

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

RSA No.2951 of 2015 (O&M)
Date of decision : 10.05.2018

Bhupinder Singh

...Appellant

Versus

Sarabjit Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjeev Pandit, Advocate and
Ms. Rimjhim Mahajan, Advocate for the appellant.

Mr. R.S. Chauhan, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Defendant No.1-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

In the considered opinion of this Court, the following substantial question of law arises for determination by this Court:-

1. Whether a registered testamentary document bearing photograph of the testator can be ignored by the Courts on the alleged suspicious circumstances which have no foundation/basis?

The dispute in the present case is with regard to the estate of Late Sh. Sohan Singh who died on 10.09.2004. Sohan Singh before his

death, executed a registered testamentary document (Will) on 27.08.2004 which was got registered on 02.09.2004. The testamentary document has been read-over by the learned counsel for the parties, wherein he refers to all the family members and record that to one of his son, he has given enough cash and second son has been disinherited. The entire property has been bequeathed in favour of one son. The testator has also written in the testamentary document that he has married all his three daughters and given them at the time of the marriage.

Learned Courts below have ignored the testamentary document on the following grounds:-

- a) All the witnesses produced by the plaintiff have stated that the testamentary document is surrounded by the suspicious circumstances.
- b) On the first page of the testamentary document, testator has signed as well as thumb marked which is unnatural.
- c) The endorsement at the time of registration of the testamentary document is of mortgage and not of the testamentary document.
- d) Sohan Singh remained ill and, therefore, Sohan Singh was not in sound and perfect health.
- e) The testamentary document has been attested by five witnesses whereas the requirement of Section 63 of the Indian Succession Act, 1925 is to get it attested only by two witnesses.
- f) The testamentary document was registered after a period of five days from the date of execution of the testamentary document, although

testamentary document was scribed in the Tehsil Premises where the Sub-Registrar has a office.

The testamentary document has been proved by examining DW5 Amrik Singh, Ex-Sarpanch, attesting witness who has specifically stated that the testamentary document was executed, read-over and explained to the testator and the testator had signed and thumb-marked the testamentary document in his presence and in the presence of other attesting witnesses. He has also stated that he has signed the testamentary document and other witness had also signed in his presence. The defendants have also examined professional scribe Pardeep Kumar, who has been examined as DW6. He has also stated that the testamentary document was executed by Late Sh. Sohan Singh with his free will and volition.

NOW THE STAGE IS SET FOR CONSIDERING THE QUESTION OF LAW FRAMED ABOVE

1. Whether a registered testamentary document bearing photograph of the testator can be ignored by the Courts on the alleged suspicious circumstances which have no foundation/basis?

The testamentary document is a solemn declaration by a person who is no more in the world. The Courts must make an endeavour to honour the wishes of the testator. Usually the testamentary document is executed to give the property to the children. The testator's wishes should not be ignored by the Courts unless and until it is established on the file that either the testamentary document was not executed by the testator or there are some circumstances available which create strong suspicion in

the mind of the Court. The strong suspicion cannot be substituted by certain circumstances which have no basis.

In the present case, late Sh. Sohan Singh was a literate person. He was previously also visiting the Court and contesting the litigation, therefore, he cannot be said to be a person having no knowledge. Late Sh. Sohan Singh immediately before his death executed a registered testamentary document. On first page, the testamentary document has been signed and thumb-marked. On examination, it is apparent that at the first page of the testamentary document, because of old age, his signatures appears to be shaky that is why the professional scribe got his left thumb-impression on the first page as well as on the second page. Still further, a photograph has been affixed on the first page of the testamentary document which is duly attested by the Sub-Registrar who had registered the testamentary document. On 02.09.2004, i.e. after a period of five days, late Sh. Sohan Singh once again appears before the Sub-Registrar to get the testamentary document registered. Late Sh. Sohan Singh had put his thumb-impression on the endorsement before the Sub-Registrar and he was duly identified by Amrik Singh, Ex-Sarpanch, the attesting witness before the Sub-Registrar.

In the considered opinion of this Court, merely because the first page also bears the signatures of the testator, it cannot be treated as a suspicious circumstance.

Learned Court has further erred in recording a finding that the testamentary document is suspicious because the stamp on the

endorsement is of the mortgage. This is a mistake which was committed by the office of the Sub-Registrar. Testator had gone to the Sub-Registrar for registration of the testamentary document. He got the testamentary document registered and as directed put his thumb impression, therefore, the entire body of the testamentary document does not even remotely refer to the mortgage. It is a testamentary document which is undisputed between the counsels. The wrong stamp on the back of the page where the testamentary document has been executed would not make doubtful.

Next reason assigned by the Courts below is that late Sh. Sohan Singh was ill. No doubt, some evidence has been led to prove that late Sh. Sohan Singh remained admitted in the month of July and thereafter immediately before the death, however, the Courts have overlooked the opinion given by the Doctor who has stated that Sohan Singh is fit to make any statement. Still further, on careful examination of the medical record, it is not proved that Sohan Singh was in senses or was not having any mental medical problem. Normally, one would think of executing the testamentary document when the end is near. This is a case where Sohan Singh who was 60 years old decided to execute the testamentary document when the end was near. Hence, unless, the Courts record a finding that the testator was either not in senses or was in any way having any mental health issue, the competence of the testator to execute the testamentary document cannot be doubted.

Next reason assigned by the Courts is that why the testamentary document is attested by five witnesses. In the considered

opinion of this Court, the reason has no basis. As per Section 63 of the Indian Succession Act, 1925, the testamentary document is required to be attested by two witnesses, however, there is no restriction that the witnesses cannot be more than two, therefore, this reason assigned by the Court is erroneous.

Last reason assigned by the Courts is that why the testamentary document was registered after a period of five days from the date of execution. Learned counsel for the respondents has supported this reasoning and has stated that the testamentary document is surrounded by suspicious circumstances on this ground. In the considered opinion of this Court, rather this reason should go in favour of the propounder, it is clear that late Sh. Sohan Singh was clear in his vision that he had to bequeath all his property to his one son i.e. Bhupinder Singh who was residing with him. It is specifically recorded in testamentary document that it is Bhupinder Singh who is serving him. Sohan Singh executed the testamentary document on 27.08.2004. He stood by decision and got the testamentary document registered on 02.09.2004. The registration of the testamentary document would always depend upon the availability of the Sub-Registrar who may not be available on a particular date. Hence, this Court itself cannot take it as a suspicious circumstance.

It may be further significant to note that the plaintiff has not even stepped into the witness-box. He has appeared through his wife who has General Power of Attorney Holder.

Another reason given by the Court is that all the witnesses

produced by the plaintiff have stated that the testamentary document is surrounded by suspicious circumstances. In the considered opinion of this Court, a party which is challenging the testamentary document would always produce the witnesses who would try to create a suspicion in the mind of the Court. Further, the Court has to scrutinize the evidence. Quality of the evidence matters and not the quantity, particularly when there is testamentary document available on the file which is registered and photograph of the testator has been affixed.

In view of the discussion made above, the question framed in the previous part is answered in favour of the appellant. The suit filed by the plaintiff shall stands dismissed.

In view of the above, the present Regular Second Appeal is allowed.

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

10.05.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No