

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

**RSA No.1326 of 2011 (O&M)
Date of Order: 26.09.2017**

Phool Singh and others

..Appellants

Versus

Smt. Santosh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajinder Goyal, Advocate,
for the appellants.

Mr. Aashish Yadav, Advocate,
for the respondents.

ANIL KSHETARPAL, J.

Plaintiffs are in regular second appeal against concurrent findings of fact arrived at by the Courts below.

The dispute in the present case is with respect to estate of one late Sh. Banwari Lal, who died on 06.09.2003. Plaintiffs are 8 sons of late Sh. Banwari Lal, whereas plaintiffs no.9 and 10 are grand sons of late Shri Banwari Lal from a pre-deceased son.

On the other hand, defendant no.1 is the widow of pre-deceased son of late Sh. Banwari Lal. Defendants no.2 to 13 have not chosen to contest the litigation.

The dispute in the present case is with regard to the validity of the alleged Will executed by late Sh. Banwari Lal, dated 05.04.2003, Ex.P1 available on the file. The Courts below have ignored the Will on the following grounds:-

(i) the Will is not scribed by a regular deed writer;

- (ii) the testator if wanted to ignore the claim of Santosh, defendant no.1, wife of a pre-deceased son, he should have got the Will registered;
- (iii) the testator remained alive for a period of 5 months after the date of execution of the Will but the Will was not got registered;
- (iv) the attesting witnesses of the Will are residents of different village than the testator;
- (v) the spacing between the lines on the first page and second page of the Will is different;
- (vi) there is a ink shade on the body of the paper and placing of thumb impression is not proper and entire ridge is missing.
- (vii) It is proved on the file that the plaintiffs were in litigation with late Sh. Banwari Lal and were not serving him.

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

Counsel for the appellant has submitted that the Will is proved on the file as both the attesting witnesses, namely, Rattan Singh and Zile Singh have been examined as PW1 and PW2. Zile Singh, PW2 is from the same village i.e., village Dadwana, where the testator used to live. He further submits that scribe of the Will, namely, Beer Singh has been examined as PW3. He is son of the daughter of late Sh. Banwari Lal. He has further submitted that the spacing between the lines being irregular as

held by the Courts, is a factually incorrect finding. He has further submitted that both the pages of the Will are duly thumb marked by the testator. He has further submitted that there is a misreading of the statement of Santosh by the Courts below. He has submitted that Santosh had admitted in the cross-examination when she appeared in evidence that she shifted to the place of her parents against the wishes of late Sh. Banwari Lal. The thumb impressions of late Sh. Banwari Lal on the Will are admitted by her.

The only case set up by the defendants is that these thumb impressions were obtained after the death of late Sh. Banwari Lal. He has further submitted that the Will is a natural Will as late Sh. Banwari Lal bequeathed his property in favour of his 8 sons who were alive and 2 grand sons of a pre-deceased son. He further submits that in the Will, reason why Santosh, defendant no.1, who is widow of a pre-deceased son has been disinherited has been given as she shifted to the place of her parents against the wishes of late Sh. Banwari Lal.

On the other hand, learned counsel for the respondents has supported the judgments passed by the Courts below. He submits that there is a concurrent findings of fact arrived at by the Courts below. He has submitted that both the witnesses have stated in the evidence that the Will is of one page, whereas factually the Will runs into 2 pages. He has further submitted that Beer Singh, one of the attesting witnesses had submitted that late Sh. Banwari Lal had put his right thumb impression whereas it is of left thumb impression. He has further submitted that the defendants has examined Handwriting and Finger Print Expert, who has opined that the thumb impressions of late Sh. Banwari Lal are abnormally placed. He has further opined about the spacing. Learned counsel for the respondents has

further read over the opinion of the Handwriting and Finger Print Expert where he has stated that the entire ridges of the thumb impressions are missing. He further submits that late Sh. Banwari Lal was in litigation with some of the plaintiffs and that litigation remained pending upto the year 1999, therefore, the relationship between the plaintiffs and late Sh. Banwari Lal were not cordial. Counsel for the respondents further submits that the property is joint Hindu family property and, therefore, Will could not be executed by late Sh. Banwari Lal.

In my considered opinion, the following substantial questions of law arise for consideration in the present case:-

- (i) Whether while adjudicating upon the genuineness of a Will, the Courts are required to give effect to the Will unless there are some strong circumstances or evidence available on the file to create a strong doubt about its validity?
- (ii) Whether a Will is required to be compulsorily registered if the testator is excluding a natural heir from testamentary succession?
- (iii) Whether a non-registration of a Will is sufficient to hold that the Will is not genuine?

In this case, the thumb impressions of deceased Banwari Lal on the Will are admitted by the defendant. It is the case of the defendant that these thumb impressions were obtained after the death of late Sh. Banwari Lal. Defendant no.1 has failed to lead any evidence on this aspect of the matter.

Late Shri Banwari Lal, was having 10 sons. Plaintiff Nos. 1 to

8 are sons of late Sh. Banwari Lal, whereas plaintiff nos.9 and 10 are sons of pre-deceased son, namely, Rattan Singh son of late Sh. Banwari Lal. In other words, plaintiff nos.9 and 10 are grand sons. Defendant no.1 is widow of Prem Singh, another pre-deceased son of late Sh. Banwari Lal. Prem Singh died issueless. It is also admitted position on the record that after the death of Prem Singh, Santosh against the wishes of late Sh. Banwari Lal, left the house and started living with her parents. Santosh has admitted this fact in cross-examination. It is specifically recorded in the Will that Santosh is not being given share as she has left the house after the death of her husband against the wishes of late Sh. Banwari Lal.

The Will is scribed by Beer Singh, grand son of late Sh. Banwari Lal (son of daughter of late Sh. Banwari Lal). He has been examined as PW3. Both the attesting witnesses have been examined, Zile Singh, the attesting witness, belongs to the same village where testator used to live. The testator was a member of Panchayat. Therefore, the reason given by the learned trial Court that the Will has not been scribed by a regular deed writer, is clearly erroneous. There is no requirement that the Will must be scribed by a regular deed writer. In the present case, the Will was scribed by grand son (son of daughter of late Shri Banwari Lal) who had no personal interest.

Will is not required to be compulsorily registered. The registration of the Will is optional. In the present case, the testator did not get the Will registered. However, this reason itself is not sufficient to hold that the Will is doubtful.

Will is executed by the testator bequeathing his property in a particular manner. The Will is always executed to deviate from natural

succession.

I have examined the Will, which is Ex.P1 on the record. It was a hand written Will. It runs into two pages. There is not much difference in the space between the lines on first page and second page. When the Will is written with hand, the spacing between the lines cannot be exactly equal. Both the pages of the Will are duly thumb marked by the testator. On the first page, the thumb impression is at the end of the page, whereas on the second page, the thumb impression is where the narration of Will comes to an end. The thumb impressions cannot be said to be at inappropriate place. On the second page, the narration of the Will goes upto half of the page and thereafter immediately thumb impressions of the testator is found to be affixed. Therefore, it cannot be said that the Will is doubtful because there is small difference in the space between the lines on both the pages.

In the Will, the testator makes a reference to his 10 sons:-8 sons who alive and 2 pre-deceased son, 8 daughters, 2 wives. The testator also makes a reference to the effect that defendant no.1 and her husband Prem Singh do not have child, although, the other pre-deceased son had two sons. In these circumstances, the findings of the courts below that space between the lines was irregular and, therefore, it is a suspicious circumstance is found to be erroneous.

Learned Courts have further held that thumb impressions of the testator is having ink shade on the body of the papers and his thumb impressions are giving an impression as if someone else had got affixed the thumb impressions by holding the hand of the testator. It has further been found that the thumb impressions are not complete as middle portion of the thumb impression is not visible.

I have seen the Will carefully. On first page, late Shri Banwari Lal has put his thumb impression at the end. Thumb impression is having a blank space towards lower end, whereas thumb impression on the second page is also to the similar effect. Defendants has got examined the aforesaid thumb impressions from a Handwriting and Finger Print Expert. His report Ex.DW4/A is available on the file. A reading of the report would show that the expert has given opinion about the difference in space between the lines. He has also opined that the thumb impression on the first page is a small mark, whereas thumb impression on the second page is larger. He has further opined that the thumb impressions are not proved but have been put in natural course of business.

Handwriting and Finger Print Expert has not given any opinion as to whether the thumb impressions belongs to the testator or not? At this stage, it may be re-capitulated that the thumb impression of the testator is an admitted fact. As noticed earlier the thumb impressions of testator are found at a proper place and the thumb impressions are clear and visible. Therefore, the findings of the Courts below are erroneous.

In view of the discussion made hereinabove, all the questions are answered in favour of the appellants and against the defendants.

The regular second appeal is allowed and the judgments and decrees passed by the Courts below are set aside.

26th September, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No