

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

104

RSA-3732-2010 (O & M)
Date of Decision:25.09.2018

Arun Thakur and others

...Appellants

Versus

Dharam Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. B.R. Mahajan, Senior Advocate with
Ms. Manzra Dutta, Advocate
for the appellants.

Mr. Vipin Mahajan, Advocate
for the respondents.

ANIL KSHETARPAL, J.(Oral)

Legal heirs of the defendants are in the regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Dispute in the present case is with regard to the estate of late Sh. Bua Ditta, who was Numberdar of the village, died on 10.02.1991. There are two registered Testaments set up by the parties. Dharam Singh, the plaintiff, son of Bua Ditta, claim succession on the basis of registered will dated 12.10.1983 through which plaintiff-Dharam Singh was given half share in the property whereas remaining half was given to wife of Bua Ditta i.e. Sita Devi. On the other hand, defendant Khazan Singh, who is now represented by his legal heirs claims succession on the basis of subsequent registered Will dated 19.06.1989.

Both the Courts have held that the Will dated 12.10.1983 executed in favour of the plaintiff is proved and even not disputed by the defendants-appellants. However, dispute is with regard to validity of Will dated 19.06.1989 allegedly executed by Bua Ditta, the common ancestor of the parties.

In the considered view of this Court, substantial question of law which arises is :-

Whether a registered Will proved to have been executed in accordance with Section 63 of the Succession Act, 1925 and proved on the file of the Court in accordance with Section 68 of the Evidence Act, can be ignored by the Courts on conjectures and surmises.

Both the Courts have given following reasons to ignore the Will.

(i) Rattan Singh, the attesting witness, who is Numberdar of the village did not know the details of the family of Bua Ditta.

(ii) there is a report of hand-writing and finger print expert Mr. Ahuja, who has opined that the signatures of the testator do not match/tally with the standard signatures.

(iii) other attesting witness of the Will i.e. Bishan Singh, who has appeared as PW-4 had signed the Will outside the office of the Sub Registrar.

(iv) date of the first Will has not been mentioned and, therefore, second Will is doubtful.

(v) sisters have not chosen to contest, which proves that first Will was valid.

As regards first reason, it may be noted that the registered Will dated 19.06.1989 is attested by three witnesses i.e. (1) Rattan Singh Nambardar, (2) Rattan Chand and (3) Bishan Singh. Bishan Singh did not appear before the Sub-Registrar as he had left by that time. Before the Sub-Registrar Bua Ditta was recognized and identified by two attesting witnesses namely Rattan Singh, Numbardar and Rattan Chand. It is interesting to note that Rattan Singh, Numbardar of village Behrampur is also attesting witness of the first Will dated 12.10.1983 as well as Will dated 19.06.1989. No doubt, Rattan Singh when appeared in evidence could not give details of the family members or their names in evidence to the Court. However, in the considered view of this Court, requirement of Section 63 of the Succession Act does not provide that an attesting witness of the Will must know the details of the family members of the testators and their names. The attesting witness is required to attest the document in accordance with law. Hence, first reason assigned by the Courts is perverse.

With regard to second reason it may be noted that Mr. Ahuja, the alleged hand writing and finger print expert, when appeared in the evidence has admitted that he has never seen the document himself. In other words, he had never seen the Will dated 19.06.1989 either in the custody of Court or in the custody of party. He admits that the photographs were brought to him by the clerk of the counsel and on that basis he prepared the report. Still further, he admits that there is overwriting and retouching in the photographs Ex.P-10/1. It may be noted that photographs from the Court file were taken by the photographer, who has appeared as PW-5, who thereafter handed over to clerk of the counsel, who took the photographs to

the expert and report was got prepared. The procedure adopted by the Court and the procedure adopted by the hand writing and finger print expert is unknown to law. Still further, it is admitted by the expert that he did not compare the signatures of Bua ditta, the testator with the previous Will. He just compared the signatures from the Vakalatnama, which was filed by Bua Ditta in one of the litigation.

In the considered opinion of this Court, such opinion of an expert should be ignored by the Court without consideration. Opinion of such experts is not worth the paper it is written.

Next reason assigned by the Court is equally strange because Bishan Singh, the other attesting witness is only attesting witness of the execution of the Will. He is not an attesting witness at the time of registration of the Will. Execution and registration of the Will are two different separate set of actions of the testator. As noticed, Will was attested by three attesting witnesses, out of them, two have appeared before the Sub Registrar also. Therefore, merely because Bishan Singh had signed the Will outside the Office of the Sub Registrar would not make the Will doubtful.

Next reason assigned by the Courts is also wrong. While executing the second Will, testator was alive to the execution of the first Will. Therefore, he specifically revoked the first Will. Merely because he could not remember the date on which the first Will was executed, the revocation of the first Will cannot be doubted. Still further, it is the last Will of the testator, which has to prevail.

Last reason assigned by the Courts below is equally strange.

Daughters of Bua Ditta i.e. sisters of the parties are not beneficiaries in both

the Wills. Therefore, if sisters have not chosen to contest, benefit thereof could not be given to the plaintiff and on that basis validity of the Will dated 19.06.1989 could not be doubted.

Learned counsel for the appellants has read over statement of the plaintiff-Dharam Singh, when appeared has stated that five years before the death of Bua Ditta, he was living separately from Bua Ditta. He admits that Bua Ditta was in sound disposing mind till his death.

Learned counsel for the respondents tried to salvage the position by referring to both the Wills and stated that in the Will dated 12.10.1983 age of Bua Ditta is described as 90, whereas in the Will executed on 19.06.1989 Bua Ditta has described his age as 89/90.

In the considered view of this Court, that cannot be a sole ground to ignore a registered Will particularly when it is not in dispute that late Sh. Bua Ditta remained alive for a period of twenty months even after the execution of the second Will.

Learned counsel for the respondents further submitted that in the first Will, Bua Ditta had put his thumb impressions as well as signatures by writing a note that his hands are trembling whereas in the Will executed on 19.06.1989 he has only signed the Will. The argument of learned counsel is that mere signatures make the Will doubtful. The answer lies to the aforesaid submission of learned counsel in the statement of Dharam Singh, who has appeared in evidence has admitted that Bua Ditta was sound disposing mind till his death.

Now the stages is set for answering the question of law.

In the considered view of the this Court, execution and proof of

Will in the Court is governed by two separate statutes. Execution of the Will is governed by Indian Succession Act, 1925. Section 63 provides that the Will has to be attested by two or more attesting witnesses. Will is to be proved in the Court in accordance with Sections 68, 69 or 71 of the Evidence Act. Section 68 operates when attesting witness has been examined. In the present case, two attesting witnesses have been examined.

In such circumstances, Courts below were not correct in doubting the correctness of the Will simply on the basis of conjectures and surmises. Wish/Will of a person, who has died should be honoured by the Court unless there is some evidence, which create a strong suspicion about genuineness of the Will. Hence, question of law is answered in favour of the defendants-appellants.

Appeal is allowed. Judgment passed by the Courts below are set aside.

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

25.09.2018
sheetal

(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No