

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

**RSA No.4703 of 2012 (O&M)
Date of Order:18.12.2017**

Manjit Singh and others

..Appellants

Versus

Smt. Narinder Kaur

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amardeep Singh Gill, Advocate,
for the appellants.

Mr. Rajeev Sharma, Advocate,
for respondent no.1.

ANIL KSHETARPAL, J (Oral)

Plaintiff and defendant no.2, who was proforma defendant have filed this appeal, against the judgment passed by the learned first appellate Court reversing the judgment and decree passed by the learned trial Court.

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

- (1) Whether a testamentary document, duly proved on the file in accordance with Section 68 of the Evidence Act, can be ignored by the Court on the alleged suspicious circumstances which are not proved on the file?

The dispute in the present case is with regard to the validity of the testamentary document executed by Sardara Singh in favour of plaintiff and defendant no.2., sons of the testator.

Learned trial Court after appreciating the evidence available on the file, held that the Will (testamentary document) has been proved by

PW1 Harbans Singh, the attesting witness.

Learned first appellate Court has reversed the findings of the learned trial Court while giving three reasons:-

- (i) the thumb mark of Sardara Singh is ink smudged;
- (ii) the attesting witnesses could not tell who had typed the Will (testamentary document), whereas it is a Will (testamentary document) written with hand;
- (iii) the attesting witness could not disclose when the testator died.

In the considered opinion of this Court, the testamentary document which has been proved on the file cannot be ignored by the Court unless some suspicious circumstances are brought to the notice of the Court to create a dent on the validity of the Will (testamentary document). Will (testamentary document) is a solemn document executed by a person who is no more in the world. Such document can not be ignored by the Court unless some substantive suspicious circumstances have come on the record which prick on the conscious of the Court and the Court is able to record a finding that such testamentary document is not natural.

In the present case, it is not disputed before me that the statement of one attesting witness i.e. Harbans Singh fulfills the requirement of Section 68 of the Indian Evidence Act.

First reason given by the learned first appellate Court is that the thumb impression of Sardara Singh is ink smudged. As per Section 63 of the Indian Succession Act, 1925, testator has to put a mark on the testamentary document. It is not in dispute that the aforesaid mark has been put in by

Sardara Singh. However, due to supply of excessive ink, the pattern of the thumb impression is not clearly visible. However, that would not itself make the Will doubtful (testamentary document). The Will (testamentary document) is hand written and it is attested by two attesting witnesses one Harbans singh and Second by Ajit Singh, who is ex-Sarpanch of the same village where deceased Sardara Singh used to live. Defendant has not produced any evidence to create a dent on the credibility of the Will (testamentary document).

First appellate Court has also found the Will to be suspicious on the ground that attesting witness had stated that the Will was typed whereas it was hand written. In the considered opinion of this court the attesting witness was being examined after sufficient time and the witness may not remember minute details. It is not in dispute that attesting witness has made a statement identifying his mark on the Will and identifies the thumb impression of the testator and mark of the other attesting witness. Thus requirements of Section 68 of the Evidence Act stood complied with.

Another reason given by the learned first appellate Court is to ignore the Will is that the attesting witness does not know as to when Sardara Singh died. The attesting witness is to prove the attestation of the document. Only because the attesting witness did not remember as to when Sardara Singh, the testator had died cannot be taken as a suspicious circumstances to ignore the Will (testamentary document). It is not in dispute that Sardara Singh lived for more than one year after the date of execution of the Will.

Taking into consideration the aforesaid facts, the question of law framed earlier is answered in favour of the appellant. The judgment and

decree passed by the learned first appellate Court is set aside and that of the learned trial Court is restored.

The regular second appeal is allowed.

December 18, 2017
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(ANIL KSHETARPAL)
JUDGE

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