

103.

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

RSA-6060-2015 (O&M)

Date of decision:02.03.2017

BHAGWAN SINGH

.... Appellant

versus

DHARMENDER AND OTHERS

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr.Ravi Kadian, Advocate,
for the appellant.

HARI PAL VERMA, J.

CM-15149-C-2015

Prayer in the application filed under Section 5 of Limitation

Act is for condonation of delay of 77 days in filing the appeal.

For the reasons stated in the application, same is allowed
and the delay of 77 days in filing the appeal is condoned.

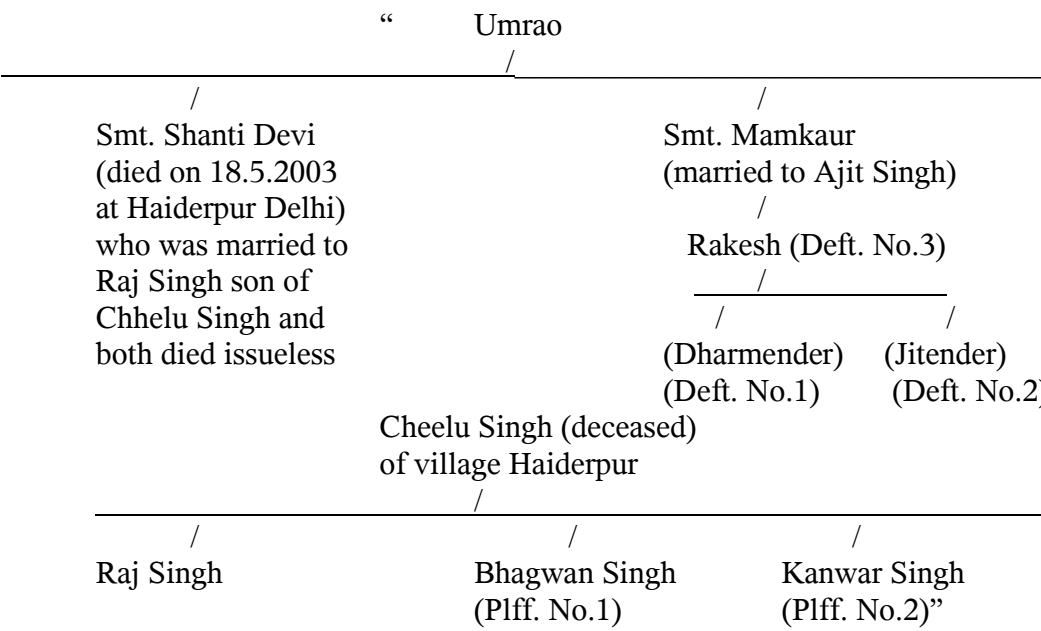
RSA-6060-2015

The appellant-plaintiff has filed the present Regular Second
Appeal against the judgment and decree dated 31.03.2015 passed by
learned Additional District Judge, Gurgaon, whereby his appeal against
the judgment and decree dated 17.03.2012 passed by learned Civil
Judge (Senior Division), Gurgaon was dismissed.

Briefly stated, the plaintiffs had filed a suit for declaration

with consequential relief of permanent injunction with the averments

that Raj Singh was married to Shanti Devi daughter of Umrao and he died in the year 1970 leaving behind his only legal heir i.e. his widow Smt. Shanti Devi. Shanti Devi also died on 18.05.2003. The couple died issueless. The plaintiffs being the brother of husband of Shanti Devi inherited all estate left by Shanti Devi and became the owners in possession of the same. The following pedigree table disclose the relationship between the parties:-



purchase of said land, she had constructed a big house thereon. She along with plaintiffs also purchased the agricultural land in Village Akbarpur Gahra, District Muradabad (UP) vide sale deed dated 28.06.1989. On the demise of Shanti Devi, plaintiffs became owners in possession of the land in question as well as the land situated in Village Haiderpur (Delhi), Village Todapur of District Gurgaon and of the property in Village Akbarpur Gahra of District Muradabad (UP), in equal shares being her husband's brothers. As per plaint, Shanti Devi had been residing with the plaintiffs since the death of her husband-Raj Singh and was having great love and affection with the plaintiffs and their family members. Since Shanti Devi was unable to manage suit property, she had appointed Bhagwan Singh-plaintiff (appellant herein) as her General Power of Attorney. Even her parents, in their old age, remained with the plaintiffs in Village Haiderpur. Both died at Village Haiderpur and their last rites were performed by the plaintiffs. Shanti Devi was suffering from high blood pressure, high sugar and was also an Asthma patient. In the year 2002, her condition deteriorated due to ill-health and she was admitted in the Santom Hospital at Delhi and was very happy with the services rendered by the plaintiffs and their family members. She died at the age of 80 years. After her death, plaintiffs visited the Village Mushedpur along with her death certificate, to get the mutation sanctioned and only then, they came to know that the defendants had moved an application dated 18.07.2003 to Tehsildar Farrukh Nagar, alleging therein that they had a Will dated

01.03.2002 in their favour in respect of land in Village Mushedpur which was executed by the deceased-Shanti Devi and accordingly, they had requested for the sanction of mutation in their favour. Ultimately, the proceedings were sent to S.D.O. (Civil)/A.C.I.G., Gurgaon. The plaintiffs pleaded that the said Will is totally fabricated, forged and fictitious and nullity in the eyes of law as Shanti Devi never executed any Will in respect of suit land. Hence, the suit was filed.

On notice, defendants appeared and filed written statement taking preliminary objections of maintainability, cause of action, locus standi, concealment of material facts, court fee, jurisdiction etc. On merits, the pedigree table as well as the relation of the parties were not disputed. The defendants admitted that plaintiffs are the brothers of husband of Shanti Devi (deceased) and they (plaintiffs) have never inherited the entire estate left behind by Shanti Devi. On the basis of Will dated 01.03.2002, defendants No.1 and 2 are owners in possession of agricultural holdings. Shanti Devi inherited the land on the death of her husband-Raj Singh nearly 32 years ago, which was gifted to him by his father-in-law, namely, Umrao more than 50 years back after the marriage of Shanti Devi and Raj Singh. The inheritance of the properties and the estate of deceased-Raj Singh situated in Village Haiderpur (Delhi) as well as the agricultural land in Village Akbarpur Gahre, District Muradpur (U.P.) jointly with the plaintiffs were not denied. They denied the ownership of plaintiffs over the suit land. As regards other properties situated in Village Haiderpur (Delhi), Village

Todapur, and agricultural land of Village Akbarpur Gahra and considerable amount of deposits, defendants had not joined any issue in respect thereof. They further submitted that Shanti Devi never resided with the plaintiffs and she was residing separately in her own residential house in Village Haiderpur (Delhi). Kumari Meena Yadav (real sister of defendants No.1 &2-Dharmender, Jitender and daughter of defendant No.3-Rakesh) had been residing with Shanti Devi since her tender age. Kumari Meena Yadav acquired education while staying with Shanti Devi and rendered valuable services to Shanti Devi in her old age. Since Shanti Devi was extremely well off, she availed the services of Kumari Meena Yadav, her real sister Mam Kaur, Rakesh and defendants No.1 and 2. Even before the death of Raj Singh, the suit land had been continuously under the management of the family of defendants and both Shanti Devi and Raj Singh were residing in Village Haiderpur (Delhi). The contention of the plaintiffs that the parents of Shanti Devi resided with them, was denied. They further stated that the last rites of the mother of Shanti Devi were performed in Village Haiderpur by Mam Kaur and other family members. The defendants have no knowledge regarding General Power of Attorney allegedly executed by Shanti Devi in favour of Bhagwan Singh regarding her properties. It was further submitted that when Shanti Devi was admitted in the hospital, the plaintiffs rebuked them and were not allowed to see her. Keeping in view of the services rendered by the entire family of Mam Kaur, Shanti Devi bequeathed the suit land in

favour of defendants No.1 and 2. The Will, in question, was executed voluntarily without any pressure from any quarter, and it was drafted by Shri R.N. Yadav, Advocate, and was typed at the instance of Shanti Devi.

The trial Court vide judgment and decree dated 17.03.2012 dismissed the suit of the plaintiffs. Dissatisfied with the said judgment and decree, the plaintiff-Bhagwan Singh filed an appeal before the Lower Appellate Court which was also dismissed vide judgment and decree dated 31.03.2015 whereby the Will (Ex.DW3/1) was proved to have been executed by Shanti Devi (deceased) in favour of defendants-respondents No.1 and 2 out of her free will and the Will was not found surrounded by any suspicious circumstances.

It is in the aforesaid circumstances, the appellant-plaintiff-Bhagwan Singh has filed the present appeal raising the following substantial questions of law:-

- “i. Whether a suit for declaration alongwith permanent injunction seeking challenge to allege Will was not maintainable?
- ii. Whether, if ad-valorem court fee was affixed on an objection raised under Order 7 Rule 11 CPC, then suit for declaration would not include the decree for possession as alternative prayer?
- iii. Whether execution of alleged un-registered Will which does not contain the entire details of the immovable properties of the testatrix is not sufficient ground to hold that Will is surrounded by suspicious circumstances?

- iv. Whether the suspicious circumstances proved on record are not sufficient to hold that Will was not genuine but was a result of a fraud and forgery?
- v. Whether alleged Will has been duly proved as provided under Section 63(a) and Section 68 of Evidence Act?
- vi. Whether in the facts and circumstances of the present case impugned judgment and decrees passed by both the courts below are not perverse as same were based on non-consideration of vital piece of evidence which has been totally ignored?
- vii. Whether in the facts and circumstance of the present case, judgments and decrees passed by both the courts are not liable to be set-aside and suit filed by plaintiffs is not entitled to be decreed?"

Learned counsel for the appellant has argued that the courts below have committed a legal error while holding that the suit was not maintainable. There was no question for Shanti Devi to execute alleged unregistered Will in favour of parental relatives. The Will was not genuine and was a forged and fabricated document which is surrounded by suspicious circumstances. It is only in the month of July 2003, the very fact of execution of alleged Will came to the knowledge of the appellant-plaintiffs when the respondents-defendants initiated proceedings for mutation on the basis of Will dated 01.03.2002 and immediately thereafter, the suit was filed on 20.08.2003. In the copy of the Will filed for seeking mutation by the respondents-defendants, the name and signature of the subscriber Shri R.N. Yadav, Advocate were not mentioned, whereas in the Will produced before this Court it

contains the same. The courts below have not taken into consideration the fact, that the entire estate of Shanti Devi was not mentioned in the alleged Will. The said Will only described the properties which were earlier owned by the parental side of the deceased. Therefore, this fact alone was not sufficient to hold the genuineness of the Will. The oral as well as documentary evidence on record including written statement filed by the respondents-defendants would reveal that in fact defendants were having no knowledge with respect to other properties owned by the deceased and as the alleged Will was not executed by the deceased, but was a creation of the defendants, therefore, such other properties could not be included in the said Will. Various suspicious circumstances were proved on record to hold that the Will was not genuine. Firstly, the Will has deprived the natural heirs, but this fact has been ignored by the courts below. Secondly, the maker of the alleged Will were not in the knowledge of the entire estate of the testatrix-Shanti Devi. Thus, the Will is surrounded by suspicious circumstances and is not genuine. The courts below have misread, misconstrued, misinterpreted the order as well as documentary evidence on record. The bare perusal of Will (Ex.DW3/1) shows that it is a fabricated document. The manner in which in a given space, the testatrix had appended her signature, the space *inter se* the lines, the utilization of the space and the alleged appending of signatures by the subscriber at the end, were sufficient to hold that the said Will was a created document which was in fact never executed by the testatrix-

Shanti Devi. The non-registration of such document, if considered in light of above referred suspicious circumstances, is sufficient to hold that the Will was not genuine.

I have heard learned counsel for the appellant.

The trial Court has framed a specific issue as to whether the Will dated 01.03.2002 is false, fictitious, void and nullity. The Will, in question, had been placed on record as Ex.DW3/1 and the defendants were required to prove the execution of the Will. The defendant-Dharmender, who appeared as DW1 and tendered his affidavit Ex.DW1/A, had deposed that Shanti Devi bequeathed the suit land in their favour by way of Will (Ex.DW3/1) out of love and affection. The Will was duly attested by witnesses, namely, Om Parkash and Satbir son of Shambhu and it was drafted by Shri R.N. Yadav, Advocate. DW3-Om Parkash, who was one of the attesting witnesses, had deposed that the Will was executed on 01.03.2002 which was drafted by Shri R.N. Yadav, Advocate, on the instructions of Shanti Devi and the said Advocate got it typed from a typist near to his seat. He further deposed that after getting the Will typed, it was read over by Shri R.N. Yadav, Advocate to Shanti Devi and she, after admitting its contents as true, put her signatures over it in Hindi and thereafter, the other witness, namely, Satbir signed the Will. Similarly, DW6-R.N. Yadav, Advocate, who tendered his affidavit Ex.DW1/6 in his evidence, had deposed in favour of the Will being drafted by him at the instance of Shanti Devi and he got it typed from a typist who sits near to his seat.

The contents of Will were read over to Shanti Devi and she after admitting its contents as correct, put her signatures and the same was witnessed by Om Parkash and Satbir. In this manner, the courts below have recorded the finding that the Will (Ex.DW3/1) was duly executed and attested as per the provisions of the Indian Evidence Act.

Per contra, the plaintiffs had tried to prove that the said Will is shrouded with many suspicious circumstances like:-

- “a) deprivation of plaintiffs from their right of Succession;
- b) Executant not in sound disposing mind at the time of execution of the will;
- c) active participation of the defendants in execution of the will;
- d) the space between the lines of the will not uniform.”

Deprivation of natural heir is not a suspicious circumstance merely because it bequeaths the estate contrary to the normal line of succession. The Will has been proved on file. Therefore, the deprivation of natural heirs is not a circumstance to discard the Will. The plaintiffs had tried to convince the court that Shanti Devi (deceased) was not in sound disposing mind as she was suffering from high blood pressure, high sugar and had been an Asthma patient since long. She remained admitted in the hospital since 07.03.2002 to 17.03.2002, but they had nowhere stated that the testatrix-Shanti Devi was suffering from any such ailment which may have rendered her ineligible to execute the Will or she was a person of unsound mind. That finding had rightly been recorded that the testatrix-Shanti Devi was not suffering from any such illness which incapacitated her to take

a wise decision regarding bequeathing her property.

Learned counsel has argued that the Will was executed at a distance of about 30 kilometers. Once it is established that the testatrix-Shanti Devi was not disqualified from her movements, the plea that the testatrix had gone to Gurgaon to execute the Will which is 30 kilometers, is not relevant and Will cannot be discarded on this ground.

Considering the material on record and on the basis of evidence, both the courts below returned a concurrent finding of fact that the Will, in question, was a voluntary act of the testatrix-Shanti Devi. From the facts, it is clear that Shanti Devi was married with Raj Singh to whom the land in question was gifted by his father-in-law Umrao Singh (father of testatrix-Shanti Devi) as a gift out of love and affection and after the death of Raj Singh, suit property devolved upon testatrix-Shanti Devi along with other properties of Raj Singh which came to him from his parents as well as acquired by him during his lifetime. Thus, the very execution of the Will had duly been proved and the same was executed by Shanti Devi in favour of respondents-defendants No.1 and 2 out of free will and is not surrounded by suspicious circumstances, as alleged. He relied upon the judgment of this Court rendered in **Kirpal Singh (dead) through his LRs Versus Ass Kaur-1997(1) R.C.R. (Civil) 649** to contend that when the Will is surrounded by suspicious circumstances, the onus to prove its genuineness is upon its propounder. Though the Will is not compulsorily required to be registered but when there are

circumstances which suggest that the testator was aware and in a position of getting the Will registered, the circumstances of non-registration have to be explained by the testator and he has to remove all possible suspicious circumstances surrounding the Will. The said judgment is not relevant as there exists no suspicious circumstances, rather in the case in hand, the Will executed by Shanti Devi had duly been proved by the witnesses and the scribe as there is no conflict in their respective statements. Even if the Will is not registered, but its execution has duly been proved by its testator, its validity cannot be questioned.

No substantial question of law arises in the present regular second appeal.

In view of concurrent finding on facts by the courts below, this Court does not find any cause for interference in the present regular second appeal and the same is, accordingly, dismissed.

(HARI PAL VERMA)
JUDGE

02.03.2017
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No