

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) RSA No.4422 of 2013 (O&M)
Date of Order:11.01.2018

Om Parkash

..Appellant

Versus

Santra @ Phooshi

..Respondent

(2) RSA No.4423 of 2013

Om Parkash

..Appellant

Versus

Santra @ Phooshi

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. N.C.Kinra, Advocate, and
Mr. Harsh Kinra, Advocate,
for the appellant

Mr. Pritam Saini, Advocate,
for the respondent.

ANIL KSHETARPAL, J (Oral)

By this judgment, I shall be disposing of the Regular Second Appeal Nos.4422 and 4423 of 2013, which arise out of a suit filed by the respondent-plaintiff.

In the considered opinion of this court, question of law which arise for determination is:-

“Whether a registered Will (testamentary document) executed by the testator, proved as per the provisions of Section 68 of the Evidence Act can be ignored by the Court on the basis of alleged suspicious circumstances?”

It would be necessary to note few facts:-

FACTS

Jaimal @ Jai Pal and Ram Karan @ Ram Kanwar were two brothers, sons of Nand Lal. As per the findings arrived at by the Courts below, Jaimal @ Jai Pal was married to Gindori. Jaimal @ Jai Pal immediately after marriage, joined Indian Army and went to participate in world War. Later on he joined Indian National Army headed by Netaji Subhash Chandra Bose from where he was captured by British Army and his whereabouts were not known. Gindori was married to brother of Jaimal @ Jai Pal by a customary marriage (kareva) presuming Jaimal @ Jai Pal to be dead. Both the Courts have found as a matter of fact that Smt. Santra, plaintiff-respondent was born on 08.10.1945 from the marriage of Ram Karan @ Ram Kanwar with Gindori. Later on Jaimal @ Jai Pal came back and the customary marriage between Gindori and Ram Karan @ Ram Kanwar was cancelled and she started living with Jaimal @ Jai Pal, the first husband. It is further not in dispute that from the co-habitation of Jaimal @ Jai Pal and Gindori, three daughters and three sons were born.

However, Ram Karan @ Ram Kanwar did not get re-married. He kept on living with the family of his brother. Smt. Santra was married and started living with her in-law's house 40 kms. away from the place where Ram Karan @ Ram Kanwar used to live. Ram Karan @ Ram Kanwar executed a registered Will dated 30.09.2002 in favour of his nephew Om Parkash son of Jaimal @ Jai Pal, which was got registered on 01.10.2002. The Will bears thumb impressions of Ram Karan @ Ram Kanwar on all the pages. His photographs is also affixed on the Will. The Will is attested by three attesting witnesses. The Will has been scribed by regular scribe, who has also been examined. Both the Courts have recorded

a finding that the Will is proved in accordance with the provisions of Section 68 of the Evidence Act. Both the attesting witnesses examined are Dhani Ram and Jawahar Singh, Numberdar.

Learned first appellate Court has chosen to reverse the judgment of the trial court on the ground that the Will is surrounded by suspicious circumstances which have not been explained. The reasons given by the learned first appellate Court to ignore the Will are:- (i) that the name of Santra, the only daughter, has not been mentioned in the Will and (ii) there is no evidence available on the file that Om Parkash, the beneficiary was serving late Sh, Ram Karan @ Ram Kanwar.

Now the stage is set to consider the question of law framed earlier.

QUESTION:

“Whether a registered Will (testamentary document) executed by the testator, proved as per the provisions of Section 68 of the Evidence Act can be ignored by the Court on the basis of alleged suspicious circumstances?”

It has been concurrently found by the Courts that the due execution of the Will has been proved on the file. Both the attesting witnesses have been examined. The Will is a registered Will which also bears the photographs of the testator apart from his thumb impressions on each page. The Will was executed on 30.09.2002, whereas it was registered on 01.10.2002, i.e. next day. The executant visited the office of the Sub Registrar on two dates. While getting the Will registered, the executant has also thumb marked the endorsement before the Sub Registrar. The photographs of the executant as well as witnesses have been affixed on the Will. Identity of the executant is not in dispute.

A careful reading of the Will shows that Ram Karan @ Ram Kanwar has stated that he is 79 years old and he has not married. He further states that Om Parkash is son of his brother who lives with him and serves him. He has further stated that he has no other legal heir and if any legal heir makes a claim then that claim will be false and frivolous. It is not in dispute that Ram Karan @ Ram Kanwar remained alive for a period of three years approximately after the execution of the Will.

In the considered opinion of this Court, a registered Will (testamentary document) cannot be ignored by the Court on presumed/assumed suspicious circumstances. For ignoring a registered Will, there has to be something substantial available on the record to create a doubt in the mind of the Court about genuineness of the Will. In the present case, facts as noticed above are such which prove that the deceased was living with Om Parkash-appellant/defendant. Smt. Santra who was approximately 60 years old on the day the suit was filed, was married and living 40 kms away with her in law's house. There is no evidence on the file that Smt. Santra ever served late Sh. Ram Karan @ Ram Kanwar. There further no evidence is available on the file to prove that Smt. Santra had kept any connection with late Sh. Ram Karan @ Ram Kanwar after her marriage. The deceased while executing the Will has given reason why he is executing the Will in favour of Om Parkash. It is proved on the file that late Sh. Ram Karan @ Ram Kanwar was living with the family of Om Parkash.

Learned counsel for the respondents has argued that Om Parkash was present at the time of registration of the Will. No doubt, endorsement on the Will proves that fact, however, that circumstance itself

cannot be held sufficient to ignore the valid Will particularly when there is no evidence available on the file that Om Parkash, appellant ever influenced late Sh. Ram Karan @ Ram Kanwar in executing the Will.

In these circumstances, in the considered opinion of this Court, learned first appellate Court committed material irregularity in ignoring the registered Will, on the basis of the alleged suspicious circumstances for which no evidence is available.

In the second appeal, Om Parkash has challenged the finding that Smt. Santra was not daughter of late Sh. Ram Karan @ Ram Kanwar. Both the Courts have concurrently found that Smt. Santra was proved to be daughter of late Sh. Ram Karan @ Ram Kanwar and Gindori. The most important witness is Gindori, who had appeared as PW2. She has stated that Smt. Santra is her daughter from the lions of late Sh. Ram Karan @ Ram Kanwar. Although, learned counsel for the appellant has tried to argue that the marriage between Smt. Santra and late Sh. Ram Karan @ Ram Kanwar was not legal, however, this issue would not detain this Court from returning a finding that Smr. Santra is daughter of late Sh. Ram Karan @ Ram Kanwar.

In view of what has been recorded hereinabove, the question of law framed earlier is answered in favour of the appellant. The regular second appeal No.4422 of 2013 shall stand allowed and regular second appeal no.4423 of 2013 shall stand dismissed.

January 11, 2018
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No