

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

(1) RSA No.3003 of 1987 (O&M)  
Date of Order:11.10.2017

Joti (since deceased) through LR's and another  
Versus  
...Appellants

Smt. Parmeshwari (since deceased) through LR's  
...Respondents

(2) RSA No.3445 of 1987 (O&M)

Smt. Parmeshwari (since deceased) through LR's & Ors  
..Appellants

Versus  
Joti (since deceased) through LR's and others  
...Respondents

(3) COCP No.3367 of 2013 (O&M)

Sewa Rani and others  
...Petitioners

Versus  
Ram Kishan and others  
..Respondents

CORAM: HON'BLE MR. JSUTICE ANIL KSHETARPAL

Present: Mr. R.S.Malik, Advocate,  
for the appellant (in RSA No.3003 of 1987)  
for the respondents (in RSA No.3445 of 1987)

Mr. Jai Kumar Chauhan, Advocate,  
Mr. Balbir Kumar Saini, Advocate,  
Mr. Abhay Chauhan, Advocate,  
for the appellants (in RSA No.3445 of 1987)  
for the respondents (in RSA No.3003 of 1987)  
for the petitioners (in COCP No.3367 of 2013)

ANIL KSHETARPAL, J.

By this common judgment, I shall be disposing of RSA Nos.3003, 3445 of 1987 and COCP No.3367 of 2013.

In my considered opinion, following substantial questions of law arise in the present case:-

- (i) Whether an un-registered Will (testamentary document) is presumed to be surrounded by suspicious circumstances, if it is executed in the same premises where office of registration authority is located?
- (ii) Whether a widow, who remarries under the custom with the brother of the deceased husband, stands divested of the property inherited from the deceased husband on her remarriage?

**BRIEF FACTS**

The dispute in the present case is with regard to estate of Surji, who died on 15.1.1979. Initially Surji was married to one Shri Bakhtawar, who died in the year 1929. Plaintiff-Parmeshwari was born out of the aforesaid wedlock. The property of late Shri Bakhtawar was mutated in favour of widow Surji.

It is alleged that thereafter Surji entered into a kareva marriage (customary marriage) with brother of late Shri Bakhtawar, namely, Bansi. It has been found by the court that out of the wedlock of Bansi and Surji, one daughter Phooli @ Panni was born.

Surji died on 15.11.1979. Parmeshwari filed a suit claiming property of Surji. She impleaded defendant-appellant Joti as defendant no.1 and Phooli @ Panni as defendant no.2. Defendants filed written statement asserting that Surji had bequeathed the entire property in favour

of Joti, defendant no.1 through a Will (testamentary) dated 20.06.1972.

It may be noticed that Joti is grandson of Bansi, the second husband of Smt. Surji.

Courts below have ignored the Will on the ground that although the Will was admittedly executed in the Tehsil premises where office of sub-Registrar is located, however, it was not got registered. It was further held that the Will has been executed in favour of collateral ignoring the daughters and, therefore, the Will is surrounded by suspicious circumstances.

In the present case, the Will was attested by two attesting witnesses, one Numberdar, namely, Krishan Lal, who has been examined as DW2 and Late Shri Nanak. The Will was scribed by Geeta Ram, who has appeared as DW4. The Will is notarized by a Notary public, who has been examined as DW3.

Now is the stage for considering the questions of law framed above.

**QUESTION NO.1**

***Whether an un-registered Will (testamentary document) is presumed to be surrounded by suspicious circumstances, if it is executed in the same premises where office of registration authority is located?***

It is not in dispute that the Will has been proved in accordance with Section 68 of the Evidence Act. Attesting witness Krishan Lal, Numberdar has been examined. Apart therefrom scribe Geeta Ram, Notary Public Brij Raj Saran have also been examined. Second attesting witness had already died.

It is well settled that the Will is not required to be registered. It is

the option of the testator to get the Will registered or not. In the present case, original Will is available on the file as Ex.D1. Smt. Surji has duly thumb marked the Will. Notary Public has given his note on the left hand margin of the Will. He has also signed the Will. Scribe has also been examined. Once the Will is not required to be compulsorily registered merely because the Will was executed in the tehsil premises but not registered, would not itself make the Will doubtful. The narration in the Will, would show that Smt. Surji makes a reference to two daughters, who are already married. She specifically states that whatever was required to be given to them has been given at the time of their marriage. She further states that she does not wish to give anything more. She states that she is living with Joti Ram son of Chajju Ram son of Bansi Ram. It is stated that he is looking after her after the marriage of her daughters and serving her. Will is attested by Lambardar Krishan Lal, who has been examined as DW2. Merely because the Will was not got registered, it cannot be taken as suspicious circumstance.

Learned first appellate Court has also held that the Will was executed in favour of collateral which is not factually correct. As noticed earlier, Smt. Surji after the death of her first husband i.e., Bakhtawar entered into the customary marriage with Bansi. Joti is grandson of Bansi, in other words Joti is step grandson of Surji being grandson of second husband. It is also admitted position that both the daughters i.e., Parmeshwari and Phooli @ Panni were married and settled in their respective matrimonial houses. None of them was living with Surji when Smt. Surji died on 15.11.1979. Therefore, in my considered opinion, the findings of the Courts below ignoring the Will are clearly erroneous.

**QUESTION NO.2**

***Whether a widow, who remarries under the custom with the brother of the deceased husband, stands divested of the property inherited from the deceased husband on her remarriage?***

On the death of Bakhtawar in the year 1929, Smt. Surji had re-married with brother of Bakhtawar i.e., Bansi. Learned counsel representing Parmeshwari has submitted that in view of Section 2 of the Hindu Widows' Remarriage Act, 1856, on re-marriage of the widow, the property received from her first husband by the widow shall revert back to the next heirs of her deceased husband. Section 2 of the Act is extracted as under:-

***“2. Rights of widow in deceased husband's property to cease on her marriage – All rights and interest which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any Will or testamentary disposition conferring upon her, without express permission to remarry, only a limited interest in such property, with no power of alienating the same, shall upon her remarriage cease and determine as if she had then died; and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same.”***

On careful reading of the aforesaid Section, it is clear that if a widow has inherited only a limited interest in such property, with no power of alienation, the property shall revert back to the next heirs of her deceased

husband.

In the present case, the remarriage is under a custom with the real brother of the deceased husband. Such remarriages are permissible in the society which are pre dominantly agriculturists.

A Full Bench of this Court in the judgment reported as *Charan Singh Harnam Singh and another v. Gurdial Singh Harnam Singh and another, AIR 1961 Punjab 301*, considered this question in detail, although, it was a case of persons belonging to “Jats” another pre-dominantly agriculturist community. The Court after considering the custom of remarriage, i.e, Karewa, found that on remarriage widow shall not be divested of the property because remarriage is in accordance with custom.

In the present case, the parties are agriculturists. Still further as noticed earlier a remarriage is with the real brother of the deceased husband. Therefore, in my considered opinion, she would not stand divest of the property.

### **LIMITATION**

Still further the re-marriage is alleged to have taken place in 1930. Parmeshwari did not raise any claim. Surji after remarriage remained alive for almost 49 years. Parmeshwari did not raise any claim to the property during the life time of Surji. In these circumstances, even the claim of Parmeshwari with respect to the property of Surji is clearly barred by time.

In view of the discussion made above, the Will dated 20.06.1972 in favour of Joti is upheld, the suit filed by Parmeshwari is dismissed.

Resultantly, the Regular Second Appeal No.3003 of 1997 is allowed, the judgments and decrees passed by the Courts below are set

aside, whereas Regular Second Appeal No.3445 of 1987 filed by Parmeshwari and others is dismissed.

**COCP3367 of 2013**

The contempt petition has been filed alleging violation of interim order passed by the Court.

In view of the detailed judgment passed, the contempt petition is also disposed of accordingly.

**October 11, 2017**  
**nt**

**(ANIL KSHETARPAL)**  
**JUDGE**

Whether speaking/reasoned

: YES/NO

Whether reportable

: YES/NO