

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

**RSA No3265 of 1997 (O&M)
Date of Decision: February 17, 2018**

Basant Singh and others

..Appellants

Versus

Gurbachan Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. R.K. Verma, Advocate
 for the appellants

 Mr. V.K. Kataria, Advocate
 for the respondents.

FATEH DEEP SINGH, J.

The facts that are most essential to be enumerated before coming to the relative merits of the two sides in the light of submissions of the learned counsel for the parties as well as in view of the records of the case are that Mangal Singh son of Lal Singh, who admittedly had died in the year 1985 and had undergone two marriages, one with Karam Kaur and another with Nand Kaur, who both have since died. Out of the womb of Karam Kaur, one son Gurbachan Singh and two daughters Balbir Kaur and Dalbir Kaur were born and Nand Kaur had given birth to Basant Singh, son and four daughters Surjit Kaur, Parkash Kaur, Gurmel Kaur and Jasmail Kaur. The dispute revolves around registered Will dated 30.4.1970 purported to have been executed by Mangal Singh, whereby, as is

there in the stand of the two sides father had bestowed upon both the sons Gurbachan Singh/Plaintiff and Basant Singh/defendant equal shares in property. Aggrieved over it, Gurbachan Singh filed suit for declaration holding out that Will so executed by his father disinheriting his daughters was illegal, null and void and that judgment and decree suffered by defendants No.2 to 5 in favour of defendant No.1 too was inoperative and ineffective and defendants No.2 to 5 have no right, title or interest in suit in question claiming that plaintiff and defendants No.6 and 7 who are co-sharers in the suit land were not made party and kept decree a guarded secret has sought setting aside of this Will.

All the defendants except defendants No.6 and 7 latter having been proceeded ex-parte took the stand that deceased had executed legally valid Will which needs to be enforced and, thus, denied each and every contentions of the plaintiff. The trial Court out of the pleadings of the parties framed the following issues:-

1. Whether deceased Mangal Singh executed a valid Will dated 30.04.1970 in favour of plaintiff and defendant No.1
OPP
2. Whether decree dated 23.4.1986 passed by the Additional Senior Sub Judge, Faridkot is null and valid and are inoperative qua their rights of the plaintiff? OPP
3. Relief

The plaintiff examined PW1 Inderpal Singh, Advocate, PW2 Niranjana Singh, Tehsildar, PW3 Rajinder Kumar, Deed Writer, PW4 Gian Singh, Assistant Kanungo, PW5 Gurbachan Singh and PW6 Jaswant Singh. and closed his evidence. On the other hand, defendants examined DW1 Sukhtej Singh, attorney of defendant No.1 and closed their evidence. The Court of learned Additional Senior Sub Judge, Faridkot dismissed the

suit of the plaintiff. The same was challenged before the Court of learned Additional District Judge, Faridkot and through impugned judgment and decree dated 15.2.1997 learned 1st Appellate Court accepted the appeal and set aside the decree of the trial Court.

Appreciating the submissions of learned counsel for the parties and upon perusal of the records of the case, the factum of two marriages of Mangal Singh with Karam Kaur and Nand Kaur and his children out of the same are not questioned from each of the sides. The plaintiff claims that Mangal Singh during his life time executed a valid registered Will in favour of plaintiff and defendant No.1 but alleged that defendant No.1 in connivance with Revenue officials at the back of the plaintiff got mutation Nos.363 and 1975 entered vide report No.161 dated 30.12.1985 and got mutation sanctioned on 11.1.1986 in favour of plaintiff and defendants in equal shares. When plaintiff came to know of it, challenged the same before the Revenue Authorities which was set aside and mutation on the basis of registered Will was got enforced and, thus, also challenged mutation Nos. 2058 and 684 on the grounds that they are based on decree dated 17.7.1986, thus, at the back of the plaintiff and hence rallying point that has come about is the Will in question which is Ex.P4 and is a registered document registered on 30.4.1970 and the witnesses to the same are Gurbachan Singh, who admittedly has died and another PW6 Jaswant Singh who has turned hostile.

It would not be out of place to refer here that another suit by Jaswant Singh etc. was also filed at the same point of time regarding which application was moved by Gurbachan Singh for consolidating these

two suits but the same stood dismissed on 3.4.1994 by the Court of learned Senior Sub Judge, Faridkot. Plaintiff examined PW1 Inder Pal Singh, Advocate to prove the Will and who identified the persons by putting his signatures thereon and proving the pleadings of the parties and, thereafter, PW2 Niranjana Singh before whom the Will was executed and got registered has lend credence to Will Ex.P4 and the counsel for the appellant could not bring about anything which could undermines the sanctity of this witness who is the person before whom the same was executed and got the same registered. Testimony of PW4 Gian Singh is of formal nature and thereafter testimony of Gurbachan Singh, plaintiff. As is contended by learned counsel for the appellant and is well conceded by the learned counsel for the respondent that the most important admission that has come about in the testimony of PW6 Jaswant Singh he admits that Gurbachan Singh son of Mangal Singh asked him to put his thumb impression and categorically accepted that he has thumb marked the same and states that the Tehsildar had not read over the Will to him and the most vital admission that has come about in his cross-examination he invariably accepts that he has thumb marked the Will and identified his thumb impression. On the other hand, DW1 Sukhtej Singh, attorney of defendant No.1 has testified so. Section 68 of the Evidence Act lays down that if a document is required by law to be attested it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. Admittedly, in this case, Gurbachan Singh has since died and the only testimony of Jaswant Singh PW6, however he has not fully supported, though, admits his thumb impression on the Will in question is adequately

taken care by the provision of Section 71 of the Evidence Act which provides that if attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence. Thus, answers the arguments put forth by learned counsel for the appellant that no requirement of law has been accomplished as marginal witness has not been examined. In the case of Will requirements in terms of said provisions are now well settled that the Will like any other document needs to be proved under the provisions of Indian Succession Act. However, onus to prove the Will is always on the propounder but in the present case it is the own admission of the two sides that Mangal Singh has duly executed the Will Ex.P4 and, thus, it is well brought on the record and is not controverted that Will was thumb marked by the executant. A Division Bench of this Court in the case of 2006(2) RCR (Civil) 140 Babu Singh and others vs. Ram Sahai @ Ram Singh considering such an eventuality has laid down the proposition that a registered document like Will in the present case will certainly give rise to presumption as to its genuineness. PW2 Niranjana Singh has stepped into the witness box and established the due execution of the Will by the executant and which execution is even otherwise is not controverted by any evidence by the party trying to oppose it. Their Lordships in the cited ratio has applied doctrine of necessity incorporated in Section 69 of the Evidence Act where reliance has sought to be placed on 1994 (1) RRR 221 in case of Lila Dhar vs. Smt Badho and another and in the cited ratio similar situation has arisen and the Court was of the opinion that where the scribe as well as attesting authority testified in favour of the Will is in itself sufficient to prove due execution of the Will.

The learned Appellate Court while adjudicating on the matter has well appreciated the evidence by holding that statement of Sub-Registrar in such an eventuality can be treated as witness where reliance has been placed on **1991 PLJ 587** and that mere hostility of Jaswant Singh PW6 does not affect the outcome of the Will who has accepted the statement to which he was confronted and has rightly set aside finding on issue No.1 holding that plaintiff has fully proved execution of the Will Ex.P4 and has rightly come to a justifiable conclusion that the plaintiff and defendant No.1 are entitled to inherit the property of Mangal Singh in equal shares on the basis of this Will, contrary to the findings of the Court below, whereby, the learned trial Court has wrongly interpreted the provisions and has come to a unjustifiable and illegal findings.

In the light of what has been detailed and discussed above, the findings of the learned First Appellate Court are certainly legally firm and judicially acceptable, thus upholding the same the present appeal stands dismissed.

(FATEH DEEP SINGH)
JUDGE

February 17, 2018
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No