the Will in presence of both the attesting witnesses or each of the attesting witness has seen the testator sign or affix his mark to the Will in compliance with the requirements of Section 63(c) of the Indian Succession Act. In this view of the matter, I have no hesitation to uphold the findings of the Appellate Court that the Will has not been proved in accordance with law.

This apart, the trial Court and the Court in appeal failed to take into consideration a significant aspect of the matter that second page of the Will does not bear attestation of the witnesses. If the second page of the Will is taken out of consideration for want of attestation in compliance with Section 63(c) of the Indian Succession Act, the first

page itself would be an incomplete document and, thus, inadmissible in evidence. The Will in question runs into two pages and the second page contains various recitals in regard to provision made in favour of Smt. Darshan Kaur and Sh. Buta Singh and further the estate to be inherited by a male sibling of Ravinder Singh, if any, born subsequently, in equal share. As the second (concluding) page of the Will on which the seal and stamp of the Deed Writer has been affixed and so also the date on which the document was executed has not been attested by the attesting witnesses, the Will cannot be said to be executed and proved in compliance with the provisions of Section 63(c) and Section 68 respectively reproduced hereinbefore. As a result, the aforesaid question No.1 is answered against the appellant and in favour of the contesting respondent.

The Courts have recorded consistent findings that the Will is surrounded by suspicious circumstances and the propounder has failed to dispel those circumstances. As has been rightly argued by counsel for the contesting respondent that consistent findings of fact recorded by the Courts below are not amenable to challenge in the second appeal, keeping in view the scope of intervention in exercise of jurisdiction under Section 100 of the Code of Civil Procedure. As has been noticed hereinbefore, the learned trial Court has taken into consideration 9 to 10 suspicious circumstances but the First Appellate Court has given weightage only to three circumstances stated to be suspicious. Admittedly, Ravinder Singh was barely 5 years' old in October, 1998. As per the Will, Sh. Bakhshish Singh decided to bestow

his entire estate upon Ravinder Singh to the exclusion of all his class one heirs as he was happy with the services being rendered by him and none else. Both the Courts have taken a serious view of this recital for the reason that as Ravinder Singh himself was dependent on others for his care and upbringing at that tender age of 5 years' in 1998, where was the occasion for him to render services to his grandfather in lieu whereof the grandfather would have decided to bequeath his entire estate in his favour even to the exclusion of his wife. There is no denial that Smt. Darshan Kaur wife of Bakhshish Singh was residing with him and she was dependent upon Bakhshish Singh for all her needs and necessities. It has been proved that Darshan Kaur was around 50 years' old in the year 1998. Darshan Kaur appeared in this Court to produce her affidavit raising no objection, if the appeal preferred by her grandson is allowed. She appeared to be a stout and healthy woman even at this age. There is nothing on record suggestive of the fact that Darshan Kaur was not rendering services to her husband which is otherwise a practice ordinarily being followed in every family particularly when the parties are residing in a village and the wife is not gainfully employed. This fact further creates a suspicion in the recital of the Will that Bakhshish Singh was being served by none else than his grandson Ravinder Singh. As per the Will, no part of the land has been given to Ms. Darshan Kaur. The mere fact that a provision has been made for maintenance of Darshan Kaur out of 02 killas of land and that too without giving its clear description is another suspicious circumstance, rightly taken note of by the Courts. Without dilating further on the various other circumstances held to be suspicious either

by the trial Court or the Court in appeal, the aforesaid two circumstances are more than sufficient to prove that the Will is surrounded by suspicious circumstances and the propounder has failed to dispel the same. As a consequence, question No.2 is also answered against the appellant and in favour of the contesting respondent.

To be fair to the appellant, counsel has relied upon various judgments to contend that the onus to prove the plea of fraud, undue influence or misrepresentation is to be discharged by the party who has challenged the testament on these grounds. There cannot be any dispute about the settled position in law laid down in the referred judgments. However, keeping in view the discussion made hereinbefore that the propounder has failed to prove the Will in accordance with law, these judgments would lose relevance and significance in the present context.

So far as the contention that deprivation of natural heirs cannot be said to be a suspicious circumstance as the whole idea to execute a Will is to deviate from the natural succession, the same cannot be disputed but it may be relevant in the context of other suspicious circumstances surrounding a Will.

Before parting with this judgment, it needs to be clarified that as the Will set-up by the appellant has been discarded throughout, the suit property shall be inherited by all the class one heirs (four) of the deceased namely Darshan Kaur, Jasbir Kaur, Buta Singh and children of pre-deceased daughter, in equal share to the extent of 1/4th share each.

In view of what has been discussed hereinabove, finding

no merit, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs.

25.04.2016

yakub

(REKHA MITTAL)
JUDGE