

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

**RSA No.3735 of 2016 (O&M)**

**Date of Order:21<sup>st</sup> May, 2018**

**Balbir Singh**

**..Appellant**

**Versus**

**Avtar Singh and others**

**..Respondents**

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

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

Mr. V.G.Jauhar, Advocate and  
Mr. Rishabh Gupta, Advocate,  
for respondent no.1.

**ANIL KSHETARPAL, J.**

Arguments in detail were heard and the appeal was dismissed.

This court now proceeds to record reasons.

Defendant no.1-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

The dispute in the present case is with respect to the estate of late Sh. Bhagat Singh, who died on 23.11.2001. It is the case of the plaintiff that Bhagat Singh his maternal grand father had executed a registered Will in his favour as well as in favour of another grand child Kulwant Singh son of daughter of late Sh. Bhagat Singh, with respect to land situated in village Dulladi.

Defendant no.1, who is son of the testator, contested the suit and pleaded that the Will-testamentary document as propounded is forged and fabricated. It was further pleaded that late Sh. Bhagat Singh was not competent to execute the testamentary document.

Facts which have come on record are that late Sh. Bhagat Singh was owner of the land measuring 41 bighas and 1 biswas in village Dulladi and 33 kanals and 18 marlas of land in village Kalaran. As per registered testamentary document dated 23.11.2001, late Sh. Bhagat Singh bequeathed his property at village Dulladi in favour of plaintiff and defendant no.8, minor sons of his two daughters, whereas with respect to property at village Kalaran, late Sh. Bhagat Singh bequeathed his property in favour of his only son Balbir Singh, appellant-defendant and widow.

In the registered Will, it is recited that late Sh. Bhagat Singh does not have any child and there is no hope of child being born to Balbir singh, hence he is bequeathing property situated at village Dulladi in favour of his two minor grand children (sons of two daughters).

This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below.

Learned counsel for the appellant has made the following submissions:-

- (i) The property at village Dulladi falls within the area of Municipal Committee, Nabha and therefore, more valuable;
- (ii) grand sons were not residing with late Sh. Bhagat Singh as is recited in the Will;

- (iii) Second attesting witness, namely, Nambardar, although summoned but was not examined;
- (iv) Will is an unnatural Will;
- (v) the Will is surrounded by suspicious circumstances which have not been properly explained by the plaintiff;
- (vi) the written arguments filed before the first appellate court have not been dealt with.

**FINDINGS:**

With regard to first argument of learned counsel, it is suffice to notice that while examining the validity of the Will, the court is not required to see whether distribution of the property amongst the legal heirs is proper or not. In fact, the Will-testamentary document is executed normally when the testator wishes to deviate from natural succession. Difference in value of the property cannot be made basis to discard the Will-testamentary document.

Second argument of learned counsel for the appellant is that the grand sons were not residing with the testator is also to be noticed and rejected as on the day Bhagat Singh died, Avtar Singh, plaintiff was 8 years old, whereas Kulwant Singh, defendant no.8 was 12 years old. Grand children do come and stay with their maternal grand parents. Continuous residence of the grand children, who are beneficiaries under the Will is not necessary. In the testamentary document, late Sh. Bhagat Singh has mentioned that the grand sons are residing with him. In such circumstances, validity of a registered Will cannot be doubted on this ground.

Next argument of learned counsel is that Nambardar, the attesting witness, who was summoned has not been examined.

It may be significant to note here that as per Section 68 of the Indian Evidence Act, 1872, the Will is required to be proved by examining one attesting witness, who fulfills the requirements of the law. In the present case, Gurcharan Singh, attesting witness has been examined as PW3. On careful reading of the statement of Gurcharan Singh, it is established that Sh. Gurcharan Singh has supported the due execution and registration of the Will. Still further, Sub-Registrar who registered the Will has also been examined as PW4, whereas scribe has been examined as PW2. In such circumstances, non-examination of the Nambardar would not make the testamentary document-the Will doubtful.

Next argument of learned counsel is that the Will is an unnatural Will. While elaborating, he submitted that the testator has bequeathed more valuable land in favour of his two grand children (sons of two daughters) by excluding remaining 3 daughters. Hence, he submitted that the Will is unnatural. This court has considered the submission, however, do not find any substance therein.

At the cost of repetition, testamentary document is executed to deviate succession of the property from natural succession. By way of the aforesaid testamentary deposition, late Sh. Bhagat Singh has bequeathed property in village Dulladi in favour of his grand sons whereas property at village Kalaran has been bequeathed in favour of Balbir Singh, son and Mohinder Kaur. Admittedly, during the life time of late Sh. Bhagat Singh, he was not having child. Of course, a girl was born to Balbir Singh after the death of Bhagat Singh. Hence, the Will cannot be said to be unnatural.

Next argument of learned counsel is that the Will is surrounded by suspicious circumstances.

This court has gone through the reasons assigned by the learned trial court to hold that the testamentary document is surrounded by suspicious circumstances. The main reason given by the learned trial court is that when Ravinder Singh (father of the plaintiff and son-in-law of late Sh. Bhagat Singh), appeared as PW1, he stated that Bhagat Singh was under his influence. It may be noted that Ravinder Singh is the eldest son- in-law in the family. Learned trial court has read one line in isolation without referring to the complete statement. From the reading of complete statement of Ravinder Singh, it is not safe to conclude that he has stated that Bhagat Singh executant was in his influence.

Next reason assigned by the trial court is that Sh. Ravinder Singh, father of one of the beneficiary was present at the time of execution of the agreement. However, on careful reading of the evidence of Ravinder Singh, it is established that Ravinder Singh was not present at the time of execution and attestation of the Will, however, he was present when the Will was presented before registration. In the considered opinion of this court, such presence of the father of the beneficiary would not make the Will suspicious.

Next circumstance pointed out by the learned trial court is that in the testamentary document, late Sh. Bhagat Singh has written that his grand children served him, whereas the grand children were minors at the time of execution of the Will.'

Counsel for the parties have read over the Will-testamentary document dated 06.12.2000. Late Sh. Bhagat Singh has recited in the Will that his grand children lived with him and served him. Such recital in the Will is in general and with reference to love and affection, the deceased had

for his grand children. A maternal grand father was having love and liking for two grand children and in that context he has got it recited in the Will that the grand children lived with him and served him. However, since the Will is registered and no evidence has been produced on file to prove that the Will was not executed and got registered by late Sh. Bhagat Singh, therefore, it is the duty of the court to get the Will implemented.

This court has examined copy of the Will available in the record. Will is written in local language i.e. Gurmukhi (Punjabi). Each page of the Will has been signed by the executant. Photograph of the executant has been affixed on the first page of the Will, whereas at the time of registration, the photograph of the executant along with the Sub-Registrar and attesting witness has also been printed on the Will itself.

Last argument of learned counsel is that the written arguments have not been dealt with by the learned first appellate court.

This court has carefully gone through the judgment passed by the learned first appellate court. Learned first appellate court has dealt with all the submissions in written arguments before the first appellate court.

This court has once again gone through the written submissions. It is entirely reiteration of what has been orally argued by the learned counsel for the appellant. Only additional point is that the property is claimed to be ancestral and co-parcenary land.

In this regard, learned trial court had framed issued no.8B. It was found that the property at village Dulladi was purchased by late Sh. Bhagat Singh. At the most, property at village Kalaran could be ancestral property. Although, it was contended that the property at village Dulladi was purchased from the income of the land situated at village Kalaran,

however, no evidence in this regard was produced. The property at village Kalaran has been bequeathed in favour of Defendant no.1-appellant and his mother (widow of Bhagat Singh executant), so even if the property is ancestral, the same has been bequeathed in favour of son and widow.

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

The regular second appeal is dismissed.

**21<sup>st</sup> May, 2018**  
**nt**

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

Whether speaking/reasoned  
Whether reportable

: Yes/No  
: Yes/No