

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

RSA No.2860 of 2016 (O&M)

Date of Order:31.07.2017.

Santosh Chaudhary

..Appellant

Versus

Dimpal Chaudhary and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.K.Ganga, Advocate,
for the appellant.

Mr. Ashish Aggarwal, Sr. Advocate, with
Ms. Aakriti Malik, Advocate,
for respondent no.1-caveator.

Mr. Shiv Kumar, Advocate,
for caveator-respondent no.2.

ANIL KSHETARPAL, J.

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

Plaintiff-respondent had filed a suit for joint possession and declaration with consequential relief of permanent injunction. Plaintiff had claimed that she is entitled to 1/3rd share in the property left by her father late Sh. Nand Lal. It was pleaded that the Will dated 23.9.2004 and mutation entered on the basis of aforesaid Will is null, void and illegal. It was pleaded that late Sh. Nand Lal had solemnized two marriages. Plaintiff was born on 28.01.1974 from first marriage of late Sh. Nand Lal with Smt. Shakuntla Devi. Thereafter late Sh. Nand Lal divorced Shakuntla Devi. However, plaintiff was brought up under the care and custody of family of late Sh. Nand Lal. Sh. Nand Lal had solemnized

second marriage with defendant no.1-Santosh Chaudhary and a son was born. Smt. Santosh Chaudhary also had a daughter from previous marriage. Late Sh. Nand Lal was a government employee, serving as a Head Master in M.C.D.School. It is the case of the plaintiff that defendant no.1 used to harass the plaintiff and used to get signatures on various papers/stamp papers.

Defendant appeared and contested the suit. Defendant pleaded that late Sh. Nand Lal had executed a Will dated 23.09.2004. It was further pleaded that plaintiff had executed an affidavit dated 19.04.1999, relinquishing all her rights in the property belonging to late Sh. Nand Lal.

After the parties led their evidence, learned trial Court decreed the suit filed by the plaintiff. Learned trial Court found that following reasons to hold that the Will is suspicious:-

(i) the Will was allegedly thumb marked by late Sh. Nand Lal and it was written as left thumb impressions, whereas Fingerprint and Hand Writing Expert had examined the thumb impressions and had opined that it is of the right hand. Hence, no comparison was possible. It was further found by the trial Court that males generally put their left hand thumb impression, whereas women put their right hand thumb impressions. It is a general practice, which is also incorporated in the instructions issued to the deed writers by the registration authorities;

(ii) the spacing on the second page of the Will is squeezed at the end and it appears that the signatures and thumb impressions were existing on the blank papers and the Will has been typed thereafter;

(iii) the alleged affidavit of the plaintiff dated 19.04.1999 clearly shows that defendant no.1 was trying to usurped the entire property

and her eyes were always on the property of late Sh. Nand Lal . The learned Court found that Ex.D1, the affidavit shows that this affidavit was executed by the plaintiff as witness because the word witness has been written in Hindi. However, later on above the word witness, 'deponent' has been added in "Hindi" .

(iv) Learned Court has further found that testator has not even disclosed, who were his legal heirs. Even the name of Varun who was the only son of late Sh. Nand Lal has been mentioned.

For the reasons aforesaid and other reasons given by the learned Trial Court, the suit filed by the plaintiff was decreed.

Defendant-appellant filed first appeal, which has also been ordered to be dismissed, after re-appreciating the evidence available on record.

Learned first Appellate Court has further recorded that last line of the Will has been written even after the Will had concluded because after conclusion of Will, date of execution has been mentioned, thereafter, one line has been added. The signatures of late Sh. Nand Lal are at a very narrow space. It appears that blank papers have been used. Learned first Appellate Court further reiterated the reasons assigned by the learned trial Court. Therefore, the appeal filed by defendant no.1 was ordered to be dismissed.

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

Learned counsel for the appellant has submitted that no doubt the spacing on the second page of the Will is uneven. However, he has

submitted that the three lines which the trial Court has recorded that these have been squeezed, do not in any way affect the Will. The major part of the Will is on the first page, which is also duly signed by late Sh. Nand Lal. Therefore, mere difference in spacing on the second page of the Will would not affect the validity of the Will. Learned counsel has further relied upon Ex.D1, dated 19.04.1999, affidavit of the plaintiff relinquishing her rights in the property of late Sh. Nand Lal.

I have considered the submissions made by counsel for the appellant. However, I am unable to agree.

Will always comes into effect after the death of testator. In the present case Will is not registered. Although, it is true that the Will is not required to be registered but while examining the genuineness of the Will, registration of a Will is certainly one of the consideration. It is admitted position on the record that Will was executed and notarized in the District Court Complex. No reason has been given as to why that was not registered.

Further, a look at the Will shows that the reasons assigned by the Courts below are correct. The spacing in between the lines on page 2 of the Will is not consistent. The last three lines of the Will have just been squeezed in giving impression that the signatures of the testator were already existing on the blank papers. The last line on the Will has been further added even after the narration in the Will had concluded and date of execution had been put in. It is specifically mentioned on the Will at page 1 as well as at page 2 that late Sh. Nand Lal has put in left thumb impression. However, Fingerprint and Hand Writing Expert has found the thumb impression of the right hand. Late Sh. Nand Lal was educated, working as a

Head Master. The Will was executed in the District Court Complex and was attested by Notary Public. Therefore, it cannot be said that the persons who were scribing the Will or attesting the Will were not in the knowledge of practice that male member use left thumb impression only. Even the signatures of one of the witness at the end are slanted upwards as no space was available. Therefore, counsel for the appellant is not correct in asserting that the spacing is natural.

Further a reading of the Will would show that late Sh. Nand Lal has not even mentioned the name of his natural heir, namely, Varun, the only son. If the father executed a Will and is mentioning the name of daughter, he would naturally mention the name of the son. For the reasons recorded by the Courts below, as well as by me, I find that the Will dated 23.09.2004, is suspicious.

Learned counsel has further submitted that in view of affidavit, Ex.D1, plaintiff had no right to maintain the present suit.

I have examined Ex.D1 from the record. Ex.D1 is an alleged affidavit of plaintiff. The affidavit runs in two pages. First page of affidavit is not signed. On second page, below the word “witness”, which is typed plaintiff has signed. However, thereafter, with the hand, the word “deponent” has been written in Hindi. The entire affidavit is typed. However, the word “deponent” has been written with hand and that also above the word “witness”. The affidavit is stated to be executed on 19.04.1998 and attested by a Notary public. Plaintiff itself had stated that her signatures were obtained on many blank papers and these signatures were taken by defendant no.1 under a threat that she will not allowed to get married. She had further stated that she was engaged on 31.01.1999,

whereas her signatures were taken on 19.04.1999. She was married on 26.04.1999. The learned first appellate court has recorded that the affidavit was not out come of free mind. The signatures appear to have been taken as a witness but later on these signatures have been used to convert the document in an affidavit. As noticed earlier, first page of the affidavit is not signed.

Taking into consideration the facts available on the file and the concurrent findings of fact arrived at by the courts below, I do not find any good ground to interfere in the regular second appeal filed by defendant no.1. Therefore, the regular second appeal is ordered to be dismissed.

July 31, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No