

Present: Mr. Shalendra Sharma, Advocate for the appellant.

None for respondent No.1.

Mr. Saurabh Bajaj, Advocate for respondent No.5.

Respondents No.2 to 4, 6 to 11 proceeded ex parte vide order dated 16.9.2011.

4. **RSA No. 856 of 2011(O&M)**

Usha Rani @ Punam @ Usha KumariAppellant

VERSUS

Sadhu Ram and othersRespondents

Present: Mr. Shalendra Sharma, Advocate for the appellant.

None for respondent No.1.

Mr. Saurabh Bajaj, Advocate for respondent No.5.

Respondents No.2 to 4 and 6 proceeded ex parte vide order dated 16.9.2011.

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

This order shall dispose of RSA Nos.454, 455, 795 and 856 of 2011 as identical questions of law and fact are involved for adjudication.

For the sake of convenience, facts are taken from RSA No.454 of 2011.

The present litigation pertains to inheritance to the estate of Ram Chander son of Saroop Lal resident of Ward No.7, Pehowa, District Kurukshetra. Ram Chander died on 14.02.1994. He left behind 6 daughters namely Usha Rani @ Poonam @ Usha Kumari, Rama Rani,

Nirmala Rani @ Nirmla Kumari, Padma Rani @ Padma Kumari, Urmila Kumari and Kamlesh Rani @ Kamlesh Kumari. Usha Rani filed civil suit No.128 dated 12.10.1995 claiming inheritance to Sh. Ram Chander on the basis of natural succession. She challenged registered Will dated 11.03.1991 Ex.D1 purported to be executed by the deceased in favour of his daughter Rama Rani. Another suit No.129 dated 09.06.1998 was filed by Kuldeep Kumar son of Urmila Kumari in which Urmila Kumari was later transposed as plaintiff No.2. Kuldeep Kumar and Urmila Kumari claimed succession to the estate of Ram Chander on the basis of Will dated 05.06.1993 Ex.DW6/A whereby Ram Chander bequeathed his estate in favour of Urmila Kumari, Kamlesh Kumari, Usha Rani, Rama Rani and Kuldeep Kumar to the extent of 1/5th share each.

Both the suits were consolidated and decided vide common judgment dated 04.01.2006 passed by the Additional Civil Judge (Senior Division), Pehowa whereby the trial Court discarded Will dated 11.03.1991 set up by Rama Rani as well as Will dated 05.06.1993 propounded by Kuldeep Kumar. The judgment and decree passed by the trial Court led to filing of six appeals, decided by a common judgment by the District Judge, Kurukshetra vide judgment and decree dated 15.06.2010. The Court in appeal reversed findings of the trial Court in respect of Will dated 11.03.1991 whereas decision of the trial Court qua Will dated 05.06.1993 was affirmed and as a consequence thereof Rama Rani was held to be owner of the properties left behind by deceased Ram Chander.

Counsel for the appellant has submitted that the trial Court took into consideration various suspicious circumstances shrouding the Will dated 11.03.1991 and rightly concluded that Will dated 11.03.1991 is not the genuine and valid Will reflecting wish of the deceased as to how his estate is to be dealt with after his departure. It is further argued that the Court in appeal committed a serious error rather perversity by reversing findings of the trial Court and upholding plea of Rama Rani that the deceased executed Will dated 11.03.1991. To bring home his contention and to assail Will dated 11.03.1991, counsel has few submissions to make, detailed hereunder:-

1. There is irregular spacing in the typed Will Ex.D1 that creates a doubt of its being valid and genuine.
2. In the Will Ex.D1 it has been mentioned that four daughters of the deceased namely Nirmala, Padma, Urmila and Kamlesh are already married and they are well settled in their matrimonial home. Urmila did not have marital harmony and there was litigation between Urmila and her husband and his family members. Urmila along with Kuldeep shifted to Pehowa and started residing with Ram Chander.
3. The Will contains reference to payment of Rs.50,000/- by the deceased to Usha Rani. There is no evidence on record to prove payment of Rs.50,000/-. Usha Rani was also unmarried in the year 1991, therefore, there was no reason for the deceased to exclude Usha Rani from inheritance.

4. The appellant examined the handwriting expert to prove that Will Ex.D1 does not bear signatures of Ram Chander. Rama Rani, beneficiary under the Will Ex.D1, sought permission of the Court to examine another expert but eventually did not examine him that shows that expert engaged by Rama Rani was not in a position to support cause of Rama Rani or to counter report prepared by the expert examined by Usha Rani.
5. Rama Rani did not appear in the witness box to support her case, therefore, an adverse inference is liable to be drawn against her for her failure to appear as a witness without any tangible explanation. In addition, it is argued that as Rama Rani did not appear in the witness box, appellant is deprived of her valuable right to cross examine her on various vital aspects involved in the lis.

Counsel representing Rama Rani, beneficiary under the Will dated 11.03.1991, has supported judgment passed by the Court in appeal with the submission that the trial Court was misled by testimony of the so-called expert which has rightly been discarded by the Court in appeal, in the light of direct evidence adduced by Rama Rani to prove that Will dated 11.03.1991 was executed by the deceased in his sound disposing mind who appended his signatures in *Urdu*, in the presence of attesting witnesses of the Will as well as before the Registering Authority i.e. Ram Pal Singh, Tehsildar, Sirsa DW-1. It has further been argued that science of handwriting comparison is not a perfect science. Evidence of handwriting

expert is of fragile nature when ordinarily expert toe to the line of the party who avails his services.

According to counsel, the trial Court gave weightage to alleged shrouded circumstances of Urmila being disinherited despite her disturbed matrimony that led to her residing at parental house with her father when as a matter of fact, there is nothing on record suggestive of the fact that Urmila Rani had been residing in the house of deceased Ram Chander. Urmila had constructed a house in Pehowa and had been living independently. Her plea that she got divorce from her husband has rightly been rejected by the Court in appeal as she failed to produce a decree in this regard.

Another submission made by counsel is that as soon as the Will is accepted to be executed by deceased Ram Chander in his sound disposing mind, recital in the Will with regard to payment of Rs.50,000/- to Usha Rani is to be taken as correct and given primacy over oral version of Usha Rani that she was not paid any such amount.

I have heard counsel for the parties, perused the paper-book and records.

It is pertinent to mention at the outset that Urmila and Kuldeep have not challenged concurrent findings of the Courts rejecting unregistered Will dated 05.06.1993 set up by Kuldeep. Under the circumstances, findings recorded by the Courts to negate plea of Kuldeep and Urmila with regard to Will dated 05.06.1993 have attained finality between the parties. Indisputably, Urmila did not challenge Will dated 11.03.1991 Ex.D1 in favour of Rama Rani. This apart, as the Will

dated 11.03.1991 finds reference in the Will dated 05.06.1993 set up by Kuldeep and Urmila, they possibly cannot raise an issue that Will dated 11.03.1991 was not executed by Ram Chander.

Counsel for the appellant, in response to a query, has fairly conceded that Will Ex.D1 has been proved in accordance with law in compliance with the provisions of Section 68 of the Indian Evidence Act. Rama Rani examined Ram Pal Singh, Tehsildar, Sirsa DW-1, Satpal, one of the attesting witnesses of the Will and Gopal Dass, scribe of the Will. Counsel for the appellant has failed to point out any materials brought forth in cross examination of the witnesses to challenge their veracity much less to establish that their testimonies are not worthy of credence and reliance. In this view of the matter, findings recorded by the Court in appeal accepting that propounder of the Will Ex.D1 has successfully proved it in accordance with law are liable to be affirmed and ordered accordingly. I would hasten to add that in the face of direct evidence in the nature of testimonies of Rampal Singh, Tehsildar, Sirsa, Satpal and Gopal Dass, the appellant cannot derive any advantage either from testimony of Sh. N.K. Jain, the so-called expert examined by the appellant or failure of Rama Rani to examine another expert as a counter to the testimony of expert examined by the appellant. Even otherwise, it has been proved by the testimony of Rampal Singh that Ram Chander – deceased was a Numberdar and personally known to Rampal Singh. The Registering Officer also personally knew the second witness Lajja Ram as he was also the Numberdar. In this view of the matter, it can be safely held that Will Ex.D1 stands proved in consonance with the requirements in law.

Counsel for the appellant and so also the trial Court doubted correctness of the Will because of irregular spacing in its body writing. Firstly, this is not plea of the appellant that the Will has been prepared on blank signatures of Sh. Ram Chander. The scribe of the Will Sh. Gopal Dass a regular deed writer was examined. No question was put to the witness as to why spacing in body-writing of the Will is irregular. The very fact that Will stands proved by the witnesses examined by respondent - Rama Rani shows that irregular spacing in the Will is of no consequence much less to be taken as a suspicious circumstance surrounding the Will.

There is no dispute that in the year 1991, four daughters of the deceased namely Nirmala, Padma, Urmila and Kamlesh Kumari had already been married and two daughters Usha Rani and Rama Rani were unmarried. It is incorporated in the Will that the deceased had spent sufficient money on the marriage of his four daughters by giving them cash as well as dowry. As per the Will, Usha Rani one of the unmarried daughters was given Rs.50,000/- in cash by Ram Chander. As soon as the Court accepts that the Will was executed by Ram Chander in his sound disposing mind and the Will represents correct expression of wish of the deceased, document Ex.D1 is sufficient to prove that the deceased had paid an amount of Rs.50,000/- to the appellant and for that reason he excluded one of the unmarried daughters also from inheritance. As Usha Rani has challenged testamentary succession on the basis of Will dated 11.03.1991, she had every reason to deny that no amount was paid by the deceased to her. Rama Rani had no means to prove payment of Rs.50,000/- by the deceased to Usha Rani as there is nothing on record suggestive of the fact

that payment was made through any negotiable instrument/writing much less through bank transaction. Under the circumstances, only Usha and Ram Chander would be knowing about this fact. As Ram Chander is no more in this world to say something about the contents of the Will and Usha Rani had every reason to deny payment of Rs.50,000/- to bring home her contention that Will dated 11.03.1991 is not valid and genuine, we have to rely upon the recitals in the written document, duly proved, that deceased paid Rs.50,000/- to Usha Rani. I would hasten to add that Usha Rani got married in the year 1992 and her marriage was performed by the deceased. It is not plea of Usha Rani that deceased did not spend money on her marriage or she was not given dowry by the deceased according to his capacity. In this view of the matter, the appellant cannot be heard to say that statement of Usha is sufficient to rebut the factum of payment of Rs.50,000/- by the deceased to her.

This brings the Court to the circumstance of excluding Urmila one of the daughters who had disturbed matrimony. Before dealing with the question of exclusion of Urmila, I would like to deal with the issue of correctness of recital in the Will that married daughters of the deceased are stated to be settled in their matrimonial home. No doubt, evidence on record proves that Urmila did not have cordial relations with her husband and she was also involved in litigation with her husband and his family members. It has also been established on record that Urmila along with her son Kuldeep started residing at Pehowa.

The question that falls for consideration is, if one of the facts stated in the Will is found to be incorrect, is it sufficient to discard and disbelieve the Will Ex.D1.

The Court in appeal has noticed that plea of Urmila with regard to her divorce gets falsified and belied as she failed to adduce any evidence in this regard. It has further been held that evidence shows that Urmila had constructed her own house at Pehowa. Except statement of Urmila Kumari, there is no other evidence on record to prove that Urmila used to live in the house of her father. Evidence on record does not make the picture clear as to how much property was owned by Urmila Kumari. Counsel for the appellant has not challenged factual findings recorded by the Court in appeal in para 60 of the judgment. In the face of these findings, recital in the Will that married daughters are settled in their matrimony particularly Urmila does not assume much significance.

So far as exclusion of Urmila from inheritance, aforesaid facts must have weighed with the deceased to exclude Urmila from inheritance despite the fact that she had not been living with her husband. This apart, Urmila appeared in the witness box and in the opening lines of her cross examination by counsel representing Rama Rani, she has deposed that her father died in the house of her sister Nirmala. She did not know if Ram Chander remained admitted in Modi Hospital. She did not know which doctor at Kurukshetra treated her father in 1992. She did not know if her father remained admitted in hospital at Delhi for a month. As has been noticed by the Court in appeal and rightly so that there is no evidence on record except oral version of Urmila that she had been residing in the

house of Ram Chander. The abovestated facts negate her plea that she was residing with Ram Chander much less rendering services to him. Under the circumstances, exclusion of Urmila from inheritance cannot be taken as a circumstance strong enough to discard and disbelieve the Will Ex.D1.

To be fair to the appellant, counsel has raised an issue with regard to non-examination of Rama Rani. Rama Rani was not present at the time of execution of Will dated 11.03.1991. Her testimony is not relevant for proving the Will Ex.D1. There is no dispute that Rama Rani was unmarried in the year 1991. She was even unmarried when Ram Chander died on 14.02.1994. It is not disputed that Rama Rani had been residing with the deceased during his lifetime. It has also been proved that Rama Rani got married in the year 1998 and that too with husband of Nirmala Kumari after Nirmala Kumari passed away. All these facts give an inkling that probably Rama Rani did not want to perform marriage but later she decided to marry with her widower brother in law (Jija). The recitals in the Will do not indicate anything more than that the deceased decided to bequeath his property in favour of Rama Rani to the exclusion of other daughters including unmarried daughter to whom he paid Rs.50,000/- in cash. As such, non-examination of Rama Rani cannot constitute a ground to discard or disbelieve the Will Ex.D1. In this view of the matter, it can be safely held that the appellant has miserably failed to prove that decree passed by the Court in appeal is perverse or raises a substantial question of law, requires to be decided in regular second appeal. I do not find any reason to differ with findings of the Court in appeal that rectified the error committed by the trial Court.

No other point has been raised.

For the foregoing reasons, the appeals fail and are accordingly dismissed leaving the parties to bear their own costs.

MARCH 6th , 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no