

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

RSA No.1280 of 1995 (O&M)

Date of Order:31st May, 2018

Punjab Kaur Etc.

..Appellants

Versus

Ram Singh Etc.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. M.L.Sarin, Sr. Advocate, with
Mr. Ritesh Aggarwal, Advocate,
for the appellants.

Mr. Santosh Sharma, Advocate,
for the respondents.

ANIL KSHETARPAL, J.

Plaintiffs-appellants are in the regular second appeal against the judgment and decree passed by the learned first appellate court while reversing the judgment and decree passed by the learned trial court.

Dispute in the present case is with respect to the estate of Harnam Singh, who is alleged to have executed a registered Will dated 01.03.1967 in favour of grand son of the brother Albel Singh, who were minors at that time as he did not have any child. Harnam Singh died issueless without leaving any Class-I heirs on 15.07.1968. Plaintiffs are daughters of Biro, sister of Harnam Singh.

Will has been proved by examination of Harchand Singh, Nambardar as DW8, attesting witness. Naib Tehsildar who registered the Will has also been examined. Son of the scribe has been examined as PW10, whereas Karnail Singh Chhajla, Advocate, who was witness of the registration of the Will was examined as DW16.

Learned trial court held that the Will is surrounded by following suspicious circumstances:-

- (i) The attesting witnesses were residents of different village than executant Harnam Singh;
- (ii) The attesting witnesses were not known to Harnam Singh;
- (iii) The Will was propounded by the defendants after a period of 8 years of the death of Harnam Singh;
- (iv) Another attesting witness Nand Singh was not produced before the Sub-Registrar;
- (v) No reason has been given to disinherit sister Biro;
- (vi) The attesting witness could not correctly tell the age of the testator;
- (vii) The registration of the Will is perfunctory.

First appeal preferred by the defendants has been allowed by the court after re-appreciation of the evidence.

This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments and decrees passed by the courts below and the record.

Counsel for the appellants has proposed the following substantial questions of law:-

1. *Whether the Will Ex.DX allegedly executed by Harnam Singh was valid in the eyes of law?*
2. *Whether the Will Ex.DX is surrounded by suspicious circumstances, which have not been explained by the propounder of the Will, i.e. the defendant-respondents and thus the same is liable to be rejected?*
3. *Whether the lower Appellate Court could reverse the well-considered judgment and decree of the Trial Court, without meeting with all the reasons given by it for rejecting the Will, Ex.DX?*
4. *Whether the judgments and decrees of the Lower Appellate Court is perverse and suffers from errors patent on the record?*

SUBMISSIONS

Learned counsel for the appellants while addressing arguments has submitted that the Will is not proved in accordance with Section 68 of the Indian Evidence Act. He further submitted that the learned trial court had given six reasons while holding that the Will is surrounded by suspicious circumstances which have not been reversed by the first appellate court. As per Section 34 of the Punjab Land Revenue Act any person acquiring interest in the immovable property by inheritance, purchase, mortgage or otherwise, is required to report his acquisition of the right to the Patwari of the estate. He submitted that no report was submitted by the defendants as required within the time prescribed, therefore, the Will is doubtful. Learned counsel has further referred to the provisions of Section 39 of the Punjab Land Revenue Act which provides that if any

person neglects to make a report required by Section 34 within 3 months from the date of his acquisition of a right referred to in that section shall be liable, at the discretion of a Collector, to a fine not exceeding five times of the amount of fee which would have been payable according to the scale fixed. He further submitted that Nand Singh, another attesting witness, has not supported execution and attestation of the Will. He further drew attention of the court to the alternative plea of the defendants wherein they claimed that they have become owners by way of adverse possession. He further submitted that the second attesting witness at the time of registration of the Will could not be different than at the time of execution of the Will.

FINDINGS

As regards first argument of learned counsel for the appellants, it may be noticed that Section 68 of the Indian Evidence Act, 1872 provides that examination of one attesting witness is sufficient if the attesting witness fulfills the requirements of Section 63 of the Indian Succession Act, 1925. In the present case, on a careful examination of evidence given by Harchand Singh, Nambardar, it is established that Harchand Singh, Nambardar has proved the Will in accordance with the provisions of Section 68 of the Indian Evidence Act, 1872 by proving that the Will was executed and attested in accordance with Section 63 of the Indian Succession Act, 1925.

Learned trial court had highlighted that the Will was produced by the defendants after a period of 8 years after the death of Harnek Singh. It may be noticed that the defendants were admittedly minors on the day Harnek Singh died. They were also minors at the time of execution of the Will. Will is a registered Will. Its execution and registration cannot be

doubted on the ground that it has been produced after 8 years of the death particularly when no effort has been made by the plaintiffs to prove that the Will was not thumb marked by the executant.

Next argument of learned counsel for the appellants that the reasons given by the trial court have not been dealt with by the first appellate court, is not based upon sound factual basis. On careful examination of the judgment passed by the first appellate court, it is established that the first appellate court after re-appreciating the evidence has broadly dealt with all the reasons given by the trial court and after critical analysis thereof have reversed the same. Reference in this regard can be made to paragraphs 11, 12, 13, 14, 15 and 16 of the judgment passed by the first appellate court, which are extracted as under:-

11. The Will Ex.DX has four important recitals. The first is about the age of the testator Harnam Singh. He mentioned that he was aged about seventy five years and as such he had grown very old. There is hardly any dispute about the correctness of this recital. The second important recital is that it was difficult for him to maintain himself without the help of a Sewadar (i.e. The person who could render him services). No serious dispute is there on this fact either. The third important recital is that Harnam Singh deceased had no child of his own, whether male or female. This fact is also an admitted one. The fourth important recital is that appellants Ram Singh and Bant Singh sons of Mahinder Singh son of Albel Singh, were his close heirs and they were the grand-sons of his cousin brother Albel Singh. Harnek Singh deceased admittedly had no wife or child or even no brother or parents alive at the time of his death. In case, had Harnam Singh deceased no sister also, his heirs would have been his father's real brother

Phuman Singh or letter's son Albel Singh, who was thus the first cousin of Harnam Singh deceased. Or the sons and grand sons of Albel Singh. The recital in the deed is that the appellants were the grand sons of Harnam Singh's brother Albel Singh. Therefore, it can also be said that in the matter of succession had Harnam Singh been in differently headless towards his sister then appellants were the next close relatives of Harnam Singh. This fact cannot be lost sight of in the context of earlier noted other recitals of the Will which recitals pertain to real facts of the situation in which Harnam Singh deceased was while he was living at village Chhahar.

12. It has already been noted in detail that his sister Smt. Biro had been married off to a distance place and there is no cogent and reliable evidence that either Smt. Beero or her daughters or her own husband or husband of her daughters and their children ever came to reside with and look after Harnam Singh deceased and his land. While on the other other, his nearest colletarls were his first cousin Albel Singh's son and grand sons. When the court is appreciating two rival cases, one in favour of Will and the other against it, it cannot afford to totally ignore the recitals in the Will, specially when those recitals are much more nearer to the actial and factual state of affairs.

13. Equally would be a biased approach to the case of appellants as made by the learned trial court when it observed that it was imperative for the propounder of the Will to report the matter for mutation to circle Patwari after 15.7.1968 i.e. after the death of testator Harnam Singh. Reference was made to Section 34 of the Punjab Land Revenue Act, 1887, according to which any person, acquiring by inheritance purchase, mortgage, gift or otherwise, any right in any estate, was bound to report

the acquisition of his right to the Circle Patwari of the Estate. These provisions would be applicable to both the contesting parties. If the succession to the estate of Harnam Singh deceased opened on the basis of the Will the report was to be lodged by the appellants with the Patwari but in case it was a non-testamentary succession then the report should have been lodged by Smt. Beero, predecessor-in-interest of the plaintiff-respondent. Harnam Singh died on 15.07.1968. The matter was to be reported to the Patwari within three years of this date. What to speak of the period of three years, none of the parties, namely, the appellants and Smt. Beero lodged a report with the Patwari for more than six years after the death of Harnam Singh deceased. Whereas the appellants have a plausible explanation which may also be a valid one, for not lodging the report with the patwari about the opening of the succession to the estate of Harnam Singh deceased, there was none available with Smt. Beero. The appellants explained that they were minors at the time of death of Harnam Singh whereas no such disability was with Smt. Beero. Harnam Singh deceased was in joint possession of the land with Mahinder Singh and Joginder Singh sons of Albel Singh (the appellants being sons of Mahinder Singh aforesaid) and after Harnam Singh's death the possession remained with Mahinder Singh and Joiginder Singh and the appellants had no difficulty with the enjoyment and management of the estate of Harnam Singh through their father Mahinder Singh or uncle Joginder Singh, who are already in possession of this land, yet no steps were taken by Smt. Beero either to assert her joint possession or to enforce her right to the income/share in the crop, in the joint holding even at the pain of her claim getting time barred. Therefore, no adverse inference can be drawn against the appellants under the provisions of

Section 34 of the Punjab Land Revenue Act, as against the case of Smt. Beero.

14. The report with the Patwari was lodged on 21.9.1975 i.e. after more than seven years of the death of Harnam Singh. The appellants who were minors at that time, after coming to know that Smt. Beero had got mutation of inheritance sanctioned in her, behind their back, approached the Civil Court in Civil Suti No.231 instituted on 01.09.1976 before Sub Judge Ist Class, Sunam and disclosed the existence of a Will in their favour. This mutation was sanctioned, initially on 14.7.1976. In the jamabandi for the year 1967-68 (Ex.D13), that of 1971-72(Ex.D14) and even in the entries of khasra girdwari from kharif 1972 to Rabi 1977 (Ex.D15). Harnam Singh deceased continued to be shown as co-sharer in half-share of the joint khata inspite of his death in 1968. Thus not only the contesting parties, but even the revenue authority, effecting the entries in the revenue record on the basis of physical verification at the spot, did not bother to get the entries changed from the name of Harnam Singh deceased in favour of persons who had succeeded him. Apparently, there was no serious challenge to inheritance which obliged disclosure of the claim of the appellants on the basis of the Will till they came to know that the mutation had been sanctioned at their back in favour of Smt. Beero. Therefore the objections that the Will had not seen the light of the day for a long period, has a very weak force in the context of the above noted circumstances.

15. Smt. Jaswant Kaur v. Smt. Amrit Kaur and others (Supreme), 1977, P.L.J., 54 is a case where the Will made in 1945 did not see the light of the day till 1957, after 2 ½ years of testator's death, but it was not the sole circumstances. It was observed as follows:-

Being an ambulatory document, it may be granted

that there may be no occasion for any one to know of its existence until the death of the testator on December 15, 1954. But it is un-understandable that a document by which property worth lacs of rupees was disposed of should have remained a closely guarded secret from the whole world of intimate friends and relatives, any from the sole legatee himself, for over 2 ½ years after the testator's death. The testator had left behind him a large property and along with it a large amount of litigation which makes it impossible to believe that upon his death in December 1954, no one bothered to go through his papers which would reflect the state and extent of his property. The explanation of the defendant that he hit upon the Will by chance while going through some papers of his grand father is, therefore, patently lame and unacceptable.”

Unlike, the above facts, in the present case, the Will was known to Joginder Singh and Mahinder singh, who are co-sharers of the deceased and who are already in possession of the suit land. There was no third person who was to take possession from the appellants of their share till it was challenged by smt. Beero and soon after coming to know about that challenge the appellants started guarding their rights by putting up the instrument of inheritance i.e. Will in their favour. No litigation spread over a number of years was pending in the present case as in the case of Jaswant Kaur (Supra).

16. This will was attested by three witnesses, namely, Harchand Singh, Lambardar, one Nand Singh and Karnail Singh Chhajla, Advocate. The first named witness Harchand Singh @ Chand Singh Lambardar DW8 appeared for the defendants-appellants and supported their case. The second named witness, Nand

Singh instead, appeared for the respondents-plaintiffs as PW7 and he went against the execution of the Will and supported the case of the respondents, inspite of he being himself an attesting witness of the Will. The third attesting witness namely Karnail Singh Chhajla, Advocate, though appeared for the appellants-defendants (the propounders of the Will), yet he also turned hostile to the party producing him. It is the appreciation of the evidence led through these witnesses, by the learned Sub Judge which has been vehemently attacked by the learned counsel for the appellant.”

Next argument of learned counsel for the appellants is that there is non compliance of Sections 34 and 39 of the Punjab Land Revenue Act, 1887.

The argument is just to be noticed and rejected. Section 34 provides for procedure for reporting to the Patwari and Section 39 provides for a penalty which can be maximum 5 times of the fee payable. However, attention of the court was not drawn to any provision of the Punjab Land Revenue Act, 1887, which debars a party subsequently to report to the patwari. Even otherwise, mutation is attested and sanctioned only for fiscal purposes and non-sanction of mutation does not take away title of the parties.

Next argument of learned counsel is that Nand Singh, the attesting witness, has not supported the execution of the Will

In the considered opinion of this court, no doubt Nand Singh has stated that the Will had been already executed when he was asked by Harchand Singh, Nambardar to come and attest the Will. However, Nand Singh does not dispute his signatures on the Will. One, attesting witness who has been won over, cannot be permitted to hijack the validity of a

registered Will. In the present case, execution of the Will is witnessed by two attesting witnesses, namely, Harchand Singh, Nambardar and Nand Singh whereas before the Sub-Registrar, registration of the Will was attested by Harchand Singh, Nambardar and Karnail Singh Chhajla, Advocate. Both the attesting witnesses of the registration have supported the Will and proved its registration. Execution of the Will has been proved by Harchand Singh, Nambardar who was known to the executant. Still further, Sub-Registrar Balwant Singh has also been examined, who had stated that the Will was read over and explained to the executant, who admitted its correctness and thereafter put his thumb impression.

Next argument of learned counsel for the appellants is that the defendants since have claimed in alternative adverse possession, therefore, title of the plaintiffs is admitted.

This court has considered the submissions.

On careful reading of the written statement filed by the defendants, it is apparent that the defendants had set up the Will in their defence, however, in the alternative, defendants did take a plea of adverse possession but in the considered opinion of this court such plea in the alternative would not defeat the main plea by the defendants while defending the suit.

Learned senior counsel has further drawn attention of the court to the statement of DW8 Harchand Singh, Nambardar who has stated that Harnam Singh was young, whereas he was 80 years of age at the time of execution. This court has carefully read the statement. During the cross-examination when counsel for the plaintiffs asked about the physical built of the testator, the attesting witness responded that he was fairly having

good height and young, however, that would not mean that Harchand Singh, Nambardar has stated that Harnam Singh, testator was a young man. The phrase used by Harchand Singh, Nambardar is used with respect to person who is physical well built.

Another argument of learned counsel for the appellants is that the attesting witness could not be changed at the time of registration.

In this regard, it may be noticed that the Will is not required to be compulsory registered. It is at the option of the executant. Requirement of the execution and attestation of the Will is that it must be attested by two attesting witnesses. In the present case that requirement has been fulfilled as it was attested by two attesting witnesses namely, Harchand Singh, Nambardar and Nand Singh. The Indian Succession Act, 1925 does not provide for any ceiling on number of attesting witnesses. The registration of the Will is a separate step. At the time of registration, normally the registration authority insist on attestation of the document by a person known to Sub Registrar. In the present case, it has come in evidence that Nand Singh left the place after execution of the Will. Therefore, Mr. Karnail Singh Chhajla, Advocate was made to attest, the registration of the Will. Learned counsel for the appellants could not point out any provision which debars a different second witness at the time of registration.

It may be noticed that the reasons why Nand Singh did not support the execution of the Will, have also been discussed by the first appellate court. It has been noted that maternal uncle of the defendants had appeared as a witness in a criminal case against Nand Singh. This fact is clear from the statement of PW6 Harnek Singh.

The question of law as proposed are not substantial questions

of law. However, these have already been dealt with by this court while dealing with the submissions of learned counsel for the appellants.

In view of the aforesaid discussion, there is no ground to interfere with the well reasoned judgment passed by the learned first appellate court.

The regular second appeal is dismissed.

31st May, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No