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

**RSA No.2154 of 2014 (O&M)
Decided on: 03.08.2017**

Hari Singh

.....Appellant

versus

Kuldeep Kaur and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Ms. Ekta Thakur, Advocate
for the appellant.

Mr. Satwant Singh, Advocate
for Mr. Kulwant Singh, Advocate
for the respondents.

Rajbir Sehrawat, J.(Oral)

1. This is the second appeal filed by the plaintiff against the concurrent judgment and decrees passed by both the Courts below, whereby his suit for declaration as joint owner in possession to the extent of 1/4th share in the land left behind by deceased Sukhdev Singh; was dismissed and his appeal was also dismissed. For the convenience, the parties in this appeal shall be referred as the plaintiffs and defendants as they are described in original suit.
2. The brief facts of the case are that the plaintiff is the brother and the defendants are the sisters of one Sukhdev Singh. Sukhdev Singh was the joint owner in possession of the property in dispute mentioned in the plaint. He died issueless on 01.01.2007. The plaintiff and defendants were the only legal heirs left behind by

Sukhdev Singh. It was claimed by the plaintiff that he was entitled to 1/4th share out of the property left behind by Sukhdev Singh and accordingly, the mutation of succession should have been entered by the revenue authorities. But when the plaintiff went to Halqua Patwari for getting the mutation of inheritance entered in his name then he came to know that mutation No. 11909, regarding inheritance of Sukhdev Singh, has already been sanctioned in favour of the defendants on the basis of Will dated 09.01.2006. It was alleged that the Will in question is fabricated one. The defendants are threatening to alienate the suit property, therefore, he filed a suit.

3. Upon notice the defendants/respondents-herein filed a reply claiming that Sukhdev Singh was the owner of the property in dispute; he died issueless; he executed the Will dated 09.01.2006. The Will was got registered on 12.01.2006. On the basis of the registered Will only, the mutation was entered in favour of the defendants. It was further pleaded that the plaintiff was residing at Chandigarh and he had strained relations with their brother Sukhdev Singh and there were several civil litigation between the plaintiff and the defendants along with Sukhdev Singh. It was further pleaded that earlier, the plaintiff had forged the Will in his favour, claiming to be a Will of the father of the plaintiff and defendants, Bhan Singh. However, when their father came to know of this, he got that Will cancelled. When their father Bhan Singh expired on 02.04.2004, the mutation of estate of Bhan Singh was sanctioned in the name of the plaintiff and defendants by

discarding the alleged Will; claimed by the plaintiff to be in his favour. It was further pleaded by the defendants that the Will in their favour was validly and duly executed by Sukhdev Singh regarding the property left behind by him. Hence, it was claimed that the plaintiff has no right, title or interest in the properties left behind by Sukhdev Singh.

4. On the basis of the pleadings of the parties, issues were framed by the Trial Court. However, although the issues regarding entitlement of the plaintiff qua 1/4th share in the estate left behind by the deceased Sukhdev Singh was framed and also the issue regarding the validity of mutation in question was framed but the specific issue regarding the validity of the Will was not framed.

5. Parties led their evidence.

6. To support his plea the plaintiff examined himself as PW1 and also examined PW2, Bhajan Singh, who deposed that Sukhdev Singh resided in Chandigarh with Hari Singh and his family resided at Village Siar. He deposed that all the sisters of Sukhdev Singh are married. By placing reliance upon this testimony, the plaintiff had taken a plea that there was no reason or occasion for Sukhdev Singh to exclude him from the inheritance since he was serving said Sukhdev Singh and the last rites were also performed by him. It was further claimed that the Will in favour of defendants was surrounded by suspicious circumstances, since it was executed on the same day on which another document, namely, the general power of attorney is executed by Sukhdev Singh in favour of Manjit Kaur, defendant No. 1. Further, the plaintiff had pointed out

certain discrepancies in the testimony of the witnesses examined by the defendants.

7. On the other hand, the defendants proved the execution of the Will by examining the attesting witness Jagtar Singh as DW2 and the scribe of the Will DW3, Darbara Singh. Besides this, Manjit Kaur defendant appeared as DW1. Therefore, on the basis of this, the defendant had argued before the trial Court that the Will stands duly proved. It was further argued that the plaintiff was having strained relation with Sukhdev Singh, therefore, Sukhdev Singh thought it appropriate to exclude the plaintiff from his inheritance.
8. After hearing the parties and appreciating the evidence on the file, the trial Court dismissed the suit filed by plaintiff. The trial Court held that the Will in question have been duly proved by the defendants by examining the attesting witness and the scribe of the Will. It further recorded that the plaintiff has failed to prove any suspicious circumstances or any incapacity on the part of Sukhdev Singh to execute the Will. Feeling aggrieved against this judgment and decree, the plaintiff filed an appeal before the lower Appellate Court.
9. The lower Appellate Court also recorded a finding that the Will has been duly proved by examining the attesting witness and the plaintiff had failed to prove any suspicious circumstance in the execution of the Will in question. It was further held that the argument of the plaintiff that no reason has been given to exclude the plaintiff from inheritance, is irrelevant. It was held that it has come on record that plaintiff had strained relation with his brother,

Sukhdev Singh, therefore, there was a reason for Sukhdev Singh to exclude the plaintiff from his inheritance. Still further the argument of the learned counsel for the plaintiff that no issue was framed regarding the validity of the Will, therefore, the Will cannot be taken into consideration was held liable to be rejected. It was held by the lower Appellate Court that since parties were alive to the issue, sufficient evidence was led on the part of the defendants and the witnesses were cross examined by the plaintiff in this regard, therefore, it is immaterial whether any issue was framed regarding the Will or not. Accordingly, the appeal filed by the plaintiff was dismissed and the judgment and decree passed by the Trial Court were upheld. Aggrieved of the judgment and decree of the lower Appellate Court, present appeal has been filed by the plaintiff.

10.While arguing the case, learned counsel for the appellant has submitted that since the defendant, who was the beneficiary of the Will, was present at the time of execution of the Will, therefore, the Will has to be treated as suspicious. Still further it was argued by the learned counsel for the appellant that the lower Appellate Court has gone wrong in law in holding that even without framing specific issue, the Court could have taken into consideration the evidence led by the parties on the validity of Will. To support his argument, learned counsel for the appellant has relied upon the judgment of this Court rendered in **1989 CivCC 528**, titled as ***Rani Versus Balbir Kaur and another***.

11.On the other hand, learned counsel for the respondents has

argued that the Will has been duly proved by the defendants/respondents-herein by examining the attesting witnesses and scribe of the Will. Still further learned counsel placed reliance upon the judgment of the Hon'ble Supreme Court in **2015(1) CivCC 111** titled as ***Sri Gangai Vinayagar Temple and another Versus Meenakshi Ammal and others***; to contend that it is immaterial whether the issue is framed on a point in the case or not, if the parties are alive to the controversy, lead the evidence on that point, and have contested and counter contested the claim on that point. In this situation, the Court is right in taking into consideration the evidence led by the defendants to prove the validity of the Will.

12. Having heard the learned counsel for the parties and perusing the record available on the file, this Court is of the considered view that there is nothing illegal or perverse in the finding or the judgment and decree passed by the Courts below. The arguments led by the counsel for the appellant deserve to be noticed only to be rejected. The argument of the learned counsel for the appellant that the Will and power of attorney in favour of the defendant was executed on the same day and the defendant/beneficiary was present at the time of execution of the Will and hence, the Will is surrounded by suspicious circumstances; is not sustainable. It has come in evidence that the testator Sukhdev Singh had met with an accident and his legs were amputated and, therefore, he was not in a position to manage his properties. Hence, he executed a general power of attorney in favour of defendant No. 1, his sister. On the same day, he also executed the Will in favour of both the sisters.

Since the said Sukhdev Singh was a handicapped person and having lost his legs, it was very natural for him to execute both these documents at on one and the same day, to avoid repeated visits. Still further the presence of the defendant at the time of execution of the Will is also explained by the same fact. She was present because even the power of attorney was being executed in her favour. Therefore, there is nothing unnatural in this sequence of the facts.

13. So far as the validity of the Will is concerned, the plaintiff had claimed that the Will is a fraudulent document. He had not denied the existence of the Will but he claimed fraud in execution of the Will. In this situation, he was required to lead evidence to substantiate his plea. However, he has failed to lead any evidence to substantiate his plea regarding fraud in execution of the Will. The plaintiff has to stand on his own legs to secure a decree in his favour. However, in the present case, the plaintiff miserably failed to substantiate his claim, as claimed in the suit. The judgment relied upon by the learned counsel for the appellant in the case of **Rani (Supra)** is of no help to the case of the appellant. In that case, the beneficiary of the Will had no relation with the executant of the Will. Therefore, her presence at the time of execution of the Will was taken by the Court to be a circumstance which created doubt regarding the execution of the Will. In the present case, the presence of the beneficiary at the time of the execution of the Will is duly explained. Hence, mere presence of the beneficiary at the time of the execution of the Will is no ground to doubt the

execution of the Will.

14. On the other hand, the defendants have duly proved the Will by examining the attesting witness and the scribe of the Will. Otherwise also, the Will is a registered document having presumption of truth of the execution of the same attached to it. Otherwise, the attesting witness and scribe of the Will have duly deposed before the Court that the Will was executed by Sukhdev Singh. The Will was written on his instructions. He was made to understand his Will and he had signed the Will in their presence. It was further deposed by them that they had also put signatures on the Will in the presence of Sukhdev Singh. Hence, the Will was duly executed and the same was got registered by Sukhdev Singh. Mere fact that the plaintiff has been excluded from inheritance by the Will does not vitiate the Will at all. The very purpose of the execution of Will is to exclude some of the legal heirs from succession. In the present case, otherwise also there is evidence on record to show that Sukhdev Singh was in litigation with the plaintiff, up to the last time. Still further plaintiff was residing at Chandigarh whereas Sukhdev Singh was residing at his village. Therefore, there was every reason and occasion for Sukhdev Singh to exclude the plaintiff from his inheritance.

15. The argument of the learned counsel for the appellant that the Will cannot be taken to be proved; because no issue was framed regarding the validity of the Will, is totally misconceived. It is well settled law, and the same was reiterated by the Hon'ble Supreme Court in the judgment of ***Sri Gangai Vinayagar Temple case***

(*supra*), that if the parties are alive to the controversy, they have contested and cross contested a fact, they have led the evidence on that fact and examined and cross examined the witnesses regarding that particular fact, then it is immaterial whether any specific issue was framed regarding that fact or not. The evidence on that fact has come on record with full knowledge of the parties and with full participation of the parties. Therefore, the Court would be fully justified in relying upon such evidence to make up its mind on that particular fact. Hence, the Courts below have not committed any illegality or perversity in taking into consideration the evidence led by the defendants on the validity of the Will, by way of examination of the attesting witness and the scribe.

16.No other argument was raised by the learned counsel for the appellant.

17.In view of the above, the present appeal fails being devoid of any merit and the same is dismissed. The judgment and decree passed by the Courts below are upheld.

3rd August, 2017
shabha

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned	-	Yes
Whether reportable	-	Yes