

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 2676 of 2012 (O&M)
Date of Decision : 08.02.2016

Bhagwana

....Appellant

Versus

Krishan and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Amit Jain, Advocate
for the appellant.

Surinder Gupta, J.

Plaintiff-Bhagwana has laid his claim to the property left by his brother Mange Ram, who died unmarried and issueless, by way of natural succession and has challenged registered Will No. 3/293 dated 26.02.2002 in favour of defendants no.1 to 3 sons of Khazan Singh (brother of Mange Ram), and defendant no. 4-Raj Kumar (grandson of Mange Ram). His suit was dismissed by Civil Judge (Junior Division), Bahadurgarh and the appeal filed by him was also dismissed by Additional District Judge, Jhajjar.

2. In later part of the judgment, parties will be referred as 'plaintiff' and 'defendants'.

3. Case of plaintiff, in brief, is that after death of Mange Ram, who died intestate on 28.11.2003, he has inherited $\frac{1}{2}$ share in the suit land measuring 62 *bighas* situated in revenue estate of village Asauda Todran, *tehsil* Bahadurgah, District Jhajjar. Will dated 26.02.2002 propounded by defendants no. 1 to 4 is outcome of fraud and coercion.

4. Defendants contested the claim of plaintiff *inter alia*

pleading that Will dated 26.02.2002 was executed by Mange Ram in his sound disposing mind. It was got registered in the office of Sub-Registrar, Bahadurgarh. The allegations that Will is result of fraud, coercion etc. were denied.

5. Learned counsel for the appellant, while assailing the concurrent findings of Courts below, has argued that the Will was attested by three witnesses, namely; Balbir, Satbir and Chand Singh, Advocate but when the Will was produced before Sub-Registrar, Balbir marginal witness has not signed the Will. There is no explanation as to why his signatures were not obtained. Secondly, Krishan-defendant no. 1, had taken active part in execution of Will and was present before the Sub-Registrar when the Will was executed. This shows that Mange Ram was under undue influence while executing his Will. The active participation of Kishan Kumar is suspicious circumstance. Thirdly, signatures/thumb impression of executor of Will are always taken by the deed writer on right side of the Will while in this case thumb impression of Mange Ram was taken on left side of the Will which is another suspicious circumstance. Fourthly, Mange Ram was only 55 years of age and it was not an age when a person thinks of executing a Will particularly when he is hale and hearty.

6. I have perused judgments of both the Courts below and also the documents/statement of witnesses made available by learned counsel for the appellant.

7. Admittedly, Mange Ram died unmarried and issueless. He had executed Will in favour of his nephews and

one grandson i.e. Raj Kumar-defendant no. 4. The Will bears thumb impressions of Mange Ram at three places i.e. one taken by the deed writer and two thumb impressions taken before the Sub-Registrar. He and his witnesses were also photographed at the time of registration of the Will. Plaintiff has not produced any evidence to rebut the contention of defendants that Will bears thumb impression of Mange Ram. It was scribed by Durga Dutt Kaushik who had made entry regarding execution of the Will by Mange Ram in his register. It was for plaintiff to enquire from the scribe about reasons of his taking thumb impression of Mange Ram on left side of the paper of Will. It depends upon the practice by a particular deed writer as to whether he takes signatures/thumb impressions of executant of a document on right side, left side or middle of the paper. The above factor is not a suspicious circumstance about execution of the Will for the reason that two more thumb impressions of executant were taken before the Sub-Registrar. Photograph of executant of the Will was also taken on the Will at the time of its registration alongwith photograph of the marginal witnesses. Though, registration of the Will in itself is sufficient to draw conclusion about its genuineness and validity but certainly it is a factor, in the facts and circumstances of this case, which is rightly relied upon by both the Courts below while reaching the conclusion that it is a legal and valid Will executed by Mange Ram.

8. The Will is not required to be attested by three witnesses. Even if three witnesses have signed the Will when it was scribed, it does not effect its validity on the ground that

before the Sub-Registrar only two witnesses, namely; Chand Singh and Satbir signed the Will. Presence of Krishan-defendant no.1 is recorded before the Sub-Registrar at the time of registration of Will but it in no manner reflects that Mange Ram was under his influence or the Will was not executed by him of his free mind. It is not the case where Mange Ram had ignored any of his legal heir. He, rather, was not having any wife or children or even parents. He has not given his entire property to Krishan-defendant no.1, rather, he has given his property to defendants no.1 to 4 in equal share. Both the Courts below have committed no error while discarding this contention of appellant.

9. Two marginal witnesses of the Will, namely; Balbir and Satbir were examined by plaintiff. Balbir, though, denied execution of the Will by Mange Ram but has admitted his signatures on the Will. He has stated that these signatures were appended by him on the asking of Khajan Singh and his sons. PW-2 Satbir has also admitted his thumb impression on the Will. He has stated that Mange Ram was present at the time of execution of Will. He could understand his welfare. Plaintiff in his zeal to examine the witnesses of the Will took the risk of examining Durga Dutt Kaushik deed writer also as PW-5. However, this witness instead of proving the case of plaintiff has shattered his plea. He has fully supported the case of defendants and has stated that the Will was scribed by him which he entered at page no. 117 of his register. His statement is that the Will was read over to Mange Ram and witnesses, who after admitting contents of the same put their thumb impressions

and signatures. Mange Ram had brought with him marginal witnesses Satbir (*sarpanch*), Balbir and Chand Singh (Advocate). He has further stated that Mange Ram was healthy and in sound disposing mind at the time of execution of Will and has also put his thumb impression in the register (against entry of the Will). Age of Mange Ram is mentioned in the Will as 55 years. This is a subjective decision of a person as to when he has to execute his Will. Mange Ram died on 28.11.2003. Though, cause of his death has not come on file, yet this reflects that he must be having some inclination about his deteriorating health and executed the registered Will regarding his property in favour of defendants no. 1 to 4.

10. On perusal of the paper-book, lower Court record and judgments of both the Courts below, I find no legal or factual infirmity in the findings of the Courts below, calling for any interference. No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

February 08, 2016
jk

(SURINDER GUPTA)
JUDGE