

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

**RSA No.4337 of 2011  
Date of Decision:30.01.2018**

Baljinder Singh and others

...Appellants

**Versus**

Wattan Singh and others

...Respondents

**RSA No.658 of 2012**

Wattan Singh and others

...Appellants

**Versus**

Baljinder Singh and others

...Respondents

**CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**Present:** Mr.Sanjiv Gupta, Advocate for the appellants in  
RSA No.4337 of 2011 and for the respondents in  
RSA No.658 of 2012.  
Mr.Sanjay Majithia, Sr. Advocate with  
Mr.Inderjeet Singh, Advocate for the appellants in  
RSA No.658 of 2012 and for the respondents in  
RSA No.4337 of 2011.

**ANIL KSHETARPAL, J.**

By this common judgment, two appeals bearing RSA Nos.4337  
of 2011 and RSA No.658 of 2012 are being disposed of arising from a civil  
suit.

The plaintiffs as well as the defendants have filed separate  
appeals against the judgment passed by the learned first appellate court,  
partly accepting the appeal filed by the plaintiffs, declaring that the will

dated 21.8.1991 registered on 27.8.1991 executed by Late Shri Beant Singh is surrounded by suspicious circumstances. Hence defendants No.1 to 4 cannot claim succession to the property left by Beant Singh.

In the considered opinion of this Court, question of law, which arise for consideration of this Court in the present case is, whether a registered will proved to have been executed in accordance with Section 63 of the Indian Succession Act and proved on the court file in accordance with the provisions of Section 68 of the Indian Evidence Act, can be ignored by the court on the alleged suspicious circumstances, which have no basis.

Harnam Singh was having 11 children i.e., six sons and five daughters. The dispute in the present case is with regard to the estate of Beant Singh son of Harnam Singh, who was not married and hence issueless. Beant Singh executed a will dated 21.8.1991, which was registered on 27.8.1991 in favour of Tarlochan Singh, Gurmeet Kaur and Darshan Kaur, children of Mehar Singh, pre-deceased brother of Beant Singh.

The suit has been filed by two brothers and three sisters of Late Shri Beant Singh. They are disputing the correctness of the Will dated 21.8.1991 (registered on 27.8.1991) in favour of Tarlochan Singh, Gurmeet Kaur and Darshan Kaur, children of Mehar Singh, pre-deceased brother of Beant Singh as also the sale-deed executed by Beant Singh in favour of Balbir Singh (husband of Darshan Kaur) and Tarlochan Singh son of pre deceased brother of Beant Singh. It is further case of the plaintiffs that the defendants are also setting up a Will dated 28.4.1995. The plaintiffs also

claimed that they were in the exclusive possession of the property left by Beant Singh.

Defendants contested the suit and pleaded that in fact since Beant Singh was unmarried hence he was living with the family of Mehar Singh, pre-deceased brother. It was natural for Beant Singh to have lot of love and affection towards children of his pre deceased brother namely Tarlochan Singh, Gurmeet Kaur and Darshan Kaur and therefore, he executed the registered Will in their favour. It was further submitted by the defendants that they were taking care of Beant Singh in his old age and when he fell ill, he was got admitted by Balbir Singh, son in law of Mehar Singh (Husband of Darshan Kaur). In order to prove the execution of the Will, Ram Dev, Numberdar, was examined through Local Commissioner as CW-1. Ram Dev is an attesting witness of the Will dated 21.8.1991 (registered on 27.8.1991). Defendants also examined Raj Gopal, who has admitted having scribed the Will on the asking of Beant Singh and he has deposed that entry with regard to Will has been made by him in the register on 21.8.1991 at Sr.No.234.

The learned trial court after appreciating the evidence on the file, dismissed the suit, whereas the first appellate has upheld the finding of the learned trial court with regard to execution of the registered sale deed dated 10.11.1994, however, the Will has been held to be surrounded by suspicious circumstances and therefore, ignored by the court.

Now, the stage is set for considering the following question of law.

“Whether a registered will proved to have been executed in accordance with Section 63 of the Indian Succession Act and

proved on the court file in accordance with the provisions of Section 68 of the Indian Evidence Act can be ignored by the court on alleged suspicious circumstances which have no basis.”

The learned first appellate court has given the following reasons to ignore the Will:-

- (i) In the Will, Late Shri Beant Singh has not assigned any reasons to exclude his brothers and sisters, natural heirs.
- (ii) There is no evidence available on the record that children of Mehar Singh-pre deceased brother of Beant Singh, were taking care of Late Shri Beant Singh in his old age.
- (iii) Darshan Kaur and Gurmeet Kaur, daughters of Mehar Singh, were married and living in their in laws' houses and therefore, they cannot take care of the Late Shri Beant Singh.
- (iv) Ram Dev appears to be a professional witness as he has attested not only the Will dated 21.8.1991 but has also attested the registered sale-deed dated 10.11.1994 and he has also admitted that he has attested various other documents.
- (v) Raj Gopal, Scribe, could not identify the photograph of the testator when confronted in the witness box.
- (vi) No evidence has come on record that beneficiaries under the Will had got him treated.

This Court has repeatedly held that the registered Will executed by the testator should not be ignored by the courts on alleged suspicious circumstances, unless there is some substantive ground is available on the record to create a doubt in the mind of the court with regard to genuineness of the Will. Beant Singh was unmarried and hence issueless. Mehar Singh,

his brother, had died during his life time. It is but obvious for the brother to have lot of love and affection towards the children of pre deceased brother, particularly when he does not have his own. It is admitted by the plaintiff that Beant Singh was a wise man, literate and in possession of lot of property. Plaintiff No.1 when appeared in the witness box, stated as under:-

“...Beant Singh was a wiseman and was literate and possession of lot of property. He had bank account also. He had executed a sale deed in favour of Tarlochan Singh and Balbir Singh during his life time. We came to know about the sale deed after the death of Beant Singh..”

Plaintiff has also admitted that it is the defendants who are in continuous possession of the property left by Beant Singh. He also admitted that Beant Singh remained sick for approximately 10 days. Beant Singh remained alive for three years and nine months after execution of the registered Will. The Will was scribed on 21.8.1991, whereas it was registered on 27.8.1991. Ram Dev, attesting witness and Raj Gopal, who had scribed the Will, have been examined. Therefore, the finding of the learned first appellate court that no reasons have been given for excluding natural heirs is wholly erroneous. Late Shri Beant Singh had not excluded any Class 1 legal heir as he was not having any Class 1 heir.

The learned first appellate court has given much emphasis on the fact that no evidence has come on record that Beant Singh was being taken care by the children of Mehar Singh. Darshan Kaur, who is one of the beneficiaries, has appeared in the witness box and has stated that Beant Singh used to live with her family of Mehar Singh. She has also stated that in the old age, it was the family of Mehar Singh, who used to take care of

Beant Singh. However, the learned first appellate court has ignored the statement of Darshan Kaur on the ground that she was married and generally a married woman lives in her in-laws' house.

The first appellate court has also ignored the statement of Balbir Singh, son in law of Mehar Singh and husband of Darshan Kaur, who has appeared as DW-4. Balbir Singh has stated that he was in the military service and his wife Smt.Darshan Kaur along with their children used to reside in the house of her parents. Balbir Singh has further stated that whenever during the vacations of two months in a year, he would come back from duty, Darshan Kaur would join him in his house. Balbir Singh has also stated that he also used to visit the residence of his in-laws, during vacations.

The learned first appellate court has further over looked the fact that the Will is not only in favour of Darshan Kaur but it is in favour of all the three children of Mehar Singh, pre deceased brother of Beant Singh. It is not in dispute that Tarlochan Singh and his children are living in the same village. Voter list Ex.D3 shows that name of Beant Singh is mentioned at Sr. No.683 along with Darshan Kaur and Tarlochan Singh.

Beant Singh not only executed the Will in favour of children of Mehar Singh but also executed the sale-deed dated 10.11.1994. Validity whereof has been challenged in the connected appeal in favour of Balbir Singh (son in law of Mehar Singh-pre deceased brother of Beant Singh) and Tarlochan Singh (son of Mehar Singh). Once the learned first appellate court has upheld the execution of the sale-deed dated 10.11.1994, the first appellate court obviously committed an error in recording the finding that

there is no evidence that Beant Singh was taken care by the family of Mehar Singh. The execution of sale-deed clearly proves that Beant Singh wanted to give his entire property to the family of Mehar Singh.

The learned first appellate court has over looked the evidence of Chhabbu Lal, an official of Gulab Devi Hospital, who has appeared as DW-5. He has stated that Beant Singh was got admitted in the Gulab Devi Hospital by Balbir singh on 28.4.1995 and he died on 30.4.1995. The learned first appellate court has ignored this evidence as there was a small cutting in the hospital record. The learned first appellate court has also ignored the Will on the ground that Ram Dev, Numberdar, belongs to a different village. In the States of Punjab and Haryana, Numberdar do attest the documents, because they are issued identity cards by the Government and their attestation is accepted by the revenue authorities more conveniently. Ram Dev has not only attested the execution of the Will dated 21.8.1991 but also attested the registration of the Will before the Sub Registrar on 27.8.1991. Ram Dev has stated that since he knew personally Beant Singh, therefore, he has also attested the sale-deed dated 10.11.1994. Ram Dev has admitted that he has attested the various documents. However, such admission cannot be used to doubt the genuineness of the Will.

The learned first appellate court has also held that Raj Gopal, Deed Writer/Scribe could not identify the photograph of the testator when confronted in the witness box. In this regard, the learned first appellate court has over looked the fact that the Will was executed in the year 1991, whereas Raj Gopal was examined in the year 1999. A professional

Scribe/Deed Writer cannot be expected to remember the face of the executant after a period of 8 years.

In view of the discussion made above, the question of law framed above is answered in favour of the appellants. The present appeal bearing RSA No.4337 of 2011 is allowed.

**RSA No.658 of 2012**

Plaintiffs have challenged the same judgment of learned first appellate court, alleging that the sale-deed dated 10.11.1994 executed and registered by Beant Singh is without consideration and result of undue inference.

Both the court have recorded a concurrent finding that sale-deed has been executed by Beant Singh with their free will and volition and the sale-deed- cannot be set aside only on the apprehensions expressed by the plaintiffs.

Learned counsel for the appellants has vehemently argued that the sale-deed is also surrounded by suspicious circumstances and payment of consideration, i.e. Rs.1.73 lacs, is not proved.

It may be noticed that in the sale-deed, which has been duly signed by Beant Singh, it has been recorded that the sale consideration has already been received by him at home. Balbir Singh has appeared in the witness box and has specifically stated that he used to pay Beant Singh. The evidence of Balbir Singh is supported by the evidence of Darshan Kaur, who has appeared as DW-3. It is admitted by the plaintiffs that the land is in possession with the legal heirs of Mehar Singh (defendants).

In the considered opinion of this Court, a registered sale-deed

cannot be set aside on suspicious circumstances. Payment of consideration amount stands proved from the fact that receipt of sale consideration is accepted in the registered sale-deed.

In view thereof, there is no good ground to interfere in the concurrent findings of fact arrived at by the courts below.

Dismissed.

**30.01.2018**  
**mks**

**(ANIL KSHETARPAL)**  
**JUDGE**

**Whether speaking/reasoned: Yes/No**

**Whether Reportable: Yes/No**