

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 2.5.2018

CR No. 6555 of 2015 (O/M)

Inderjit Kaur

..... Petitioner

Versus

Sh. Kuljeet Singh Shan and others

..... Respondents

CRM No. M-21022 of 2016 (O/M)

Major General Gaganjit Singh (Retd.)

..... Petitioner

Versus

U.T. Chandigarh and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. J.S. Bedi, Senior Advocate, with,
Mr. Vineet Sehgal, Advocate, for petitioner
in CRM-M-21022-2016.

Mr. Sukant Gupta, APP, UT, Chandigarh.

Mr. Rajiv Atma Ram, Senior Advocate, with,
Mr. Kunal Dawar, Advocate, for respondent No. 1
in CR-6555-2015 and
for respondent No. 2 in CRM-M-21022-2016.

Mr. Raghav Goel, Advocate, for,
Mr. Harkesh Manuja, Advocate,
for respondent No. 4 in CR-6555-2015.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? No.
2. To be referred to the Reporter or not. Yes.
3. Whether the judgment should be reported in the digest ? Yes.

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KULDIP SINGH J.

By this single judgment, I shall dispose of two abovenoted connected cases, which are arising out of same facts.

First the facts of CR No. 6555 of 2015. In this civil revision Inderjit Kaur has impugned order dated 14.8.2015 (Annexure-P-7), passed

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by learned Civil Judge (Junior Division), Chandigarh, whereby an application filed by petitioner under Order 26 Rule XII (2) CPC read with Section 151 CPC, 1908 for re-examination and taking second opinion on signatures of Will in dispute has been dismissed. The civil suit was filed in the year 2011.

Unfortunate controversy between the siblings is regarding the property i.e. House No. 605, Sector-16-D, Chandigarh, left behind by Dr. Harnam Singh Shan. Dr. Harnam Singh Shan died leaving behind a son, namely, Kuljeet Singh, and three daughters, namely, Smt. Inderjit Kaur wife of Major General Gaganjit Singh (Retd.), Smt. Tejinder Kaur Bindra, now settled in New York, USA, and Smt. Pushpinder Kaur, now settled in Michigan, USA. Dr. Harnam Singh Shan was owner of House No. 605, Sector-16-D, Chandigarh. Dr. Harnam Singh Shan is stated to have executed unregistered Will dated 25.5.2011 regarding kothi and other property in favour of his son Kuljeet Singh and three daughters Smt. Inderjit Kaur, Smt. Tejinder Kaur Bindra and Smt. Pushpinder Kaur. The ownership right of first floor are recorded to have been already gifted in favour of his son Kuljeet Singh. All the daughters are recorded to have been given joint ownership of completely constructed ground floor (including adjacent constructed rooms as well as lawns) and also second floor of kothi No. 605, Sector-16-D, Chandigarh. It is also not denied by parties that on 28.5.2011, i.e. after three days of execution of unregistered Will, Dr. Harnam Singh Shan, who happened to be 88 years of age and was suffering from general diseases relating to old age, was shifted to PGI Chandigarh. He died on 9.6.2011. Kuljeet Singh filed civil suit for declaration that he is the sole and absolute owner of one fourth share in the

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ground floor, entire first and second floor of House No. 605, Sector-16-D, Chandigarh. Defendants were sought to be restrained from interfering in the peaceful possession of plaintiff and restraining defendant No. 4 to transfer the house on the basis of forged and fabricated Will dated 25.5.2011. He also sought partition by way of possession of said house by metes and bounds. It was further prayed that since partition is not possible in Chandigarh, therefore, house be sold by way of auction among the co-owners or in alternative by way of putting the house on auction in public and divide the proceeds as per the shares of plaintiff and defendants No. 1 to 3. It also comes out that in the civil suit on 21.11.2011, when defendants No. 1 to 3 for the first time disclosed about said Will dated 25.5.2011, plaintiff filed an application that said Will be produced and placed on Court file, so that he may get the same inspected from handwriting expert and file replication and it was also disclosed by plaintiff that he has already approached Mr. Parsad, handwriting expert, who wants to take photographs and to inspect the original Will for giving his opinion. This Court is informed by parties that Will was produced, issues were framed, at which stage an application dated 6.5.2013 was filed by defendants that official of Punjab National Bank, Sector-16-D, Chandigarh, be summoned alongwith original record and that the questioned documents alongwith original record be sent for comparison to Government Examiner of questioned documents, Railway Board Building, Shimla, or any other Government institution for examination and report. On the said application, the Court of learned Civil Judge (Junior Division), Chandigarh, passed the order dated 28.5.2014 whereby the original documents i.e. four cheques produced by PNB, ten cheques produced by

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SBI, and original account opening form of Dr. Harnam Singh Shan alongwith original Will were sent to Government Laboratory, Shimla, for examination. In pursuance to said order, Central Forensic Science Laboratory, Shimla, got the documents examined from Shri R.S. Rana, Scientist-B and submitted the report on 25.2.2015 whereby after examining the questioned documents with admitted signatures A1 to A13, it was reported that said signatures on the Will do not tally with said signatures. Other signatures A14 to A26 were not compared. On receipt of opinion, present application was moved by defendants on 8.4.2015 under Order 26 Rule XII (2) read with Section 151 CPC, 1908, for re-examination and taking second opinion on the Will in dispute on the ground that signatures on Mark A14 to Mark A26 have not been compared which were of the time when Will was executed. The said application was dismissed by learned Civil Judge (Junior Division), Chandigarh, holding that there should be special circumstances and the Court must record its reasons for sending the document to the second expert or for appointing a second commissioner. The Court found that it is not desirable to appoint second commissioner or refer to the second expert without there being any valid reasons. While dismissing the application, it was observed that defendants can call their own hand writing expert at the time of leading evidence. It is the said impugned order dated 14.8.2015, which has been challenged in civil revision.

It further comes out that on the basis of opinion of expert, Kuljeet Singh Shan son of Dr. Harnam Singh Shan got registered FIR No. 127 dated 25.4.2015 at Police Station Central, Sector-17, Chandigarh, under Sections 420, 511, 467, 468, 471, 120-B IPC against his sisters

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Inderjit Kaur, Tejinder Kaur Bindra, Pushipinder Kaur, his brother in law Major General Gaganjit Singh (Retd.), scribe and witnesses of Will Harpal Singh, Durlabh Singh Lamba and M.S. Sudan. Four days later, Sh. Durlabh Singh Lamba, who was attesting witnesses of Will and appointed sole executrix of Will by testator, on account of registration of FIR against him, committed suicide on 29.4.2015, leaving a suicide note blaming Kuljeet Singh Shan to be responsible for his death on the basis of which FIR No. 247 under Section 306 IPC dated 12.5.2015 was registered at Police Station, Sector 34, Chandigarh, on the complaint of wife of deceased. It is stated that as a result of trial in said case, Kuljeet Singh Shan has been acquitted. It also comes out that earlier one of accused, namely, Inderjit Kaur filed CR No. 6555 of 2015 which was withdrawn on 5.10.2015. Now, Major General Gaganjit Singh (Retd.), who is husband of Inderjit Kaur, has filed present CRM No. M-21022 of 2016, praying that investigation in FIR No. 127, dated 25.4.2015 be stayed till the second opinion on the Will is received from hand writing expert about the genuineness of disputed Will.

I have heard the learned senior/counsels for parties, the learned Additional Public Prosecutor for UT Chandigarh, and have also carefully gone through the file.

The controversy revolves around unregistered Will dated 25.5.2011, executed by Dr. Harnam Singh Shan. Dr. Harnam Singh Shan was stated to be of 88 years of age, as admitted by both the parties. Due to old age, he fell ill and was taken to PGI, Chandigarh, on 28.5.2011 where he died on 9.6.2011. It is to be noted that during investigation into FIR No. 127, said Will was again sent to FSL, Shimla, for second opinion. The

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matter was again examined by Shri R.S. Rana, Scientist, who again submitted the report dated 10.3.2016 wherein he reiterated his earlier opinion. In the report, he has again submitted that signatures on Mark A14 to Mark A26 have not been considered for the purpose of comparison with disputed signatures in the red enclosed portions and similarly marked Q1 for the manifest reasons that the aforesaid admitted signatures are not found to be consistent with the rest of admitted signatures marked A1 to A13.

First of all, this Court will examine as to whether Will can again be sent to another FSL for second opinion by Civil Court ?

First of all, it is to be noticed that Will was set up by defendants. In the civil suit, the Will was got produced by plaintiff from defendants before filing of replication. After framing of issues, it is for plaintiff to lead evidence in respect of his case. Plaintiff wanted to examine some private expert. It was at the stage of evidence of plaintiff that defendants moved application dated 6.5.2013 for sending the Will alongwith admitted signatures to FSL and accordingly, Court on request of defendants, to which plaintiff raised no objection, sent the Will alongwith standard signatures to FSL, Shimla. The report sent by CFSL, Shimla, dated 25.2.2015 shows that Shri R.S. Rana, Scientist-B compared only standard signatures Mark A1 to Mark A13 and did not compare signatures Mark A14 to Mark A26 and submitted the opinion that disputed signatures do not tally with standard signatures. Now, on a look at admitted signatures Mark A1 to Mark A13 shows that A1 to A5 pertain to year 1980, A6 pertains to year 1996, A7 to A12 pertain to year 2010 i.e. about five years prior to execution of Will.

Defendants have contended that Dr. Harnam Singh Shan was 88 years of age and, therefore, in such circumstances, when he was suffering from diseases pertaining to old age, signatures which are close to the date of execution of Will dated 25.5.2011, should have been examined.

Admittedly, signatures Mark A13 are of 13.3.2011, Mark A14 are of 7.5.2011, Mark A15 and Mark A16 are of 1.6.2011, Mark A17 and Mark A18 are of 2.6.2011, Mark A19 and Mark A20 are of 16.5.2011, Mark A21 and Mark A22 are of 2.6.2011, Mark A23 and Mark A24 are of 4.4.2011 and Mark A25 and Mark A26 are of 6.4.2011. As Dr. Harnam Singh Shan was admitted in PGI on 28.5.2011 on account of old age disease, therefore, one can suspect that his signatures after 28.5.2011 till his death on 9.6.2011 will not be normal. In any case, signatures of nearer dates i.e. 13.3.2011 and 7.5.2011 on Mark A13 and A14, 4.4.2011 to 6.4.2011 on Mark A23 to A26 and 16.5.2011 on Mark A19 and Mark A20 could be relevant to see as to around 25.5.2011, what was the nature of signatures of Dr. Harnam Singh Shan considering his old age. The expert relied upon signatures Mark A1 to A13, out of which only one signature is of 13.3.2011 i.e. nearer to date of execution of Will. However, other signatures are of April and May, 2011 which were available, were not compared for the reasons mentioned in the report, as discussed above.

Another development took place on the basis of report of expert dated 25.2.2015. Kuljeet Singh got registered a case against his sisters, brother in law and attesting witnesses of Will, one of which committed suicide on account of harassment, naming, Kuljeet Singh Shan to be responsible for his death. Therefore, it has to be held out that it is not ordinary case and not to be dealt with in ordinary manner in which civil

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suits are dealt with.

Coming to the procedure, under the law when the report of CFSL is received, if defendants lead evidence of private expert in defence evidence, report of CFSL will overrule the said report. Therefore, only the report of another CFSL can possibly rebut the said report and it was in this context that defendants filed the application. In a normal case, this Court would have declined to send the Will for second opinion at the present stage when evidence of plaintiff is being led. However, in this case, trial Court in its wisdom at the stage of evidence of plaintiff, sent the Will to the CFSL, Shimla, on request of defendants. The said report was used by plaintiff to lodge a criminal case against his sisters, brother in law and witnesses which further complicated the matter. Now, it is on the basis of said report that police is further proceeding in the investigation. During investigation, the police again sent the Will to the same FSL. It was again examined by same Scientist and again same opinion shall be given stating that signatures Mark A14 to Mark A26 are not found to be consistent with rest of admitted signatures. This might be possible on account of old age of Dr. Harnam Singh Shan. Admittedly, in the old age due to some infirmity and old age related diseases, signatures of old person can swiftly change. Therefore, I am of the view that signatures of April and May, 2011, which may have been appended by Dr. Harnam Singh Shan before his admission in PGI on 28.5.2011, are as also required to be examined.

The learned senior counsel for petitioner has relied upon observations of a Division Bench of Andhra Pradesh in *M. Ramesh Babu Versus M. Sreedhar*, 2009 (5) Andh LD 187, which are reproduced as under :-

'51. Therefore, we are of the view that there is no bar to take the opinion of a second expert without setting aside the earlier report. However, it is not desirable to appoint second commissioner or to refer to the second expert without there being any valid reasons. There should be special circumstances and the Court must record its reasons for sending the document to the second expert or for appointing a second commissioner. If the circumstances warrant, the Court may appoint second commissioner or to seek the opinion of a second expert in the light of the language of Order XXVI Rule 10-A of CPC read with Section 45 of Indian Evidence Act. The salient features, essentials and distinction between Order XXVI Rule 9 and Order XXVI Rule 10-A CPC read with Section 45 of Indian Evidence Act always to be kept in mind. We are in complete agreement with the opinion of the learned Judge in Korvi Rosaiah's case (3 supra). Moreover, we are of the view that the doors of the trial Court shall not be shut at the initial stage. The parties must be given full opportunity to adduce evidence and the other side must be given the same opportunity to adduce rebuttal evidence.'

'53 Since there appears to be some truth in the allegation that the respondent had changed his style of signature from time to time and expert had not compared all the specimen signatures sent to him and in view of the variation between S-10 and S-11 and since Exs.C1 to C4 and Exs. X1 to X4 appear to have been obtained subsequently it may be just and reasonable to direct the second expert to examine these signatures and compare the same with the disputed signatures and such course would result in a valid and genuine exercise.'

On the other hand, respondents have produced the authority of Single Bench of this Court in *Sant Gurmeet Ram Rahim Singh Versus Central Bureau of Investigation, Chandigarh*, 2018 (1) RCR (Criminal), 136, wherein in a criminal case, Single Bench of this Court refused to send disputed signatures to another laboratory for second opinion. Further reliance has been placed upon the authority of Hon'ble Supreme Court in *Syed Askari Hadi Ali Augustine Imam and another Versus State (Delhi Administration) and another*, Supreme Court Cases, (2009) 5 SCC 528.

I am of the view that ordinarily at the stage of evidence of

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plaintiff, questioned document should not be sent for second opinion on the request of defendants. Defendants can lead evidence at the stage of evidence of defendants to rebut the report. However, there can be special circumstances warranting to deviate from said general rule. I am of the view that present case is such case where deviation should be made. In this case, Will was sent to CFSL, Shimla, by the Civil Court on request of defendants at the stage of evidence of plaintiff. On account of receipt of negative report, plaintiff immediately used the same to lodge FIR against his three sisters, brother in law, scribe and witnesses, on account of which one of the witnesses committed suicide. The investigation in said FIR is underway and now has been stayed by this Court. Plaintiff seeks stay of investigation till second opinion is received. The situation is that only report of another CFSL can be relied upon to contradict the said report. I am of the view that Will is required to be sent for second opinion, in the given circumstances considering that same Scientist of CFSL, Shimla, twice examined the documents, but did not examine some of the signatures which are nearer to the date of execution of Will on the ground that these are not consistent. The signatures could not be consistent due to old age diseases. There could be other reasons for inconsistency in the disputed signatures on Will. Therefore, the matter needs to be got clarified from another laboratory to find out the truth in civil case as well as in criminal case.

As such, it is ordered that unregistered Will dated 25.5.2011 alongwith signatures Mark A1 to Mark A26 be again sent to CFSL, Ministry of Home Affairs, Government of India, Amberpet Post, Ramanthapur Hyderabad, Telangana, at the expenses of defendants i.e.

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petitioners for giving second opinion regarding genuineness of signatures of Dr. Harnam Singh Shan on Will. It be also brought to the notice of CFSL, Hyderabad, that Dr. Harnam Singh Shan was 88 years of age and that after alleged execution of Will, dated 25.5.2011, he was admitted to PGI, Chandigarh, due to diseases relating to old age on 28.5.2011, where he died on 9.6.2011. The CFSL, Hyderabad, is directed that in addition to comparing the signatures of Dr. Harnam Singh Shan with signatures of earlier time, his signatures should be compared with his signatures of March, April, May, 2011 and upto 28.5.2011 and specific opinion be given regarding genuineness of disputed signatures on Will dated 25.5.2011 so far as same is possible in the light of attending circumstances. It is further ordered that investigation in FIR No. 127, dated 25.4.2015, can continue, but final report will not be presented before the Court till receipt of opinion of CFSL, Hyderabad. The police is directed that whenever report of CFSL, Hyderabad, is received, police will obtain copy of same from Civil Court to carry out further investigation. Consequently, CR-6555-2015 is allowed and CRM-M-21022-2016 accordingly stands disposed of.

(KULDIP SINGH)
JUDGE

2.5.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No