

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

1. RSA No.3501 of 2003 (O&M)
Date of decision : 18.12.2018
Satwant Singh ...Appellant

Versus

Amar Kaur and others ...Respondents

2. RSA No.5131 of 2003 (O&M)
Date of decision : 18.12.2018
Amar Kaur and others ...Appellants

Versus

Satwant Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Rakesh Chopra, Advocate for the appellant
(In RSA No.3501 of 2003)
for respondent No.1 (In RSA No.5131 of 2003)

Mr. S.S. Rangi, Advocate for the appellants
(In RSA No.5131 of 2003)
for respondent Nos.1 to 5 (In RSA No.3501 of 2003)

ANIL KSHETARPAL, J.

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

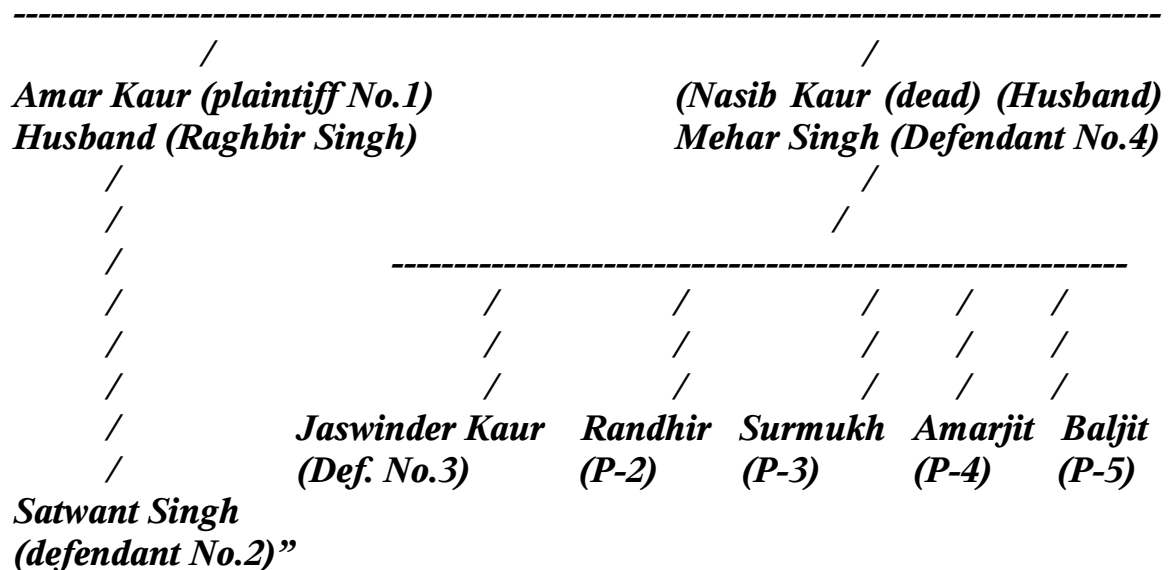
By this judgment, RSA Nos.3501 and 5131 of 2003 shall stand disposed of. Parties would be referred to by their name so as to avoid any error.

In the considered view of this Court, the following substantial questions of law arise for consideration:-

- 1) Whether a Will which is registered is required to be superseded only by a registered Will/document?

Dispute in the present case is with respect to the estate of late Sh. Ram Singh who died on 14.09.1995. At the time of death, he left behind a widow, a daughter Amar Kaur (plaintiff No.1) and five grand children from a pre-deceased daughter Nasib Kaur as Class I heirs. Pedigree table is extracted as under:-

Ram Singh
Death: 14.09.1995
 /
 /----- ***Inder Dai (Wife)***
 / ***(defendant No.1)***
 / ***Death: 02.02.1996***
 /



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Chandigarh

claimed that they are owners of the property left by late Sh. Ram Singh as per testament dated 28.08.1995.

On the other hand, defendants contested the suit. It may be noted that defendant No.1-Inder Dai died on 02.02.1996. Defendants denied execution of the Will by late Sh. Ram Singh dated 28.08.1995 and they set up a registered Will dated 04.08.1995.

Both the Courts have held that the Will dated 04.08.1995 is not proved whereas Will dated 28.08.1995 is proved but it is surrounded by suspicious circumstances and, therefore, property would go by natural succession.

The Will dated 28.08.1995 is attested by three witnesses namely Sardara Singh (who has appeared as PW2), Amar Singh (who has appeared as PW3) and Karam Singh (who has not been examined in the suit). Scribe of the Will dated 28.08.1995 has been examined, PW1 Baljit Singh. No doubt, learned First Appellate Court has dismissed the application filed by the defendants for permission to lead secondary evidence in order to prove the Will dated 04.08.1995 as some part of the Will was found torn, however, this Court is of the opinion that issue would not require any decision.

Learned First Appellate Court after recording a finding that execution of the Will dated 28.08.1995 (unregistered) has been proved, have held that the Will is surrounded by following suspicious circumstances which remained unexplained.

- a) The Will dated 28.08.1995 is unregistered whereas Ram Singh had executed two previous registered Wills, first on 28.06.1995 and

second on 04.08.1995.

- b) There is no evidence that Ram Singh was having any ailment and required any medication because in the last Will dated 28.08.1995, it has been written that Smt. Inder Dai, his wife with the help of Raghbir (husband of Amar Kaur) has withdrawn all the amount from the joint account and no amount is left even for his treatment.
- c) No evidence has come on record as to what prompted the Testator to change his mind within a period of 24 days after the execution of the registered Will.
- d) Presence of Karam Singh, one of the person who also attested the Will, is not proved.
- e) There is no reason why the Will was not got scribed from a professional Deed Writer.
- f) No reason is forthcoming why other heirs have been ignored.

Now the stage is set for considering the validity of the suspicious circumstances.

With regard to first reason, it may be noted that the Will is not required to be compulsorily registered. Registration of the Will is optional and not compulsory as provided in Section 18 of the Registration Act, 1908. Hence, a Will cannot be ignored only on the ground that previous Will is registered whereas subsequent Will is unregistered. Of course, facts of each case have to be examined to hold that whether non-registration of the Will is suspicious circumstance or not. In the present case, third Will i.e. dated 28.08.1995 is executed by Ram Singh dividing the property equally amongst family of his two daughters. Half share has been bequeathed in

favour of Amar Kaur whereas remaining half share has been bequeathed in favour of four sons of pre-deceased daughter late Smt. Nasib Kaur. It is recorded in the Will that since Inder Dai, his wife has withdrawn entire amount from the joint bank account, therefore, he is left with no money. It may be noted that still as per the last Will, Ram Singh made an arrangement and obligated successors to his property to ensure payment of ₹1500/- per month to his widow-Inder Dai. In such circumstances, non-registration of the Will cannot be taken as suspicious circumstance.

Next reason assigned by the First Appellate Court with regard to no evidence of any ailment to Ram Singh at the time of execution of the Will is also to be noticed and rejected because late Sh. Ram Singh was of the age of 85 years (approximately) on the date of execution of the Will. In the Will dated 28.08.1995, Ram Singh has written that Smt. Inder Dai, his wife has withdrawn entire amount from the joint account in collusion with Raghubir Singh which prompted Ram Singh to change his mind. Propounder of the Will is required to prove the Will and is duty bound to remove all the suspicious circumstances. However, suspicious circumstances are required to have some solid foundation and are not expected to be based upon whims and fancies of an individual. At the age of 85 years, the term "*hale and hearty*" is subjective and one cannot be expected to be not needing any medicine. Ram Singh had felt anguished on withdrawal of the entire amount and, therefore, changed his Will.

As regards next reason, it may be noted that Section 63 of the Indian Succession Act, 1925 provides that the Will must be attested by two or more witnesses. The minimum requirement is that the Will must be

attested by two witnesses. In the present case, the Will dated 28.08.1995 is attested by three witnesses. No doubt, Sardara Singh, one of the attesting witness has stated in one line while appearing in oral evidence that at the time of execution of the Will dated 28.08.1995, he, Amar Singh-the 2nd attesting witness, Scribe and the Testator were present. However, if the statement of Sardara Singh is read in entirety, it appears that Sardara Singh had in the cross-examination, by slip of tongue has mentioned that at that time, only four persons were present. However, that itself would not be sufficient to discard the Will, particularly, when two other witnesses who were present at the time of execution of the Will have proved execution and attestation of the Will in accordance with law.

The next reason that the Will has not been got scribed by the professional Scribe. There is no requirement that the Will must be scribed by a professional Scribe. Baljit Singh, the alleged Scribe has appeared and supported the Will. In such circumstances, the Court erred in taking it as a suspicious circumstance.

As regards the last alleged suspicious circumstance, it may be noticed that learned First Appellate Court has overlooked that the deceased has not excluded any natural heirs. Half share of the property has been bequeathed in favour of daughter-Amar Kaur who is alive, whereas half share in the property has been bequeathed in favour of four sons of a predeceased daughter. With regard to the widow, provision has been made in the Will to the extent of ₹1500/- per month. Hence, no heir has been excluded.

Now the stage is set for answering questions of law.

1) Whether a Will which is registered is required to be superseded only by a registered Will?

As already noticed, a reading of Section 18 of the Indian Registration Act makes the registration of the Will optional. Once, the registration of the Will is optional, it cannot be held that a registered Will is required to be superseded only by a registered Will/document. Once, registration of the Will is not mandatory, revocation thereof can be by an unregistered document. Hence, question No.1 is answered accordingly.

2) Whether a decree passed by the Court against a minor defendant is liable to be set aside on the ground that the trial Court failed to appoint a Court guardian even in a situation where the minor is represented by natural guardian and there is no material before the Court that his interest was not properly defended?

Learned counsel appearing for defendants has pleaded that defendant No.2 was minor on the day the suit was instituted and there is no compliance of provisions of Order 32 Rule 4 of the Code of Civil Procedure. It may be noted that in the present case, defendant No.2-Satwant Singh was minor. He was impleaded as defendant in the suit through his next friend and guardian (natural father) Raghbir Singh. Defendant No.2 appeared before the Court through Raghbir Singh. Thereafter, he filed a written statement duly signed by his mother, again another natural guardian. Still further, Raghbir Singh has appeared as DW2 and supported the case of defendant No.2. Even, the second appeal is filed by Satwant Singh through his father Raghbir Singh. No evidence has been led to prove that natural guardians failed to protect his interest or contest the suit properly. First appeal was also filed by Satwant Singh through his father. In such

circumstances, it cannot be held that natural guardians, mother and father have not defended the interest of the minor.

No doubt, the provisions of Order 32 Rule 4 of CPC are mandatory, however, a Full Bench of this Court in the case of **Amrik Singh etc. Vs. Karnail Singh etc., 1974 AIR (Punjab) 315**, have held that once a minor is represented by natural guardians, the judgment so passed would not be rendered void, unless it is proved that non-compliance of the provision of Order 32 of CPC have caused some prejudice to the interest of the minor or he was not effectively represented. Further, this issue has been examined by the Hon'ble Supreme Court in the recent judgment in the case of **Nagaiah and another Vs. Smt. Chowdamma (dead) by LRs and another, 2018(2) RCR (Civil) 617**. Although, Hon'ble the Supreme Court was dealing with the appointment of guardian, however, in para 8 of the judgment, has dealt with the issue even in respect of minor defendants and while referring to various judgments of the different High Courts, the Court has declared that even if there is certain formalities for appointment of a guardian ad litem to represent the defendant have not been observed unless the prejudice to the minor defendant is proved, the decree passed cannot be set aside. Para 8 of the judgment is extracted as under:-

“8. Not only, is there no provision for appointment of next friend by the Court, but the permission of the Court is also not necessary.

However, even in respect of minor defendants, various High Courts are consistent in taking the view that the decree cannot be set aside even where certain formalities for the appointment of a guardian ad litem to represent the defendant have not been observed. The High

Courts have observed in the case of minor defendants, where the permission of the Court concerned under Order XXXII Rule 3 of the Code is not taken, but the decree has been passed, in the absence of prejudice to the minor defendant, such decree be set aside. The main test is that there has to be a prejudice to the minor defendant for setting aside the decree. For reference, see the cases of *Brij Kishore Lal v. Satnarain Lal & ors.*, AIR 1954 Allahabad 599, *Anandram & Anr. v. Madholal & Ors.* AIR 1960 Raj. 189 *Rangammal v. Minor Appasami and ors.* AIR 1973 Mad. 12, *Chater Bhuj Goel v. Gurpreet Singh* AIR 1983 Punjab 406 & *Shri Mohd. Yusuf and Ors. v. Shri Rafiquddin Siddiqui*, ILR 1974(1) Delhi 825.

In the matter on hand, the suit was filed on behalf of the minor and therefore the next friend was competent to represent the minor. Further, admittedly no prejudice was caused to plaintiff no.2.”

Keeping in view the aforesaid authoritative pronouncements, this Court does not find any substance in the argument of learned counsel for the defendants-appellants.

Accordingly, question No.2 is also answered against the defendants-appellants and in favour of the plaintiffs-appellants.

Resultantly, RSA No.5131 of 2003 filed by the plaintiffs is allowed whereas RSA No.3501 of 2003 filed by the defendant is dismissed.

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

18.12.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

**Whether speaking/reasoned:-
Whether reportable:-**

**Yes/No
Yes/No**