

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**RSA No. 2097 of 2011 (O&M)
Decided on: 21.11.2017****Gurdial Singh and Anr.****.....Appellants****versus****Baj Singh and Ors.****.....Respondents****CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT****Present:** Mr. Sandeep Punchhi, Advocate
for the appellants.Mr. Sanjeev Kumar Arora, Advocate
for respondents No.1, 3 and 4.*********RAJBIR SEHRAWAT, JUDGE (ORAL)**

This is the second appeal filed by the plaintiffs; against the concurrent judgments and decrees passed by the Courts below, whereby their suit for declaration; claiming inheritance on the basis of the Will executed by their mother, was dismissed.

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

Briefly stated, the facts of the present case are that the suit property was owned by Smt. Sant Kaur. She had six sons. The plaintiffs are two sons of said Sant Kaur. Sant Kaur died on 07.01.1993. The plaintiffs claimed that Sant Kaur had died in their house and they also performed her last rites. She had great love and affection towards the plaintiffs and due to this reason, she executed a registered Will on 28.10.1992 in favour of the plaintiffs, to the exclusion of her other sons. Therefore, it was claimed on the basis of the Will; that the plaintiffs are the only legal heirs of their mother Sant Kaur. The mutation qua, the suit property left behind by Sant

Kaur was wrongly entered in favour of all the natural heirs. Therefore, the

suit for declaration of the mutation as illegal; and for declaration of the plaintiffs as exclusive owner on the basis of the Will, was filed.

On notice, the defendants No.1, 3 and 4 filed their written statement and contested the suit. Besides, routine preliminary objections, it was claimed on merits that the suit land is ancestral property. The plaintiffs and defendants are legal heirs of Sant Kaur. Therefore, they all are entitled to inherit her. Hence, the mutation has rightly been entered by the revenue authorities. It was further claimed that no Will was executed by Sant Kaur in favour of the plaintiffs. Still further, it was claimed that the alleged Will dated 28.10.1992; is a forged and fabricated document. It was further pleaded that Sant Kaur was of unsound mind at the time of the execution of the alleged Will. Therefore, prayer for dismissal of the suit was made.

Parties led their evidence.

After hearing the parties and appreciating the evidence, the trial Court dismissed the suit filed by the plaintiffs; saying that the plaintiffs have failed to prove the Will in their favour. Aggrieved against the judgment and decree passed by the trial Court, the plaintiffs filed the appeal before the lower Appellate Court. However, the lower Appellate Court also dismissed the appeal filed by the plaintiffs.

While dismissing the appeal, the lower Appellate Court recorded a finding that the defendants; who were excluded from the Will, have claimed inheritance in their favour. But, the plaintiffs have failed to prove the execution of Will, as per the requirements of law, as prescribed under Section 69 of the Evidence Act. Therefore, the Will was held to be not proved and the findings of the trial Court and the dismissal of the suit were affirmed.

Aggrieved against the judgment and decree, the plaintiffs have

filed the present appeal.

While arguing the case, learned counsel for the appellants/plaintiffs has submitted that since both the attesting witnesses of the Will in question had already expired, therefore, the plaintiffs were not in a position to produce the attesting witnesses. However, it is his submission that; the scribe of the Will and sub-Registrar, who registered the Will have been duly examined by the plaintiffs. It is his further submission that both these witnesses have stated that the executant and the witnesses had put their signatures in their presence. Still further, it is the submission that both the witnesses have stated that contents of the Will were read over to the executant, and only thereafter he had put his signatures on the Will. To support his argument learned counsel has relied upon the judgment of this Court reported in **2006 (2) RCR (Civil) 140** titled as **Babu Singh and Ors. Vs. Ram Sahai @ Ram Singh**, and another judgment of this Court reported in **2002 (1) RCR (Civil) 134** titled as **Mohinder Kaur Vs. Harbhajan Singh**. It is contended by the learned counsel for the appellants, while taking help of the above said judgments, that in the present case also scribe of the Will has deposed that the testator signed the Will in their presence after understanding everything. Still further, it is his submission that the scribe has also deposed, that even the witnesses have put their signatures in his presence and in the presence of testator. The same argument is raised by the learned counsel for the appellants qua the testimony of the Sub-Registrar.

On the other hand, learned counsel for the respondents/defendants have submitted that the Will has not been proved as per the requirement of law. To prove the instrument of Will, the appellants

were required to produce the attesting witnesses of the Will. If the attesting

witnesses were not available, then the requirement of Section 69 of Evidence Act were to be fulfilled by the appellants to prove the Will. However, according to the learned counsel for the respondents, even the testimony, as required under Section 69 of the Evidence Act, has not been led on record by the appellants. Therefore, the Will has not been proved. Hence, it is the submission of the learned counsel for the respondents that there is no illegality or perversity in the findings recorded by the Courts below. To support his contention, the learned counsel for the respondents has relied upon the judgment of this Court reported in **2012 (4) Law Herald 3314** titled as ***Hardeep Singh vs. Kulwindner Singh*** and another judgment of this Court reported in **2015 (1) PLR 498** titled as ***Gourav and Ors. vs. Smt. Shakuntla Chaudhary and Ors.***

After hearing the learned counsel for the parties and perusing the record with their able assistance, this court is of the considered opinion that the arguments raised by the learned counsel for the respondents deserves to be succeeded. The argument of the learned counsel for the appellants are not found to be sustainable in law. It has come on record that both the attesting witnesses of the Will had expired at the time, when the plaintiffs/appellants herein were leading their evidence. However, the Evidence Act has not left the person claiming a Will in his favour helpless in such a situation. Section 69 of the Evidence Act makes a provision to prove the Will, when none of the attesting witness is found or both the attesting witnesses are dead. This Section provides that in case, none of the attesting witness can be found then to prove the document, it must be proved that the attestation of one attesting witness is in his handwriting and that the signatures of the person executing the document is also in the handwriting of that person, who is stated to have executed that document.

Still further, Section 67 of the Evidence Act cast a duty upon the person claiming the signatures of a person, to be the signatures of that particular person, to prove the signatures or handwriting alleged to be of that person, to be in the handwriting of the person stated to have signed or written such document. The Evidence Act does not stop here. Still further, the situation is explained by the Section 47 of the Evidence Act, which provides for modalities of proving the handwriting or signatures of a person on a document. Section 47 of the Act provides that when a document is claimed to have been written or signed by the person who is not available any more, then the opinion of a person, who is conversant with the handwriting of a person, who is claimed to have written or signed the document, is a relevant fact which can be proved by the party, to prove the signatures of a person, who is stated to have signed or written the said document.

The above said provisions make it clear that Evidence Act has cast a duty upon the plaintiffs to prove the signatures, claimed by the plaintiffs to be of attesting witness and the executant of the Will, to be of the attesting witness or of the executant, irrespective of the stand taken by the other side. The method of proving that signatures have also been delineated by the Evidence Act. Therefore, in case any one of the attesting witness of Will is not available to prove the attestation /execution of the document, then a duty, as aforesaid, is cast upon the plaintiffs to prove the handwriting and signatures of the attesting witness and the executant of the Will. However, in the present case, the plaintiffs have abjectly failed to prove the signatures and handwriting on the alleged Will as per the requirements of the law. Both the Courts have rightly appreciated the evidence led by the parties.

The judgments relied upon by the learned counsel for the appellants are not of any help to the case. The judgments are distinguishable on the facts of the present case. In the judgment cited by the learned counsel for the appellants, it had come on record that the scribe or the Sub-Registrar had deposed before the Court that they knew the executant and attesting witness personally. Therefore, the scribe or the Sub-Registrar was held to have proved the signatures of the attesting witness and the executant of the Will, in view of the fact that none of the attesting witness was available. However, in the present case, both these witnesses, scribe PW2/A, Baldev Singh and the Sub-Registrar PW-2 Hardeep Singh Dhillon; have admitted in cross-examination that they did not personally know; either the attesting witness or the executant of the Will. Hence, either the scribe or the Sub-Registrar cannot be said to have proved the signatures of the attesting witness or the executant. It was a duty cast upon the plaintiffs, as stated above, to connect the signatures to the attesting witness and the executant of the document. Merely because, the scribe and the Sub-Registrar has stated that the witnesses and the executant had put their signatures in their presence, does not mean that the signatures have been connected to the attesting witness or the executant of the Will. The connecting link between the signatures and the person stated to have signed this document is lost the moment, as these witnesses admitted, that they do not know the witness and the executant personally. In that situation, the law provided another remedy for the plaintiffs to connect the signatures by comparison by handwriting expert. However, even that methodology was not adopted by the plaintiffs in the present case.

On the other hand, the judgments cited by the learned counsel

for the respondents, covers the case of the respondents on all its four.

The judgments have categorically held that in case the attesting witness of the Will are not available then Section 69 of the Evidence Act has to be necessarily complied with by the plaintiffs who claims the benefit of the Will. Still further, the judgments have laid down that to fulfill the requirements of Section 69 of the Evidence Act, as delineated above, the signatures of the attested witness and the executant of the Will, has to be necessarily connected to the witness and the executant. Therefore, these judgments take the steam out of the arguments of the learned counsel for the appellants altogether.

It is further submission of the learned counsel for the appellants that the respondents have neither pleaded that the signatures on the Will are not of the executant and of the attesting witnesses nor they have put any suggestions to the witness of the appellants that they are not the signatures of the attesting witnesses or the executant. Therefore, according to the learned counsel for the appellants, the appellants were not required to connect the signatures claimed on the Will to the attesting witness or to the executant. However, this argument of the learned counsel for the appellants is also devoid of any merit. Once the Will is claimed by the plaintiffs, it is their duty to prove the Will as per the requirement of Section 63 of the Indian Successions Act, and as per the standards required in Section 68 of the Evidence Act and, further, as per the requirement of Section 47 of the Evidence Act if the attesting witnesses are not available. Since it is the requirement of the Evidence Act that the document required to be attested have to be proved only by proving the signatures of the executant and the attesting witness, therefore, the pleading or omissions on the part of the defendants to put the suggestions to the witnesses of plaintiff are totally irrelevant. To obtain the decree of the Court, the plaintiffs are required to

prove their case as per the standards of law. They cannot harp upon the alleged weakness of the evidence of the defendants, exclusively. The compliance of law of evidence is not excused only because of some omissions on the part of the defendants. Hence, this argument of the learned counsel for the appellants is also liable to be rejected.

No other argument is raised.

In view of the above, the present appeal fails and the same hereby dismissed being devoid of any merits.

21st November, 2017

Manju

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No