

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1)

RSA No.2734 of 1994 (O&M)
Date of Order:10th October, 2017

Karnail Singh

...Appellant

Versus

Sadhu Singh and others

...Respondents

(2)

COCN No.1650 of 2001(O&M)

Karnail Singh

...Petitioner

Versus

Gurmit Singh and another

...Respondents

CORAM: HON'BLE MR. JSUTICE ANIL KSHETARPAL

Present: Mr. Sunil Chadha, Sr. Advocate, with
Mr. Chetan Bansal, Advocate, and
Mr. Akshay Chadha, Advocate,
for the appellant.

Mr. Kanwaljit Singh, Sr. Advocate, with
Mr. Abhishek Bajaj, Advocate,
for respondents no.1, 4, 5 and 6.

ANIL KSHETARPAL, J.

C.M.No.11430-C-2017

Allowed as prayed for.

C.M.No.11431-C-2017

Allowed, subject to all just exceptions.

The legal representatives mentioned in paragraph 2 of the
application are brought on record for the purpose of prosecuting the appeal.

RSA No.2734 of 1994

By this common order, I shall be disposing of Regular Second Appeal No.2734 of 1994 and COCP No.1650 of 2001.

Plaintiff-appellant is in regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Estate of Modan Singh, who died issueless on 30.11.1985, is in dispute between the parties.

Defendant no.4 claims that the entire property has been bequeathed in his favour by late Shri Modan Singh, his uncle (brother of father) by registered Will dated 28.11.1985, whereas the plaintiff claims that he also being son of brother of Modan Singh is entitled to a share as per natural succession.

To prove the Will, one of the attesting witness Vasdev has been examined as DW3, scribe, namely, Chiman Lal has been examined as DW1, Naib Tehsildar/Registration authority has been examined as DW4.

Both the Courts, after appreciating the evidence available on the file have recorded a finding of fact that the execution of the will is proved in accordance with the provisions of Section 63(c) of the Indian Succession Act, 1925 and genuineness of the Will is proved on the file of the Court in accordance with Section 68 of the Indian Evidence Act, 1872.

I have heard learned counsels for the parties at length and with their able assistance gone through the record of the case.

Learned senior counsel for the appellant has submitted that the Courts below have not considered that the Will was surrounded by following suspicious circumstances:-

- (i) Late Shri Modan Singh died after two days of the alleged execution of the Will as Will is dated 28.11.1985 and he

died on 30.11.1985;

(ii) Late Shri Modan Singh is proved to have been admitted in hospital on 27/28.11.1985;

(iii) Beneficiary in the Will has participated in execution of the Will;

(iv) No evidence has been produced on the file to prove that Gurmeet Singh was serving late Shri Modan Singh and was looking after him exclusively;

(v) The Will does not give any reason for exclusion of other natural heirs;

(vi) The Will is not proved to have been executed in accordance with the provision of Section 63(c) of the Indian Succession Act, 1925.

On the other hand, learned senior counsel for the respondents has submitted that it is a registered Will. The Will has been proved on the file in accordance with the provisions of Section 68 of the Indian Evidence Act, 1872 as one attesting witness, scribe, Registrar before whom the Will was registered have been examined. He has further submitted that Gurmeet Singh, beneficiary of the Will had appeared as DW5 and had stated that he was looking after/serving late Shri Modan Singh. There is no cross-examination on this aspect of Gurmeet Singh when he appeared in the witness box, therefore, his statement remains unrebutted.

No doubt, late Shri Modan Singh died after two days. However, this itself cannot be taken as a suspicious circumstance particularly when there is no evidence on the file that late Shri Modan Singh was not conscious or was not alert. Rather, on the other hand, defendant has

produced on file certificates Ex.DX/1 and Ex.DY. Both certificates have been issued by Dhiman Clinic and Laboratory under the signatures of Dr. Nirmal Kumar Dhiman. In both the certificates, it has been mentioned that late Shri Modan Singh was conscious and alert.

Still further, Naib Tehsildar i.e. Registration authority has been examined as DW4. He has specifically stated that late Shri Modan Singh had appeared before me and after satisfying that late Shri Modan Singh was executing the Will on account of free will and volition and was in proper state of mind, registered the Will. Hence, I do not find any force in the first submission of learned counsel for the appellant.

Next submission of learned counsel for the appellant is that as per certificate Ex.DX/1, late Shri Modan Singh was admitted in Dhiman Clinic and Laboratory.

A reading of the certificate issued Ex.DX/1 does not prove this fact. Doctor has only certified that late Shri Modan Singh was under his treatment on 28/29.11.1985. One cannot infer from this certificate that late Shri Modan Singh was admitted in hospital. Rather doctor has appeared in the witness box on behalf of plaintiff. He has made a statement, which is contradictory to what has been stated in the certificate issued by him. He states that late Shri Modan Singh was admitted with him. The doctor has not produced any evidence to show that late Shri Modan Singh was admitted in the hospital.

Next submission of learned counsel for the appellant is that the beneficiary, namely, Gurmeet Singh, had participated in the execution of the Will. He has read over the statement of attesting witness Vasudev.

I have gone through the statement. Of course, this witness has

stated that Gurmeet Singh was also travelling in the same car and accompanied the executant of the Will to the office of Sub-Registrar. However, apart therefrom that there is no evidence that Gurmeet Singh participated in the execution of the Will. No doubt, if beneficiary has participated in the execution of the Will then it is one of the suspicious circumstance. However, in the present case, the Will is a registered document. Sub-Registrar has appeared in the witness box and testified due execution of the Will. Attesting witness has also been examined. Thumb impressions of late Shri Modan Singh on the Will in question are not in dispute. A look at the Will would show that late Shri Modan Singh has put his thumb impression where narration of the Will comes to an end. Late Shri Modan Singh has also put his thumb impression on the back page where endorsement of the sub-Registrar has been recorded. In fact on the back page, thumb impressions of late Shri Modan Singh are available at two places. Both the attesting witnesses have also signed/thumb marked before the Sub-Registrar. The Will was registered between 11-12 noon in the day.

Next submission of learned counsel for the appellant is that there is no evidence on the file that Gurmeet Singh was looking after or serving late Shri Modan Singh.

Gurmeet Singh appeared as DW5 and had specifically stated that he was serving late Shri Modan Singh and late Shri Modan Singh was residing with him. In the Will also late Shri Modan Singh has specifically recorded that he is living with his brother i.e. Sadhu Singh, father of Gurmeet Singh. Gurmeet Singh has not been cross examined on this aspect.

Therefore, the statement of Gurmeet Singh has not been challenged in cross-

examination. Hence, correctness of the statement of Gurmeet Singh cannot be doubted on this count.

Next submission of learned counsel for the appellant is that no reason has been given for exclusion of the other natural heirs and, therefore, the Will is not surrounded by suspicious circumstances.

I have considered the submission. It is undisputed that late Shri Modan Singh was issueless. He was unmarried. Plaintiff as well as defendant no.4 Gurmeet Singh are sons of different brothers of late Shri Modan Singh. Once the evidence has come on record that late Shri Modan Singh was living with Gurmeet Singh or his father Sadhu Singh and was being looked after by them, the genuineness of the Will cannot be doubted. It is not a case where some near relative has been excluded. Therefore, if late Shri Modan Singh has not made a reference to the sons of other brother that itself cannot be taken as a ground to doubt the genuineness of the registered Will.

Next submission of learned counsel for the appellant is that the Will is not proved to be executed and registered in compliance with Section 63(c) of the Indian Succession Act, 1925.

Section 63(c) of the Succession Act, 1925 is extracted as under:-

“63. Execution of unprivileged wills.-Every testator, not being a soldier employed in an expedition or engaged in actual warfare, 1*[or an airman so employed or engaged,] or a mariner at sea, shall execute his will according to the following rules:-

(a) The testator shall sign or shall affix his mark to

the will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(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 of 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.”

It is clear that the Will is required to be read over and explained and is required to be attested by two attesting witnesses. In the present case, it is specifically stated by the scribe Chiman Lal who appeared as DW1 that the Will was duly read over and explained by him to late Shri Modan Singh. The Sub-Registrar Joginder Singh has also stated that before registering the Will in accordance with the Indian Registration Act, he

explained the contents of the Will to late Shri Modan Singh. Will is attested by two attesting witnesses i.e. one Vasdev and second Mansa Ram. Both have appeared in the witness box and admitted their thumb impressions/signatures. Therefore, the Will is proved to have been executed and registered in accordance with the provisions of Section 63(c) of the Indian Succession Act, 1925.

Learned counsel for the appellant in the last has submitted that Mansa Ram, the other attesting witness, has appeared on behalf of the plaintiff and had supported the case set up by the plaintiff.

Mansa Ram is wholly unreliable witness. Mansa Ram earlier appeared in the proceedings for sanction of the mutation and supported the Will. His statement is Ex.DX on the file. Even when he appeared as PW3 on behalf of the plaintiff, he admits his signatures on the Will. Mansa Ram has also signed on the back page of the Will before the sub-Registrar.

For the reasons recorded above, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below. The regular second appeal is dismissed.

COCP No.1650 of 2001

This petition has been filed against alleging violation of order passed by this Court dated 09.05.1996. This Court had restrained the respondents from alienating the suit property during the pendency of the suit. It is alleged that the suit property has been mortgaged during the pendency of the suit.

In view of the fact that the Will has been upheld, the mortgage of the property by the owner in violation of the interim order cannot be viewed seriously. The contempt petition is also disposed of in terms of the detailed

judgment passed above.

10th October, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : YES/NO
Whether reportable : YES/NO