

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.433 of 2007 (O&M)

Date of Order:01.12.2017

Bant Singh and another

..Appellants

Versus

Didar Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. J.R.Mittal, Sr. Advocate, with
Mr. Lalit Sharma, Advocate,
for appellant no.1.

Mr. Surinder Garg, Advocate,
for appellant no.2.

Mr. Jai Bhagwan, Advocate,
for the respondents.

ANIL KSHETARPAL, J.
C.M.No.9929-C-2017

Prayer in this application is to dispose of the appeal qua appellant no.2-Karam Singh in terms of the compromise, copy whereof has been annexed as Annexure A-1.

Learned counsel for the parties have stated that all the parties to the compromise have signed. The deed of compromise has been placed on record, which is taken on record as mark 'C'.

Counsel for the parties are present in the Court and reiterate the terms of the settlement as arrived at between the parties.

In view thereof, the appeal with respect to Karam Singh, appellant no.2, shall stands disposed of in terms of a deed of compromise, which has been marked as 'C'. The deed of compromise dated 24.07.2017 mark 'C' shall form part of the decree.

C.M.No.1190-C-2007

Application is for permission to lead additional evidence.

Reply to the application filed on behalf of the respondents is taken on record.

The aforesaid application shall be discussed while dealing with the main case.

MAIN

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

- (i) Whether the judgment and decree passed by the learned first appellate Court is result of misreading and non-reading of evidence?
- (ii) Whether a registered Will proved to have been executed by the testator, can be ignored by the Court on the basis of suspicious circumstances which are not supported by any evidence?

The appeal is surviving only on behalf of Bant Singh, who was defendant no.1 in the suit.

The dispute in the present case is with regard to the estate of Niranjn Singh situated in the village Ladda.

Niranjn Singh was having four sons and one daughter. He died on 04.06.2000. Plaintiffs, who are children and grand children of Niranjn Singh filed a suit for declaration claiming that land at village Ladda measuring 40 Bighas and 5 Biswas is inherited by them equally as per natural succession.

On the other hand, defendants pleaded that property at village

Ladda has been bequeathed in their favour under a “Will” (registered)-a testamentary document dated 22.08.1994.

Learned trial Court after appreciating the evidence available on the file, dismissed the suit and held that the Will stands proved on the file. However, learned first appellate Court held that the registered Will is surrounded by suspicious circumstances and, therefore, the Will is liable to be ignored and the property at village Ladda would be inherited by all the natural heirs in accordance with Hindu Succession Act, 1956. The reasons assigned by the learned first appellate Court for ignoring the Will are as under:-

- (i) There is no evidence that the relations between the plaintiffs and late Sh. Niranjan Singh were strained;
- (ii) the attesting witness i.e. Surjit Singh could not identify his thumb impression on the Will while appearing in the Court;
- (iii) Second attesting witness who is alive has not been examined;
- (iv) No evidence has been led to prove registration of the Will;
- (v) Testator on the date of execution of the Will was approximately 70 years old and, therefore, assumed to be of weak mind;
- (vi) Surjit Singh, the attesting witness who has been examined as DW2, had stated in the evidence before the revenue authorities that the Will was in favour of Didar Singh, whereas “Will” in fact was in favour of Bant

Singh and Karam Singh.

I have heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record of the case.

A registered Will executed by the testator is a solemn document. The Courts are required to make an attempt to give effect to the wish of the testator, who is no more in the world. A registered document has presumption of genuineness. The Courts are not justified in ignoring the registered "Will"-a testamentary document unless there are strong suspicious circumstances which create doubt in the mind of a reasonable person about its genuineness.

Now let us deal with the each reason given by the learned first appellate Court to discard the Will.

The first reasons assigned by the first appellate Court that there is no evidence of strained relationship between the plaintiffs and Niranjana Singh. While executing the Will the testator is not required to give reasons as to why he is preferring a particular person for bequeathing his property. In this case, Niranjana Singh had executed the Will in favour of his two sons, namely Bant Singh and Karam Singh. It has come into evidence that he had given various properties to his other legal heirs including children of another son i.e. Dharam Singh through a civil Court decree. Through this Will the testator was only bequeathing the property in a particular village. In the opinion of this Court, the wish of the testator should be honoured by the Courts.

The second reasons given by the learned first appellate Court that the attesting witness could not identify his thumb impression, in the

considered opinion of this Court is not correct. The attesting witness when appeared in the witness box as DW2, in examination-in-chief, specifically stated that the Will was executed in his presence and Niranjana Singh and other attesting witnesses had signed/thumb marked the Will in his presence and he has also thumb marked the Will in the presence of the testator. The witness when examined in the Court was 70 years old. He specifically stated that his eye sight is weak. If during the course of cross-examination, the witness could not identify his thumb impression that itself cannot be taken as a factor to ignore a registered Will. Once he has fulfilled the requirement of Section 63(c) of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872, the registered Will cannot be ignored on the ground that due to weak eye sight witness was not able to identify his thumb impression while appearing in the Court.

The next reason assigned by the learned first appellate Court that the other attesting witness has not been examined, therefore, the Will is not proved, is also not correct.

As per the requirement of Section 68 of the Indian Evidence Act, 1872, one attesting witness is sufficient to be examined if he fulfills the requirements of proving the Will in terms of Section 68 of the Evidence Act. In the present case attesting witness Surjit Singh has been examined. Second witness is required to be examined if first witness is unable to prove the due execution and attestation of the Will. In the present case, it is not disputed that Surjit Singh has proved the Will in accordance with the requirement of Section 68 of the Indian Evidence Act, 1872.

The next reason assigned by the learned first appellate Court is that there is no evidence of registration.

If one carefully reads the statement of Surjit Singh, he has stated that the Will was executed before a licenced scribe and after execution of the Will it was presented before the Sub-Registrar in the presence of the testator and both the attesting witnesses. Surjit Singh has put his thumb impressions on the endorsement where registration of the Will is endorsed. Therefore, the learned first appellate Court was incorrect in recording a finding that there is no evidence of the registration.

Learned counsel for the respondents has submitted that no official has been examined from the office of the sub-Registrar to prove the registration of the Will.

In the opinion of this Court, this argument is wholly untenable. The Will is required to be proved in accordance with Section 68 of the Indian Evidence Act. There is no requirement that official from the office of Sub-Registrar must be examined to prove the registration of the Will. The registration of the Will is established from the signatures and seal of the Sub-Registrar existing on the Will.

The next reason assigned by the learned first appellate Court to ignore the Will is that the testator was 70 years old at the time of execution of the Will and therefore assumed to be of weak mind.

It is significant to note here that testator remained alive for almost six years after execution of the Will. Still further, there is no medical evidence available on the file to prove that Niranjana Singh was of weak mind. In the absence of such evidence, the findings of the learned first appellate Court was based on no material and hence wholly incorrect.

The next reason assigned by the learned first appellate Court is that Surjit Singh, the attesting witness while appearing before the revenue

authorities at the time of sanction of the mutation had stated that the Will is in favour of Didar Singh i.e., the plaintiff.

The court has overlooked that Surjit Singh has been examined in this suit. The attention of Surjit Singh was drawn to the aforesaid statement. He explained that the Will is in favour of Bant Singh and Karam Singh. One should not overlook the fact that the Will is a written document duly signed by the executant. Once he has explained his error which was immediately corrected by the witness, it would not be safe to ignore the registered Will on this account.

Learned counsel for the respondents has further submitted that the area of the land sought to be bequeathed by the Will has not been mentioned.

Niranjan Singh has executed a Will in favour of the defendants with respect to the land situated in the village Ladda. It is not the case of the plaintiffs that apart from the land in dispute i.e. 40 bighas and 5 biswas, Niranjan Singh was owner of any other land.

Although, the appellants have filed an application under Order 41 Rule 27 of the Code of Civil Procedure, for permission to place on record judgment and decree dated 22.07.1996 by way of an additional evidence, however, during the course of arguments, it was admitted that such decree is not registered. The Court while passing a decree had observed as under:-

“It is hereby ordered that the suit of the plaintiff is decreed as prayed for subject to all encumbrances with no order as to costs. In view of the law laid down in Bhoop Singh Versus Ram Singh Major and others reported in AIR

1996 page 196-197, the decree passed by this Court shall operate only after the registration under Section 17 of Indian Registration Act, 1908.”

In view of the fact that since the decree has not been registered, which was a pre-condition for coming into effect of the aforesaid decree, therefore, the appellants cannot be granted permission to lead additional evidence.

Still further the decree sought to be pleaded is not pleaded before the Courts below.

In view of the discussion made above, both the questions are answered in favour of the appellants.

The appeal filed by the appellants is accepted qua appellant no.1. The judgment passed by the learned trial Court is restored and the suit filed by the plaintiffs qua appellant no.1 is dismissed.

December 01, 2017
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No