

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

**RSA No.6173 of 2016 (O&M)
Date of Order:23.10.2018**

Tejinder Pal Singh

..Appellant

Versus

Shashi Arvind and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ripudaman Singh Sidhu, Advocate,
for the appellants.

Mr. Vijay Lath, 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, decreeing the suit for possession by way of eviction of the defendant from House No.6, fully described in the plaint along with recovery of Rs.2500/- i.e. for the period of 20.01.2008 to 05.02.2008 @ Rs.5000/- per month as damages for use and occupation of the premises and further for recovery of damages during the pendency of the suit.

Dispute in the present case is with respect to the estate of Havesh Kanwar wife of late Sh. Surinder Singh, who died on 25.06.2007. Gurbax Singh was having 6 children, 3 daughters and 3 sons. Havesh Kanwar is one of the daughter, who was married, but died issueless. Her husband had pre-deceased her. Two Wills have been set up, one by the plaintiffs, who are sister and brother-in-law (husband of the sister), dated 31.01.2005, which is a registered Will, whereas second Will is dated

10.01.2007 executed in favour of 2 brothers, namely, Tejinder Pal Singh and Girish Pal Singh, defendant nos. 1 and 2 in the suit. The Will dated 10.01.2007 was registered after the death of the executant, on 20.11.2007.

Questions of law which require adjudication are:-

- (i) Whether the judgments passed by both the courts below are result of conjectures and surmises?
- (ii) Whether a registered Will can only be superseded by another registered Will?

It may be noticed that the signatures of Havesh Kanwar on second Will i.e. unregistered Will dated 10.01.2007 in favour of the defendants are not being disputed. She was a retired Head Teacher. It is also not in dispute that the defendants are in possession of the house in question, although, it is being claimed that they entered into the possession after the death of the deceased. The Will dated 10.01.2007 is attested by 2 attesting witnesses, namely, Prem Sagar and Anil Chaudhary. Both the attesting witnesses have been examined in evidence and have supported the Will. The Will dated 31.01.2005 has been specifically cancelled by making reference to the deed number and date. It has been mentioned in the second Will by the executant that after the execution of the first Will, plaintiffs have stopped serving her and are rather harassing her and that is the reason why she is executing the second Will.

Now let's deal with the reasons given by the courts below to ignore the Will.

One of the main reason assigned by the courts is difference in spacing between the lines while typing the Will dated 10.01.2007. The Will is Ex.D1 on the record. On first glance, there appears to be no difference in

the spacing. However, learned counsel for the respondents-plaintiffs has got the spacing measured and has pointed out that in first 18 lines of the Will, space in between the lines is 8 mm, whereas space in the next 4 lines is 7 mm, in between line nos.22-23 the space is 6 mm, in between line nos.24 to 27 the space is 7 mm and from line nos.28 to 31 the space in between the lines is 6 mm. It is not disputed that the Will has been typed on a manual typewriter. Signatures of the testator are not being disputed. No explanation has come on record to prove that how a blank signed paper of a Head Teacher landed in the hands of the defendants. Still further, Parmeshwar Singh Braria, brother-in-law of the deceased (sister's husband) beneficiary under the Ist Will, when appeared in evidence has admitted the execution of the Will dated 10.01.2007. However, he goes on to state that the executant had never told them about the execution of the subsequent Will. Thus, the execution of the second Will i.e. dated 10.01.2007 is admitted.

As regards difference in spacing, it may be noticed that the difference is only of 1 mm between first 18 lines and then next 4 lines. Thereafter, the space once again decreases to 6 mm and thereafter increases to 7 mm. Once the signatures of the testator are not being disputed, the subsequent Will executed which has been subsequently registered, of course, after the death of the testator, cannot be doubted on this ground. It is well known that while typing on manual typewriter, the difference in spacing can be because of various reasons. Still further, both the attesting witnesses of the Will dated 10.01.2007 have been examined and have withstood the lengthy cross-examination carried out by learned counsel for the plaintiffs.

Second reason assigned by the courts to discard the Will is that the registered Will can only be superseded by another registered Will. Learned counsel for the respondents does not dispute that the aforesaid reasoning is erroneous.

Next reason assigned by the courts is that the second Will i.e. dated 10.01.2007 is not registered and not executed by a professional scribe who maintains a register.

As regards registration, there is no dispute that the Will is not required to be registered. As regards getting the Will executed from a professional scribe, there is no requirement that the Will must be executed by a professional scribe.

No doubt, a Will can be ignored on the ground that the Will is surrounded by suspicious circumstances but those suspicious circumstances are required to be pleaded and proved having foundation. The reasons to ignore the Will cannot be on the basis of conjectures and surmises. In the present case, the reason for superseding the previous Will has been clearly mentioned in the subsequent Will. The aforesaid reasons have also been supported by evidence by examining a friend DW6-Gurmeet Singh Gill, who has also been cross examined at length but his evidence could not be impeached. Still further it has come in evidence that the plaintiffs, namely, real sister and brother-in-law did not even attend the cremation of the testator.

Learned counsel for the respondents has also submitted that the Will dated 10.01.2007 was registered on 20.11.2007 i.e. 6 months after the death of the testator. He further submitted that both the attesting witnesses could not showed ignorance whether they had signed the entry in the

register of the scribe or not?

In the considered view of this court, registration of the Will after the death is permissible in accordance with the provisions of Registration Act and registration of the Will after death cannot be called a suspicious circumstance. As regards ignorance shown by the attesting witnesses with regard to signing of the entry in the register of the professional scribe, it has come in evidence that the Will was typed by one Bikram Singh, who works in court premises and types various documents. Bikram Singh has appeared in evidence and has stated that he is typing the various documents after taking permission from the Deputy Commissioner.

In view of the aforesaid, the questions of law framed earlier are answered in favour of the appellant. The judgments and decrees passed by both the courts below are set aside.

The regular second appeal is allowed.

Other miscellaneous applications are disposed of in view of the judgment passed above.

October 23, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No