

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

RSA-224-2013 (O & M)
Date of Decision:27.09.2018

Meenakshi Madan @ Chander Bala @ Meenu Madan ...Appellant

Versus

Amit Sondhi and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arihant Jain, Advocate with
Mr. Arun Jindal, Advocate
for the appellant.

Mr. Anuj Raura, Advocate and
Mr. Ketan Chopra, Advocate
for the respondents.

ANIL KSHETARPAL, J.

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the Courts below.

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

“Whether judgments passed by the Courts below are based upon conjectures and surmises while discarding the testament?”

Some facts are required to be noticed. Family of Sh. H.L. Seth consisted of his wife (Vidya Wati) and four daughters (Sudarshana Narang, Smt. Nirmal, Smt. Veena Sondhi and Meenakshi Madan @ Chanderbala).

Vidya Wati (wife) died on 17.12.1989 whereas Smt. Nirmal

died issueless in the year 1981 and Veena Sondhi died on 10.09.1994.

Sh. H.L. Seth, the testator, retired from Haryana State Electricity Board and thereafter he started working as Personal Assistant to the Managing Director of M/s Meters and Instruments Private Ltd., Industrial Area Phase -I, Chandigarh where he continued to work till 31.03.1995.

Late Sh. H.L. Seth executed a testament dated 26.01.1995 bequeathing his property in favour of his daughter Meenakshi Madan @ Chander Bala. The testament is attested by two witnesses; one Sudarshana Kumari, one of the daughter and Sh. R.R. Kapoor (a friend of late Sh. H.L. Seth).

Dispute is about the validity of the aforesaid testament.

Present suit was filed by Amit Sondhi and Neha Sondhi, children of late Smt. Veena Sondhi through their father for declaration that the testament executed by Sh. H.L. Seth be declared illegal, null and void and direction be given to hand over possession of House No.1067, Sector-19B, Chandigarh. It may be noted that there were various other Fix Deposits, Bank Accounts, amount lying in National Saving Scheme and employees Provident Fund. Arrangement with regard to the same was made under the Will.

Both the attesting witnesses namely Sudarshan Kumari as well as Sh. R.R. Kapoor have appeared in evidence and have deposed in support of the Will of the testament dated 26.01.1995.

Both the Courts have held that the testament is surrounded by suspicious circumstances. The suspicious circumstances as noticed by the

Courts below and pointed out by learned counsel for the respondents are as under:-

(i) The Will is scribed on three pages and only last page has been signed by the testator and the attesting witnesses.

(ii) Page numbering on the Will is discrepant as after page Nos.1 and 2, page No.7 has been mentioned on the top.

(iii) In the date of the execution of the Testament on page 3, "26th" is not in alignment with the remaining type written sentence.

(iv) Sudarshna Kumari when appeared in evidence has stated that Will is in the hand writing of Sh. H.L. Seth whereas it is typed. She further states that there were three persons in the room when Will was signed.

(v) On the other hand, Sh. R.R. Kapoor, the other witness has stated that Will is typed and there were four persons in the room including husband of Sudarshna.

(vi) Names of two other daughters, who had died, have not been mentioned in the Will. The date written by Sh. R.R. Kapoor, the attesting witness, along with his signature is with a different pen than his signatures. He has also stated that he had carried a correction by adding word 'up' which is not visible.

(vii) Details of one bank account has not been

mentioned.

It may be noted that Sudarshna Narang, the daughter, who would have got 1/3rd share in the property in the absence of Testament, is attesting witness of the testament. She is married and is residing in Faridabad approximately 270 kilometers from Chandigarh. She has stated that she was called by her father on telephone on 24.01.1995 and she along with her husband came to Chandigarh. She admits due execution of the testament. She is one witness, who can be considered most reliable by the Court being natural heir of Sh. H.L. Seth entitled to succeed to 1/3rd share in the property.

Now let us deal with the suspicious circumstances as noticed by the Court.

As regards first suspicious circumstance, it may be noted that the Will is alleged to have been typed by Sh. H.L. Seth himself on an electronic typewriter as he was working at that time as a Personal Assistant to the Managing Director of a Private Company noted above. No doubt, the Will is written on three pages and on page 3 on the top, page number is 7. However, such small inadvertent error would not make the Will suspicious. It is nobody's case that the Will was actually written on seven pages. Still further, the item numbers as noted are in continuation as Clause No.(vi) and at page 2 whereas Clause No.(vii) is starting at next page i.e. page 3.

With regard to the absence of signatures on first two pages, it may be noted that as per Section 63 testament is required to be attested by two witnesses and the testator is to sign or affix his mark to the Will. As per Statute, each page of the Will is not required to be signed, however, it

would always be desirable but not as a matter of rule. The Court cannot hold that if each page of the testament has not been signed, the testament would be surrounded by suspicious circumstances. It would always depend upon facts and evidence brought on file. In the present case, it has come in evidence that Meenakshi Madan @ Chander Bala was married with K.C. Madan. Family of Meenakshi Madan @ Chander Bala lived in neighbourhood in a rented accommodation. She initially living in Sector 18 and thereafter started residing in Sector 19 itself. After the death of Vidya Wati, the wife of Sh. H.L. Seth on 17.12.1989 Chander Bala started residing with her father in the house in question. This is specifically mentioned by Sh. H.L. Seth in the Will.

The third reason which is most hotly contested between the parties is date of the Will. No doubt, the Will is dated 26.01.1995 and the number "26th" is little bit out of alignment. However, 26th is clearly typed. Although, learned counsel for the respondents tried to point out that the number 2 out of 26 has been over written but this Court does not find that even if 2 is replaced by any other word it would make any difference.

As regards next reason pointed out by learned counsel for the respondents, it may be noted that Will is dated 26.01.1995 whereas Sudarshna Kumari was deposing in Court after a period of more than 5 years in the year 2000. It is undisputed that she has admitted her signatures as well as her father's signatures on the Will. She states that this is the Will which was signed. Merely because in the cross-examination she has stated that it was hand written would not make the Will doubtful once she has stated that father had brought the typed Will. As regards presence, she has

specifically stated that when her father called her for execution of the Will, and she came along with her husband. However, in cross-examination she stated that there were only three persons i.e. testator and two attesting witnesses including herself in the room when the Will was signed. Her husband is not beneficiary of the Will, therefore, his presence at the time of signing would not make any difference.

Next suspicious circumstance pointed out by learned counsel for the appellant is that names of two daughters have not been mentioned in the Will. It may be noted that by that time two daughters as well as his wife had died. In such circumstances, absence of reference to the two daughters would not be material, keeping in view the facts of the present case particularly when Sh. H.L. Seth was a qualified person having sufficient by long experience of the life. Still further, Sh. H.L. Seth had himself typed the Will and, therefore, he was not having the benefit of advice of any legal mind.

Next reason assigned and submitted by the learned counsel for the appellant is that date written by Sh. R.R. Kapoor, the attesting witness, is with a different pen. This Court has carefully seen the signatures as well as date. All the signatures by both the witnesses are with ball pen. No doubt, date as mentioned is little bit darker than the signatures but the date is also again with the ball pen only. The reason for darker print can be because of use of different pen or because of writing with more pressure. However, in the considered view of this Court, such fact is not sufficient to hold that the Will is suspicious.

As regards statement of Sh. R.R. Kapoor that he had corrected

the Will by using word 'up', it may be noticed that Sh. R.R. Kapoor was also examined in the Court after a period of five years. In such circumstances, it is not expected of a person to remember minute detail. The word 'up' is mentioned with built-up this may have been on a draft, which was subsequently corrected in the final print out.

Last reason for holding that the Will is suspicious is to the effect that one account number of Sh. H.L. Seth has not been mentioned in the Will. It may be noted that Sh. H.L. Seth had given details of bank account in various banks. If he forgot to mention details of one account that cannot be treated as a circumstance to hold that Will is surrounded by suspicious circumstance.

Learned First Appellate Court has further recorded a finding that signatures of Sh. H.L. Seth, the testator, are different. Learned First Appellate Court has compared the signature of Sh. H.L. Seth on the testament with his standard signatures. It has come in evidence that signatures, which have been as a standard signatures, are from the bank account which was opened much prior to the execution of the Will. Still further, it has come in evidence that Sh. H.L. Seth kept serving and died at the age of 84 and the Will was executed almost three months prior to the date of death. In old age, control on the movement of the hand reduces. However, this fact has to be examined in the context of signatures of Sudarshan Kumari, who would have got a 1/3rd share in the property in the absence of Will. Therefore, the finding of the learned First Appellate Court on this aspect is also erroneous.

Another reason given by the learned trial Court that space

between line on the first page and on the second page is different. It may be noted that the Will was typed by late Sh. H.L. Seth. The different spacing between the lines is not significant. Wherever sub paragraphs have been typed, the space between the lines has been reduced that could only be explained by the testator, who is no more alive. Hence, the reason given by the learned Courts to suspect the genuineness of the Will is not made out.

Still further, DW-2 when appeared in evidence has stated that the Will was taken out after the final rites whereas Meenakshi Madan @ Chander Bala who appeared as DW-3 states that Sudarshna disclosed about the Will on 4th day 'chotha'. As noticed the witnesses were being examined after a period of five years and there is bound to occur some discrepancy in the evidence which depends upon memory of a person.

Next reason assigned by the Court that the Will is not registered is noticed and rejected because the Will is not required to be registered. Registration of the Will is optional.

In the considered view of this Court, a testament executed and proved before the Court in accordance with law, should not be ignored by the Courts merely on conjectures and surmises. Suspicious circumstance have to have some foundation and substance. Suspicious circumstance cannot partake the place of whims and fancies. A testament is a wish of the executant.

There is a well established rule for the Court to examine its validity by sitting on the arm chair of the executor. In the present case, if one applies that principle, it is apparent that out of four daughters, two daughters have already died; one of the beneficiary has been living in

after the death of mother. The other daughter, who is alive, is agreeable to the proposal made by the father to bequeath the property in favour of one daughter, who is serving him after the death of his wife for a period of more than five years.

In view of the aforesaid discussion, the question of law is answered in favour of the appellant. Judgments passed by the Courts below are set aside resulting in dismissal of the suit filed by the plaintiffs while allowing the present appeal.

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

27.09.2018
sheetal

(ANIL KSHETARPAL)
JUDGE

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