

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

**RSA No. 939 of 1994 (O&M)
and other connected appeals
Date of Order: 22nd December, 2017**

Prem Chand and others

...Appellants

Versus

Om Parkash and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. M.L.Sarin, Sr. Advocate, with
Mr. Ritesh Aggarwal, Advocate
for the appellants (in RSA No.939 of 1994)

Mr. Amit Jain, Advocate,
for the appellant(s)

Mr. Avnish Mittal, Advocate and
Ms. Aparna Singhal, Advocate,
for the appellants (in RSA No.2174 of 1994)
for respondent Nos.1 to 3 (in RSA No.941 of 1994)
for respondent Nos.1 to 4 (in RSA No.940 of 1994).

ANIL KSHETARPAL, J.

C.M.No.873 of 2003 in RSA No.3417 of 2003

Application is allowed. Delay in re-filing condoned.

Main

By this judgment, I shall dispose of Regular Second Appeal Nos.939, 940, 941, 1800, 2174 of 1994, 385 of 1996 and 3417 of 2003. All these appeals have arisen out of three suits filed, which were disposed of by the trial Court as well as by the first appellate Court by a common judgment.

Parties shall be referred to by their names.

Dispute in all the cases is with regard to the estate of late Shri Amar Nath, who died issueless on 07.03.1982. Appellant-Sushil Kumar in RSA No.2174 of 1994 along with two others filed a suit claiming that he is

natural heir of late Sh. Amar Nath being nephew (son of Sh. Bihari Lal, brother of late Sh. Amar Nath), whereas the plaintiff Tribhuwan Narain-appellant in RSA No.385 of 1996, filed suit claiming properties left by late Sh. Amar Nath on the basis of Will dated 14.02.1982. Tribhuwan Narain also claims that he is son of Om Parkash, plaintiff in connected Civil Suit No.268/CS/86, who was adopted by late Sh. Amar Nath.

On the other hand, it is the case of the defendants that late Sh. Amar Nath was adopted by his maternal grand father late Sh. Bakhtawar Singh and, therefore, he severed his all connection/links with the family in which he was naturally born. Defendants further pleaded that late Sh. Amar Nath had executed a registered Will dated 03.05.1974 in favour of Prem Chand, appellant in five appeals. Defendants further pleaded that late Sh. Amar Nath also executed a Will dated 26.04.1981.

Learned trial Court after appreciating the evidence available on the file, dismissed all the three suits while recording a finding that in fact late Sh. Amar Nath had been adopted by late Shri Bakhtawar Singh.

The Will set up by Tribhuwan Narain dated 14.02.1982, was rejected by the Court, however, registered Will dated 03.05.1974 was upheld. The Court further recorded a finding that Om Parkash father of Tribhuvan Naraiyan and the plaintiff in Civil Suit No.268/CS/86 was never adopted by late Sh. Amar Nath.

Three first appeals were filed by three sets of plaintiffs. Learned first appellate Court after re-appreciation of evidence available on the file, upheld the findings of the learned trial court to the effect that late Sh. Amar Nath was adopted by late Sh. Bakhtawar Singh and, therefore, late Sh. Amar Nath severed his link with the family where he was born. The

learned first appellate court further returned a finding that the Will set up by Tribhuwan Narain is not valid. The learned first appellate court further held that the property in the hands of late Sh. Amar Nath was self acquired property. The learned first appellate Court further held that late Sh. Amar Nath did not form/create any trust. Learned trial Court as well as the first appellate Court further recorded a finding of fact that the Will dated 26.04.1981, has not been proved on the file.

However, learned first appellate Court chose to reverse the findings of fact arrived at by the learned trial Court about the validity of the Will dated 03.05.1974 propounded by Prem Chand, defendant in the suits. Learned first appellate Court, has held that the Will has been proved on examination of attesting witness Sh. H.C.Mittal, Advocate as DW4 and Statement of Ved Parkash Tuteja, Tehsildar-cum-Sub-Registrar. However, the Will has been ignored by the learned first appellate Court by giving following reasons:-

- (i) the Will dated 03.05.1974 bears the signatures of late Sh. Amar Nath in English, whereas large number of documents have been produced on file to prove that late Sh. Amar Nath used to sign in “Urdu”
- (ii) Late Sh. Amar Nath has not given any reason to disinherit Om Parkash, plaintiff in one of the suits, who was residing with him since long and Sushil Kumar another plaintiff, who was near to him.
- (iii) It seems that Prem Chand alleged beneficiary under the Will Ex.D.1, was bent upon creating evidence in his favour by getting incorporated the Will-

testamentary document executed by Amar Nath in the year 1974 in the litigation in the year 1979, although there was not much relevance in the litigation against OmParkash.

(iv) Late Sh. Amar Nath has not mentioned the Will dated 03.05.1974 in the Will dated 26.04.1981.

(v) Late Sh. Amar Nath performed the marriages of Shanti Swaroop and Uma Rani, children of brother-in-law, but he excluded them while making a Will dated 03.05.1974.

Learned first appellate court ordered that the property of late Sh. Amar Nath would escheat in favour of State. Thus, these seven appeals have come for final disposal before this Court.

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

- (i) Whether in the presence of natural heirs, property can be ordered to escheat in favour of the State?
- (ii) Whether the judgment of the first appellate Court ignoring the registered Will is result of non-reading and misreading of evidence in the facts and circumstances of the present case.

QUESTION NO.1:

Whether in the presence of natural heirs, property can be ordered to be escheated in favour of the State?

Both the courts have concurrently found that late Sh. Amar Nath was adopted by late Sh. Bakhtawar Singh. This adoption took place much

before the Hindu Adoption and Maintenance Act, 1956, came into force. Late Sh. Amar Nath, although, died issueless but was having family members in the adopted family of late Sh. Bakhtawar Singh. Late Sh. Bakhtawar Singh was otherwise also maternal grand father of late Sh. Amar Nath. Therefore, late Sh. Amar Nath had left behind heirs, which would fall in the category of Class-II heir as per the schedule attached to the Hindu Succession Act, 1956. Therefore, the order of the first appellate court declaring that the property has escheated in favour of the State is wholly wrong and hence set aside.

In view of the discussions made, question no.1 is answered in favour of the appellant-Prem Chand.

QUESTION NO.2.

Whether the judgment of the first appellate Court ignoring the registered Will is result of non-reading and misreading of evidence in the facts and circumstances of the present case.

Learned trial Court as well as the first appellate Court have found that the Will dated 03.05.1974, has been proved on the file as per requirement of Section 68 of the Evidence Act, 1872

However, the learned first appellate court has ignored the Will for 5 reasons noted (supra). In the considered opinion of this Court, all the reasons given by the learned first appellate court to ignore the Will dated 03.05.1974 are erroneous.

First reason given by the learned first appellate court to ignore the Will is that late Sh. Amar Nath has signed the Will Ex.D7, in English, whereas late Sh. Amar Nath used to sign a large number of documents in “Urdu”.

Learned first appellate Court has overlooked the fact that late Sh. Amar Nath used to sign in English also. The appellant with a view to prove, got signatures of late Sh. Amar Nath compared with standard signatures of late Sh. Amar Nath available with the Punjab National Bank. The appellant examined Mr. Satwant Puri, DW5. The appellant further examined K.S.Puri, a Handwriting and Finger Print Expert who after comparing the signatures of late Sh. Amar Nath submitted a report that signatures of late Sh. Amar Nath on the Will-testamentary document and the Punjab National Bank, both in English, match/tally with each other. Once it is proved on the file that late Sh. Amar Nath used to sign in English, the Will could not be doubted on the ground that late Sh. Amar Nath used to sign in “Urdu” language also.

As per Section 63 of the Indian Succession Act, 1925, a testator is only required to put a mark. In this case, late Sh. Amar Nath has signed the Will in English.

Second reason given by the learned first appellate Court is that late Sh. Amar Nath has not given any reason to exclude Om Parkash, the plaintiff and Sushil Kumar, who were near to him. It may be noted here that Om Parkash used to live with late Sh. Amar Nath. Om Parkash had filed a suit claiming that he was adopted by late Sh. Amar Nath. Both the Courts have concurrently found that Om Parkash failed to prove his adoption by late Sh. Amar Nath. It is further proved on the file that Om Parkash had been troubling late Sh. Amar Nath who had to file Civil Suit against Om Parkash.

On the other hand, Sushil Kumar is son of cousin brother of late Sh. Amar Nath in the family he was born. However, once late Sh. Amar

Nath had been adopted , therefore, he severed his links with the natural family. Prem Chand is son of Brij Lal, brother of late Sh. Amar Nath in the family he was born.

Third reason assigned by the learned first appellate court to ignore the Will is that Prem Chand, alleged beneficiary under the alleged Will Ex.D1 was bent upon creating evidence.

The reason given by the first appellate Court is wholly erroneous. In 1979, late Sh. Amar Nath filed a suit for permanent injunction against Om Parkash son of Bhagwat Parshad and Sat Parkash son of Jado Ram. Prayer made in the suit was that the defendants be restrained from interfering in the proprietary and actual possession of the plaintiff over a residential property. Plaintiff in paragraph 2 of the plaint, which is part of the trial Court record asserted as under:-

“That the plaintiff has executed a Will in favour of some person as the plaintiff is an old man and he has no son or daughter. The defendant no.1 who is a distant relation of the plaintiff has felt annoyed and he has threatened the plaintiff that he would forcibly occupy the room in dispute. Defendant no.2 is also a relation of defendant no.1 and both are planning to dispossess the plaintiff from the room in dispute by use of force. All efforts of the plaintiff to dissuade them have failed.”

A reading of the aforesaid would prove that late Sh. Amar Nath during his life time had clearly stated that he had executed a Will. However, he did not disclose the details thereof in view of the fact that large number

of his family members were after his property. Learned first appellate court has committed a serious error in taking this pleadings to be an effort on the part of Prem Chand to create evidence. Prem Chand was not party to this suit. No evidence has been lead to prove that Prem Chand got this plaint drafted.

Next reason assigned by the Court to discard the Will dated 03.05.1974 is that late Sh. Amar Nath has not disclosed the Will dated 03.05.1974 in the Will dated 26.04.1981. Both the Courts have returned a finding of fact that the Will dated 26.04.1981 is not proved. Since the Will dated 26.04.1981 is not proved to have been executed by late Sh. Amar Nath, the Will dated 03.05.1974 could not be doubted on the ground that the Will dated 03.05.1974 has not been disclosed in the Will dated 26.04.1981.

Learned first appellate Court has further ignored the Will on the ground that the Will dated 03.05.1974 was subject matter of dispute between Prem Chand, Shanti Swaroop and Uma Devi and all these parties had entered into a settlement in that suit.

In the considered opinion of this court, if some legal heirs with a view to resolve their dispute had entered into some settlement, avoiding litigation, it cannot be taken as a circumstance to treat the Will to be a suspicious document. It always depends upon person to person whether he wants to indulge in a litigation or wants peace of mind. One should not forget that the Will dated 03.05.1974 is a registered document. Signatures of late Sh. Amar Nath have been proved by examining the attesting witnesses as also a Handwriting and Finger Print Expert.

Next reason assigned by the Court is that late Sh. Amar Nath has performed marriages of Shanti Swaroop, Uma Rani, children of brother-in-

law, however, they have been excluded. As noticed above, by the time late Sh. Amar Nath became old. Since he was owning sufficient properties, his relations started troubling him. Om Parkash son of his brother-in-law who was residing with him, troubled him the most. Late Sh. Amar Nath had to file various litigation against Om Parkash. In these circumstances, late Sh. Amar Nath chose Prem Chand, who was son of natural brother in the family he was born. There was nothing unnatural about it.

Both the Courts have further recorded a finding of fact that it was Prem Chand who performed funeral rights and ceremonies of late Sh. Amar Nath.

Learned counsel for the plaintiff-Sushil Kumar in Regular Second Appeal No.2174 of 1994 has argued that adoption of late Sh. Amar Nath is not proved on the file. He has submitted that education certificate of late Sh. Amar Nath shows that he is son of his natural father i.e. Gokal Chand. He has further drawn attention of the Court to the statement of late Sh. Amar Nath before the learned Magistrate Ist Class, Jagadhri in 1965 where he had mentioned himself as a son of Gokal Chand.

Both the Courts have discussed large number of documents, to return a finding that late Sh. Amar Nath used to write as Amar Nath son of Bakhtawar Singh. Income tax record of late Sh. Amar Nath shows that late Sh. Amar Nath is son of Bakhtawar Singh. Late Sh. Amar Nath had named his firm as M/s Amar Nath Bakhtawar Singh. Learned first appellate court has also relied upon notice issued by the Executive Officer, Municipal Committee, notice issued by Land Acquisition Collector, orders of House Tax assessment, certificate issued by the Punjab National Bank, copy of plaint in civil suit instituted by late Sh. Amar Nath, copy of affidavit and

copies of various other complaints filed by late Sh. Amar Nath consistently claiming him to be son of late Shri Bakhtawar Singh. In the presence of this overwhelming evidence, one or two documents would not prove that late Sh. Amar Nath was never adopted by late Sh. Bakhtawar Singh. Once, late Sh. Amar Nath himself in the various suits declared him to be son of late Sh. Bakhtawar Singh, including Civil Suit filed on 16.11.1979 against Om Parkash, referred to above, there is no reason why to take a different view than what has been concluded by both the courts below.

Learned counsel for Sushil Kumar has further argued that evidence of Om Parkash son of Late Jyoti Parkash, the second attesting witness has been wrongly ignored by the courts below. It may be significant to mention that Om Parkash son of Jyoti Parkash was the second attesting witness to the Will dated 03.05.1974. Both the courts below have given valid reasons to ignore the statement of Om Parkash on the ground that he has been won over by the plaintiffs and his statement is not reliable. The reasons assigned by the Courts to ignore the statement of Om Parkash are not shown to be erroneous.

Regular second appeal No.3417 of 2003 is arising out of the suit for possession filed by Prem Chand and others against Om Parkash son of Bhagwat Prasad and Tribhuvan Narain.

In view of the findings given above, declaring Prem Chand to be legatee of late Shri Amar Nath, the present suit deserves to be decreed.

Plaintiffs had filed a suit claiming possession. The suit was dismissed by the trial court being pre-mature as question of will was pending in this Court. Appeal filed against the same was also dismissed.

In view of the fact that the Will in favour of Prem Chand has been

upheld and Prem Chand had entered into a settlement with remaining plaintiffs, i.e. Shanti Swaroop, Uma Rani, hence the present appeal also deserves to be allowed for the same reasons.

In view of the discussion made hereinabove, the second question of law framed above is also answered in favour of the appellant.

Hence, the Regular Second Appeal Nos.939, 940, 941, 1800 of 1994, 3417 of 2003 are allowed, whereas Regular Second Appeal Nos.385 of 1996, 2174 of 1994 are dismissed.

**22nd December , 2017
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**(ANIL KSHETARPAL)
JUDGE**

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