

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

RSA No.3371 of 2002 (O&M)

Date of decision : 21.12.2018

Teja Ram (deceased) through his LRs and others

...Appellants

Versus

Jarnail Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Arun Jain, Sr. Advocate with
Mr. Amit Jain, Advocate for the appellants.

Dr. Surya Parkash, Advocate for the respondents.

ANIL KSHETARPAL, J.

Arguments were heard. Judgment was reserved. The judgment is being released.

Plaintiffs-appellants are in the Regular Second Appeal against the judgments passed by the Courts below.

In the considered opinion of this Court, following substantial questions of law arise for determination:-

- 1) Whether the testament scribed in the Tehsil Compound in which Sub-Registrar also has an office, non-registration of the testament becomes a suspicious circumstance?
- 2) Whether merely because both the attesting witnesses of the testament belongs to the Village where property is located and the testator used to reside before her marriage, particularly when the testament is with respect to the property received from her father, is a suspicious circumstance?

Dispute in the present case is with respect to estate of Krishna daughter of Hari Ram. Krishna received the property measuring 21 bighas and 1 biswas from her father-Hari Ram who died in the year 1960-61. Plaintiffs are her brothers and children of her pre-deceased brother. She was having four brothers, out of which, Sh. Anant Ram had died. Smt. Krishna was married and residing at Village Nangal whereas her brothers were residing in Village Hari Majra. Smt. Krishna died on 19.08.1983. Initially, mutation was sanctioned on the basis of the testament which was set aside in appeal. Hence, the plaintiffs filed present suit for declaration and permanent injunction. Suit was contested by husband and children of Krishna.

Learned First Appellate Court, after recording a finding that the execution of the Will is proved, has held that the testament is surrounded by suspicious circumstances. The suspicious circumstances, as noticed by the learned First Appellate Court are as under:-

- a). No reason has been given for ignoring natural heirs i.e. her sons, daughters and husband. Hence, it is not a natural Will.
- b) Will was not scribed from a licenced Deed Writer and although it was scribed by a Deed Writer at the Tehsil Compound, however, still it was not got registered.
- c) Both the attesting witnesses are residents of the village where the property is located.

The appeal was admitted and has now come up for hearing.

On 04.05.2018, during the arguments of the learned counsels for final disposal, it was noticed that in a sealed envelope, two testamentary documents which have been marked as Ex.P1 and Ex.D1 were found and,

therefore, it was considered appropriate to grant opportunity to the parties to lead further evidence. Hence, a report was asked from the trial Court after permitting the parties to lead evidence.

A report dated 26.09.2018 has been submitted while noticing that both, defendants as well as plaintiffs, have not led any evidence.

It may be noted here that the Ex.P1 is original Will whereas Ex.D1 is a photocopy. Both the Wills/Testaments are with respect to the property of Krishni located in Village Hari Majra and through the Will, property has been bequeathed in favour of the plaintiffs. However, it must be noticed that Ex.D1 is not photocopy of Ex.P1. There is slight change in the narration of both the Wills, although, property has been bequeathed in the same manner.

As noticed above, learned First Appellate Court has found that since both the attesting witnesses of the Will-Ex.P1, have been examined as PW1 and PW2, therefore, Will is proved. Learned First Appellate Court has further found that it is the plaintiffs who are in possession of the property left behind by Krishni.

Now let us deal with suspicious circumstances as noticed by the Courts below.

As regards, first suspicious circumstance that the testament is unnatural, as no reason has been given to deprive/disinherit her heirs namely sons, daughters and husband. On careful reading of both the Wills i.e. Ex.P1 and Ex.D1, it is apparent that the First Appellate Court has committed an error in not properly reading the testaments which are part of the record. In the testament, it is specifically mentioned by Smt. Krishni that she does not wish to bring the property in her family i.e. she does not want that property

she received from her father then comes to her family after marriage which includes husband and children. Hence, she does not wish to give any part of the property in dispute to her sons and daughters. At the cost of repetition, it must be noticed that the property in dispute had been received by Smt. Krishni from her father. Hence, First Appellate Court misread the testament.

Next reason given by the First Appellate Court is also erroneous because in the present case, the date of execution of the Will is not of much importance. A professional Scribe certainly lends more credibility to the documents scribed. However, merely because a document had been got scribed by the unlicensed Deed Writer, in absence of other evidence and circumstances to create a dent in the credibility of the document so got scribed from a unlicensed Deed Writer, cannot be ignored. In the present case, it has come in evidence that Sh. Gurmail Singh had scribed the Will. Plaintiffs summoned Sh. Gurmail Singh in evidence. He appeared in the Court. However, counsel made a statement that he would examine the Scribe, later on, after examining the attesting witnesses. Thereafter, once the attesting witnesses were examined, once again an effort was made to serve Gurmail Singh, who was served with a notice but could not appear due to his ill health. In such circumstances, the Will cannot be said to be suffering from suspicious circumstance on this ground only. It is well settled that the Will is not required to be mandatorily registered. It is optional for the Testator to get the Will registered. Hence, non-registration of the Will cannot be treated as suspicious circumstance on the ground that the Will has been scribed in the Tehsil Compound where Sub-Registrar has office. It may be noted that one of the attesting witness has specifically stated that when he suggested to the

testator-late Smt. Krishna that she should get the Will registered, she stated that she does not have that much of funds. In these circumstances, learned First Appellate Court erred in treating non-registration of the Will to be suspicious circumstance.

As regards next reason given by the Courts that both the attesting witnesses are residents of Village Hari Majra and not from Village Nangal where she is married, is also without any solid basis. In the present case, it is proved that property situated in Village Hari Majra had been received by her (Testator) from her father. Krishna wanted to bequeath only property situated at Village Hari Majra in favour of her brothers and children of a pre-deceased brother. In such circumstances, merely because witnesses are from the Village where she use to reside before marriage cannot be treated as suspicious circumstance.

In the considered view of this Court, a testament is solemn declaration by the Testator and Court should not sit in appeal or against the wishes of the Testator. If a testament is to be ignored on the ground of suspicious circumstances, such circumstances have to have some solid foundation and reasoning. The Courts cannot ignore the testament on the basis of conjectures and surmises.

As regards availability of two copies of the testament Ex.P1 and Ex.D1, it may be noticed that both the Wills i.e. one original and second photocopy, provide for bequeathing of the property in favour of the plaintiffs/appellants. No doubt, it appears that Ex.D1 (photocopy of the Will) was originally produced because there was an application for permission to lead secondary evidence which was dismissed by the Trial Court. However,

once another Will has been produced of the same date which is bequeathing the property in the same manner, the Court cannot ignore the presence of Ex.P1, the testament. The defendants have been granted opportunity to lead evidence as per order dated 04.05.2018. However, defendants have failed to lead evidence.

Learned counsel for the respondents/defendants submitted that propounder of the Will has to remove all the suspicious circumstances. He submitted that the availability of two different testaments create a suspicion.

This Court has considered the submissions, however, find no substance in it. Had two Wills bequeathing the property in a different manner executed on the same day, it could be considered as a suspicious circumstance but as noticed above, both the Wills are bequeathing the property in the same manner.

Accordingly, both the questions of law as framed earlier are answered in favour of the appellants.

Accordingly, judgments passed by both the Courts below are set aside and the suit filed by the plaintiffs shall stands decreed.

In view of the above, the present Regular Second Appeal is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

21.12.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No