

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

Date of decision: 07.12.2018

1. RSA No.3349 of 1999 (O&M)

Sadhu Singh Hamdard Trust and another

..... Appellants

Versus

Jatinder Singh and others

..... Respondents

2. RSA No.2182 of 1999 (O&M)

Jatinder Singh

..... Appellant

Versus

Sadhu Singh Hamdard Trust etc.

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Arun Jain, Sr. Advocate with
Mr. Amit Jain, Advocate and
Mr. M.S. Rana, Advocate
for the appellants (in RSA-3349-1999).
for respondent No.1 (in RSA-2182-1999).

Mr. S.P. Arora, Advocate
for respondent No.1 (in RSA-3349-1999).
for the appellant (in RSA-2182-1999).

ANIL KSHETARPAL, J.(ORAL)

Vide this judgment, I shall be disposing of two appeals bearing RSA No.3349 of 1999 and RSA No.2182 of 1999 which are connected, both are arising from the same suit filed seeking declaration that the plaintiff and defendants No.7 and 8 who are sons of Niranjana Kaur are legal heirs and the Trust created by their father is illegal. Possession of the property in dispute

was also sought.

Sadhu Singh Hamdard had a family-Niranjan Kaur (wife) and three sons namely Jatinder Singh-plaintiff, Barjinder Singh-defendant No.7 and Bhupinder Singh-defendant No.8. Bhupinder Singh had unfortunately died. Smt. Niranjan Kaur executed a Will dated 27.07.1970 bequeathing all her property in favour of her husband Sadhu Singh Hamdard. It will be noticed that Sadhu Singh Hamdard was a journalist running a press which used to publish and print newspapers. The translated copy of the Will has been filed is extracted as under:-

“ Will

I, Niranjan Kaur w/o S. Sadhu Singh Hamdard, Ajit Bhawan, Jalandhar declares my will as under:-

I am sick and going to Chandigarh for a major surgery. Body and Life is uncertain, don't know when life ends. So, I declares my last will in full conscious writes that I owns different types of properties:-

- 1. I have half share with Kuldeep Singh Gill in Hamdard Printing Press.*
- 2. I, along with my husband Sadhu Singh Hamdard owns ½ share of our total 1/3 of the Gobind Farm in Village Bal, Teh. and Distt. Ropar. Whereas the remaining share in Gobind Farm belongs to Gurdyal Singh and others.*
- 3. A plot measuring 13 Marlas, in the west side of the Ajit Bhawan, is on my name.*
- 4. Other then the above said properties any bank balance, any plot, any land anything on my individual name or in partnership with my husband or someone else, to be considered as the property of my husband Sadhu Singh after my death and all these considered to be transferred to him as my only legal heir. No one else other than my husband Sadhu Singh Hamdard to be considered as legal heir of my property. This will of mine is the last will that I am doing in my full consciousness.*

Witness

*(Bishan Singh)
House No. EG 32G,
Sant Nagar, Jalandhar
(in Punjabi)*

Scribe and witness

*(Atma Singh)
137, Lajpat Rai Nagar
Jalandhar*

*Niranjan Kaur
w/o Sadhu Singh Hamdard
Ajit Bhawan, Jalandhar”*

Smt. Niranjan Kaur died in the month of August 1970. Jatinder Singh filed a suit seeking relief as referred to above. It will be noted that Sadhu Singh Hamdard after having become owner of the entire property constituted a Trust in May, 1977. The suit was filed on 25.07.1987 by Jatinder Singh challenging constitution of the trust as also for declaration that he along with his brothers are owners of the property. The Will Ex.D-7 was produced and proved through examination of two witnesses namely Ramesh Chander DW-2 and Ajit Saini, DW-3 who had identified the signatures of the attesting witnesses, since both the attesting witnesses had died. The Will was attested by Bishan Singh and Atma Singh who were working in the printing press. It will be noted that the plaintiff has not made any effort to prove that the Will does not bear the signature of Niranjan Kaur, the executant.

Learned trial Court on appreciation of evidence found that the Will has been proved in accordance with Section 69 of the Evidence Act as both the attesting witnesses had died and this aspect has not been disputed by the plaintiff. Thus, the suit was dismissed.

Learned First Appellate Court reversed the findings of the trial Court with regard to validity of the Will on the ground that it is surrounded by suspicious circumstances. However, dismissed the suit filed on the ground of limitation. That is how these two appeals have been preferred. One by the Trust and second by the plaintiff.

With the able assistance of learned counsel for the parties, this Court has gone through the judgments passed by the Courts below and the record.

Ex.D-7 is a hand written Will by an employee of the printing press of the newspaper which the family use to run. It has been mentioned that Atma Singh has scribed who is also an attesting witness of the Will. Second attesting witness is Bishan Singh again an employee working in the printing press.

Learned First Appellate Court held that since both the attesting witnesses which have been examined are interested witnesses, therefore, their evidence is not believable. It will be noted that the employees working with the attesting witnesses have been examined to prove the signatures of the attesting witnesses since both have died because the will was challenged after a period of 17 years from the date of execution and death of the executor/testator. These witnesses namely Ramesh Chand and Ajit Saini examined as DW-2 and DW-3 are mere employee of the printing press and they do not get any benefit from the Will. The Will was executed exclusively in favour of husband namely Sadhu Singh Hamdard.

Second reason assigned by the First Appellate Court that there is a difference of space in between the lines in para 4 of the Will. It will be noted that the Will is a hand written Will executed on a plain paper. If one carefully examines the Will, para 1 of the Will also has a narrow space as compared to para 2. Thus, the space in between the lines is inconsistent and varies in the entire Will. No evidence has been led that Niranjana Kaur used to keep the blank signed papers or the husband was having any blank signed papers of Niranjana Kaur. The small difference in spacing in between the lines would not make a Will suspicious. The Will is a solemn declaration made by

a person who is no more in the world and the Courts before interfering with the wish of the deceased must place itself at the place of the executant and then examine the validity of the Will. Similarly, the next reason assigned by the First Appellate Court that three sons have been dis-inherited is also to be examined in the context, the Will has been executed. The Will has been executed when she was about to undergo a major surgery. She writes in the Will that I am going to undergo major surgery and therefore, she is bequeathing the property in favour of her husband. No doubt, reference to the sons had not been given but since the Will was not scribed by a professional scribe, therefore, she was not having advantage of a professional person who would help in writing a proper Will. Section 63 of the Indian Succession Act only provide that the Will should be thumb marked or signed by the executant in the presence of two attesting witnesses. The Will is not required to be scribed by a professional scribe. This also explains the next reason given by the learned First Appellate Court to hold that the Will is surrounded by suspicious circumstance.

Learned First Appellate Court has also taken adverse view of the fact that one of the attesting witness namely Bishan Singh had signed with different pen/ink. The Court overlooked the fact that both the attesting witnesses were working in a printing press and a witness might be carrying his own pen. That would not itself make the Will suspicious. The scribe-cum-other witnesses as well as the executant has signed with the same pen through which the Will was scribed. In such circumstances, the conclusion drawn by the learned First Appellate Court treating signature of one attesting witness with different pen to be a suspicious circumstance is not correct.

Learned First Appellate Court has also noticed that the husband-

Sadhu Singh Hamdard has re-married within one month of the death of

Niranjan Kaur. That in the considered view of this Court cannot affect the validity of the Will. Niranjan Kaur could not have dreamed of that her husband would re-marry after one month. The state of mind of the executant on the date of execution of the Will has to be seen. On that day, she specifically mentions that she is having half share in Hamdard Printing Press with Kuldeep Singh Gill and her husband owns one half share in Gobind Ram Farm. She further gives detail of the other properties which are owned by her. In such circumstance, re-marriage of the husband after the death of the testator, first wife cannot be treated as suspicious circumstance.

Next reason assigned by the Court that the Will had not seen the light of the day and was produced after long delay is also without any substance because Sadhu Singh immediately after the death of Niranjan Kaur started treating entire property to be his own and therefore, he constituted a Trust in the year 1977. Merely because the municipal record was not got corrected, it cannot be said that the Will has not been produced within reasonable time. Still further, as noticed above, the Will has been challenged after a delay of 17 years. Although, learned counsel for the plaintiff-appellant has submitted that the Will has not been challenged, however, once the constitution of the Trust has been challenged, the Will indirectly has been challenged and thus validity whereof is being examined.

In view thereof, RSA No.3349 of 1999 shall stand allowed whereas RSA No.2182 of 1999 shall stand dismissed.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

07.12.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No