

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA No.1637 of 1999 (O&M)

Date of Decision: September 01, 2017

Kehar Singh and others

...Appellants

Versus

Kishan Chand

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gaurav Chopra, Advocate
for the appellants.

Ms. Nupur Choudhary, Advocate,
for respondent No.1.

ANIL KSHETARPAL, J.

Defendants are in Regular Second Appeal against the judgments of the Courts below.

Following substantial questions of law arise in the present case:

- i. Whether an unregistered Will superseding an earlier registered Will, is required to be looked upon with a suspicion by the Courts?
- ii. Whether the judgments passed by the Courts below are result of misreading of evidence available on the file?

Dispute in the present case is with respect to estate of Sarasti Devi. Plaintiff, on the one hand, claims to be son of brother of Sarasti Devi whereas defendants-appellants, on the other hand, are admitted to be grandsons of sister of Sarasti Devi, who was also the first wife of Chhaju Ram, the husband of Sarasti Devi. In other words, Chhaju Ram was initially

married to Ishwari Devi. A daughter, Ratno was born from the marriage between Chhaju Ram and Ishwari Devi. Defendants Kehar Singh and Kartar Singh are sons of Ratno. Chhaju Ram later on married to Sarasti Devi, real sister of Ishwari Devi.

Sarasti Devi executed a registered Will in favour of defendants Kehar Singh and Kartar Singh on 02.07.1982.

Plaintiff-Kishan Chand filed a suit for possession claiming that Sarasti Devi had executed a registered Will in his favour on 09.01.1987. The Will dated 09.01.1987 is attested by two witnesses, namely, Jagir Singh, who has been examined as PW1 and Vidya Dhari, who had died before examination in the civil Court. Whereas defendants-Kehar Singh and Kartar Singh have set up the Will dated 11.01.1987 which of course is not registered, attested by two witnesses, namely, Balwant Singh who has been examined as DW1 and Vidya Dhari (since deceased).

Defendants also examined Sardara Singh Parmar, Handwriting and Fingerprint Expert, who opined that all the three Wills i.e. Will dated 02.07.1982, Will dated 09.01.1987 and Will dated 11.01.1987 bear the thumb impressions of Sarasti Devi.

Learned trial Court while appreciating the evidence available on the file, totally misdirected itself while deciding the case. Learned trial Court held that execution of the Will dated 09.01.1987 is an admitted fact. Learned trial Court gave following reasons to discard the last Will dated 11.01.1987.

- i. Subsequent Will dated 11.01.1987 is not registered, although the Will dated 09.01.1987 was registered. Once the executant

knew the importance of registration then it is not possible that the executant would execute an unregistered Will.

ii. Defendants have failed to explain what was the change in circumstances between 09.01.1987 when Will Ex.P1 was executed and 11.01.1987 when Will Ex.D5 was executed.

iii. Will dated 11.01.1987 contains minute details of Will dated 09.01.1987. It has been written that Will dated 09.01.1987 is being cancelled. Such details are not expected from an illiterate lady.

iv. Defendants are not directly related to late Smt. Sarasti Devi as they are maternal grandsons of Ishwari Devi, sister of Sarasti Devi.

Learned first Appellate Court also dismissed the appeal almost on the same reasons, however, it was added that the defendants have not proved fraud played by Kishan Chand-plaintiff.

I have heard the learned counsel for the parties at length and with their able assistance gone through the judgments and the records.

The execution of Will dated 11.01.1987 is proved on the file as the attesting witness Balwant Singh has been examined as DW1. Balwant Singh was cross-examined by the counsel for the plaintiff, however, Balwant Singh withstood the cross-examination.

Sardara Singh Parmar, Handwriting and Fingerprint Expert, has been examined as DW2, who has opined that all the three Wills i.e. 02.07.1982, 09.01.1987 and 11.01.1987 bear the thumb impressions of late Smt. Sarasti Devi. Sardara Singh Parmar was duly cross-examined but his

statement could not be shaken by the plaintiff.

11.01.1987 was Sunday and hence a holiday. Therefore, the subsequent Will could not have been registered on that day. It is also not in dispute that the Will dated 09.01.1987 was got registered after bringing the Sub-Registrar to the house of Sarasti Devi. Smt. She died on 15.01.1987. Therefore, the Will dated 11.01.1987 could not have been registered as it was holiday and Sarasti Devi died within 4 days. It is not in dispute that Sarasti Devi had earlier executed a registered Will in favour of the defendants on 02.07.1982.

Although, the Will dated 09.01.1987 has been cancelled by Will dated 11.01.1987 but certain facts do prove that the Will dated 09.01.1987 was not due to free will and volition of Sarasti Devi. The reasons to arrive at such conclusion are:

- i. Second attesting witness, namely, Vidya Dhari was examined during the proceeding before the revenue authorities while sanctioning mutation. He was duly cross-examined. His statement is Ex.D6 on the record. Sh.Vidya Dhari stated that Puran Chand, Scribe had obtained his signatures on the Will at his shop (Vidya Dhari). At that time, Sarasti Devi was not even present. Vidya Dhari in that very statement, Ex.D6, before the revenue authorities, which was statement on oath, stated that Sarasti Devi executed another Will dated 11.01.1987. Vidya Dhari has stated that he was neighbour of Sarasti Devi. He further stated that Kehar Singh and Kartar Singh defendants used to serve Sarasti Devi in her old age.

He further stated that Kehar Singh and Kartar Singh are in possession of the house as well as the land of late Smt. Sarasti Devi.

ii. It is proved on the file that Kishan Chand never resided with Sarasti Devi. Kishan Chand used to reside in village Beh Chuhar, Tehsil Dasuya whereas defendant were residing with Sarasti Devi at village Chingerwan. Still further Kishan Chand plaintiff has been set up by Jagir Singh, who is attesting witness of Will dated 09.01.1987.

iii. Kishan Chand admitted that he is living with Jagir Singh, attesting witness since the death of Sarasti Devi. Kishan Chand further admitted that the house of Sarasti Devi is in possession of Kehar Singh and Kartar Singh. Kishan Chand belongs to the village where maternal uncles of Jagir Singh are living. Although suggestion was given to Jagir Singh that Kishan Chand is son of cousin brother of maternal uncle but he denied.

Once it is proved that Kishan Chand had never lived with Sarasti Devi or served her in any manner then the claim of Kishan Chand stands on a weak footing. Still further, it is established on the file that Kishan Chand and Jagir Singh played active role in execution of Will dated 09.01.1987. Kishan Chand is the sole beneficiary of the Will. It is admitted by Jagir Singh that he and Kishan Chand had brought the Sub-Registrar to the village. It is further admitted by Jagir Singh that Kishan Chand was sitting 10 yards away when the Will dated 09.01.1987 was being executed.

Therefore, the active participation of Kishan Chand at the time of execution of Will is clearly proved. Still further, the statement of Vidya Dhari which has been exhibited as Ex.D6 demolished the case of the plaintiff when he states that his signatures were taken by Puran Chand when Sarasti Devi was not present at the shop of Vidya Dhari.

The learned trial Court has committed a material irregularity in ignoring the last Will, although, it is proved on the file. The reason for non-registration of the subsequent Will is apparent because 11.01.1987 was a Sunday. Learned Courts have further given undue importance to the fact that Sarasti Devi had executed a registered Will on 09.01.1987 and the defendants have failed to explain the change in the circumstances resulting in her Will on 11.01.1987. The Will is the last wish of the testator. Defendants cannot be expected to know the reason.

There is no dispute that Sarasti Devi had executed a registered Will in favour of the defendants-appellants on 02.07.1982. Will of 1982 remained in force for 5 years. Once it is proved on the record that defendants were living with Sarasti Devi and serving her, the Courts could not have drawn a conclusion that subsequent Will, which was executed after 2 days is suspicious because defendants had not led any evidence to prove any change in the circumstances.

Learned Court have further committed an error in doubting the Will on the ground that minute details of the Will executed two days before have been given. Learned Courts have over looked the fact that the Will dated 09.01.1987 and dated 11.01.1987 were scribed by the same Document Writer i.e. Puran Chand. Once Puran Chand was directed by Sarasti Devi to

cancel her Will dated 09.01.1987 it was obvious and natural for Puran Chand to give complete details and particulars of Will dated 09.01.1987. In these circumstances, the reason given by the Courts below to ignore the Will dated 11.01.1987 cannot be sustained.

The Courts have further ignored the claim of the defendants-appellants on the ground that they were not directly related to Sarasti Devi. In my considered opinion, the Courts have committed material irregularity in this regard. It is not in dispute that the defendants are grandsons of Ishwari Devi. Ishwari Devi was the first wife of Chhaju Ram. Sarasti Devi was married to Chhaju Ram after Ishwari Devi. Therefore, the defendants were related to Ishwari Devi and they were grandsons of Ishwari Devi i.e. real sister and the defendants were also grandsons of her husband. Therefore, the Courts were wrong in ignoring the claim of the defendants on the ground that the defendants were not directly related to late Smt. Sarasti Devi.

Learned Courts have further given undue importance to the fact that defendants have failed to prove their pleading that the Will dated 09.01.1987 was result of fraud. Once the execution of the Will dated 11.01.1987 is proved on the file, the last Will had to be implemented.

Nodoubt, it is the duty of the propounder to dispel suspicious circumstances surrounding the Will. However, suspicious circumstances have to be genuine and arising out of the facts of the case. Once there is a Will, which is proved on the file, the Courts are not justified in assuming the suspicious circumstances in the absence of pleadings and the evidence available on the file. The Will always become operative after the death of

the testator. It is the last wish of the testator. Once a Will has been proved on the file in accordance with law, the Courts should be slow in interfering with the wish of the testator, unless there are some strong circumstance or evidence available to doubt the authenticity of the Will.

In view of discussion made above, both the questions of law framed above are answered in favour of the appellants. The appeal filed by the appellants is accepted and the judgments and decrees passed by the Courts below are set aside.

(ANIL KSHETARPAL)
JUDGE

01.09.2017
sk/parveen kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No