

Sr.No.102

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

RSA No.4555 of 2010(O&M)

Decided on: 24.11.2017

Lajwanti

.....Appellant

versus

Pawan Kumar and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Abhilaksh Grover, Advocate
for the appellant.

Mr. Gurcharan Dass, Advocate
for respondent No.1.

Rajbir Sehrawat, J.(Oral)

The present second appeal had been filed by the plaintiff challenging the judgment and decree passed by the lower Appellate Court; whereby the suit filed by the plaintiff was ordered to be dismissed; by reversing the judgment and decree passed by the Trial Court. It deserves mention here that after filing of the appeal; the plaintiff had expired and the sons of the defendant No. 1 in the plaint filed by Lajwanti had got themselves impleaded as legal representatives of the plaintiff; for the purpose of the present appeal. Hence they are contesting the present appeal.

For the convenience, the parties herein would be referred as the plaintiff and the defendant as they were described in the original suit.

The brief facts of the case are that the plaintiff Lajwanti wife of Sagar Chand filed a suit for partition claiming 2/7th share in the estate left by Sagar Chand on the basis of natural succession. It was claimed in the plaint that the said Sagar Chand was the owner of the suit property fully described

in the head note of the plaint. The construction of the suit property; was raised by Sagar Chand himself. Sagar Chand died on 12.02.1990 leaving behind the plaintiff and the defendants as his widow and the sons, besides daughters. It was claimed by the plaintiff that the alleged Will dated 02.12.1989 is forged and fabricated document. The said Sagar Chand, husband of the plaintiff, died intestate. It was further claimed that the properties mentioned at Sr.No. A and C are the commercial properties and the rent thereof, is being collected by defendants No. 1 & 2; and the plaintiff is not getting anything from rental income from the commercial properties involved in the suit; whereas she is entitled to 2/7th share of the rental income. It was further claimed that defendants No. 1 and 2 were asked many times to effect the amicable partition of the suit property. However, they refused, hence the suit was filed.

Upon notice, defendant No. 1, namely, Jagpal Singh appeared and filed written statement, wherein he took the stand that his father had executed a Will in favour of Jagpal Singh and Pawan Kumar in equal shares to the extent of 1/2nd share each in the suit property. It was further claimed that the properties mentioned at Sr. No. A consists of 3 shops which are in possession of the different tenants. Properties situated at Sr. No. B are in physical possession of the defendants. The defendants are in possession of the respective shops and they are running their Karyana business. Defendant No. 2 Pawan Kumar also filed a separate written statement and he also claimed the Will on the similar lines as by the defendant No. 1. Defendant No. 4, the daughter of Sagar Chand filed a separate written statement. In the written statement she supported the case of the plaintiff that her father Sagar Chand had died intestate and the suit properties are

joint and she also claimed 1/7th share in the suit property.

Parties led their evidence.

After hearing the learned counsel for the parties and perusing the evidence; the Trial Court decreed the suit filed by the plaintiff by rejecting the Will set up by the defendants. While rejecting the Will the Trial Court held that the Will is surrounded by suspicious circumstances. In support of this conclusion; the Trial Court recorded that the Hand Writing expert has been examined by the plaintiff and he has opined that the signatures on the Will do not tally with the standard signatures. Still further the Trial Court also recorded that the Will; was got registered by the beneficiary of the Will; after the death of the testator. This shows the insecurity of the beneficiaries qua the validity of the Will. Still further the Trial Court recorded that the second attesting witness of the Will has not been examined. Still further the Trial Court also recorded that the testator expired within two months of the execution of the Will, the alleged memorandum of partition; claimed by the defendant; have not been reflected in the Will and further that no reason has been given for exclusion of the wife and the daughters from the properties. Accordingly, the suit of the plaintiff was decreed; the Will was held to be not a valid Will.

Aggrieved against the judgment and decree, one of the defendant, namely, Pawan Kumar filed appeal before the lower Appellate Court. It is worth noticing that before the lower Appellate Court, defendant No. 4 in the original suit, the daughter of the said Sagar Chand, Asha Rani; also moved an application that she admits the Will executed by her father Sagar Chand. Hence before the lower Appellate Court only Lajwanti the plaintiff was left contesting the Will.

The lower Appellate Court allowed the appeal filed by defendant No. 2 and ordered the dismissal of the suit filed by the plaintiff, by upholding the Will in favour of defendants No. 1 and 2. The lower Appellate Court recorded a finding that the findings recorded by the Trial Court qua the validity of the Will are perverse. The lower Appellate Court recorded a finding that the Hand Writing expert can not be relied in this case for the reason that the signatures of the testator are in Urdu language and it has been admitted by Hand Writing expert that he does not have degree or diploma in Urdu language. The second reason given by lower Appellate Court for not relying upon the hand writing expert was that; the standard signature taken for comparison with the disputed signatures have not been proved on record; because the power of attorney from which the standard signature was taken; have not been proved on the proceedings of the present case. So far as the other evidence is concerned; the lower Appellate Court recorded a finding that the defendants have examined the attesting witness of the Will as well as scribe; who have proved the execution of Will. The lower Appellate Court held that once the positive evidence led by the defendants have duly proved the execution of the Will then mere opinion of the Hand Writing Expert can not supersede the positive proof of the Will; duly proved on record by the defendants. Accordingly, the appeal was allowed and the suit of the plaintiff was ordered to be dismissed.

Aggrieved against the judgment and decree, the plaintiff, Lajwanti filed the present appeal.

However, after filing the present appeal she expired and the legal representatives, as mentioned above, stepped into her shoes for the

purpose of prosecuting the present appeal.

While arguing the appeal, learned counsel for the appellant has submitted that the Will in question is surrounded by the suspicious circumstances as delineated by the Trial Court. Still further learned counsel submits that the hand writing expert has been examined by the plaintiff to prove the fraud involved in the execution of the Will. It is his submission that the hand writing expert has proved that the signatures on the Will are not of the testator. Still further he has submitted that Will was not got registered by testator despite executing the same in the Tehsil Court Complex. This supports the plea of fabrication of the Will.

On the other hand, learned counsel for respondent No.1, Pawan Kumar; has argued that the Will has been duly proved on record by examining both the attesting witnesses. It is his submission that the lower Appellate Court has rightly upheld the Will for the reasons mentioned in it. Hence, the present appeal deserves dismissal.

After hearing learned counsel for the parties and perusing the record with their able assistance, this Court is of the considered opinion that the judgment and decree passed by the lower Appellate Court deserves to be upheld and the present appeal deserves to be dismissed.

The contesting respondents(defendants) in the present appeal have duly proved the Will on record. There were two attesting witnesses of the Will namely, DW-14 Vinod Kumar and one Karam Singh. Beside this, the Will was also signed by DW-12 Manmohan Katyal Advocate who has scribed the Will. In the present case, the defendants examined the attesting witnesses Vinod Kumar as DW-14 and Manmohan Katyal Advocate as DW-12. The testimony of both the witnesses show that the Will has been

duly proved on record as per the requirements of law. Both the witnesses have stated that the testator had got the Will scribed as per his instructions, he put his signatures after understanding the same in the presence of the witnesses and the witnesses also put their signatures in the presence of testator. Nothing could be extracted during cross-examination of these witnesses to impeach their testimony. Hence the Will stands proved as per the requirement of law.

So far as the testimony of Hand Writing Expert is concerned, the lower Appellate Court rejected it for two reasons, namely, firstly, for the reason that Hand Writing expert did not know the language in which the signatures has been put and, secondly, that the standard signatures which were got compared with the disputed signatures have not been proved on record. This Court finds that the first reason given by the lower Appellate Court is not sustainable. For a Hand Writing expert it is not necessary to know the language in which the signature is put. For signature/hand writing comparison; the Hand Writing expert compares only the pattern of writing; the pressure of the pen and flow of the writing. He is not supposed to know what is written in the said signatures. Otherwise also, normally, no language is discernible from the signatures. Signatures can be only a mark put by the person who is putting his signatures. Therefore, the knowledge of the language in which the signatures are put, is totally irrelevant, so far as the testimony of Hand Writing expert is concerned. However, the second reason given by the lower Appellate Court for discarding the testimony of Hand Writing Expert is a valid reason. For getting the signatures on the Will compared the plaintiff was required to, first, prove the standard signatures before the Court. In the present case the lower Appellate Court

has rightly held that the standard signatures on the alleged power of attorney has not been proved before the Court. Hence the testimony of the Hand Writing Expert has rightly been discarded by the lower Appellate Court.

So far as the question of suspicious circumstances is concerned, the lower Appellate Court is right in holding that in view of the positive evidence of execution of the Will, as required by law, mere opinion of the Hand Writing Expert can not supersede the positive evidence. Otherwise, there are no such suspicious circumstances surrounding the execution of the Will. Mere fact that the Will is registered after the death of the testator is not a suspicious circumstance in itself. This is a transaction recognized by law. So far as the exclusion of the legal heirs is concerned, the very purpose of execution of the Will is, excluding some of the legal heirs. The testator in the present case has also mentioned in the Will why he is not giving something to the daughters or to the wife. Therefore, the exclusion of the legal heirs is also explained by the testator. The fact that the deed of the Will was written in the Court complex but the same was not got registered by the testator is also irrelevant. The testator might not have even considered necessary to get the same registered since the registration of the Will is not mandatory as per the law. The only requirement for sustaining the Will is to prove the same as per the requirement of law. Therefore, when non-registration itself is not a ground for setting aside the Will, then non-registration of the same on the same date when it was executed, can not be a ground of setting aside the validly executed Will. It deserves to be noticed here that it is not a case where the testator himself is alleged to have subsequently got registered the Will. Registration in the present case was got done only by the beneficiaries of the Will, may be, by way of abundant

caution. There is nothing extra ordinary or abnormal in the step taken by the beneficiaries.

No other argument was raised by learned counsel for the parties.

In view of the above, the present appeal fails. The judgment and decree passed by the lower Appellate Court are upheld. Hence, the present appeal is dismissed being devoid of any merits.

24th November, 2017
Shivani Kaushik

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*