

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

RSA No.2642 of 2014 (O&M)

Date of decision: 30th July, 2018

Mrs. Mary Singh & others

... Appellants

Versus

Padamjit Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Raman Mahajan, Advocate for the appellants.

Mr. Charanjit S. Bakhshi, Advocate for the respondent.

FATEH DEEP SINGH, J.

The present dispute between the siblings, Kanwar Sunder Singh plaintiff (since deceased) now being represented by his legal heirs Mrs. Mary Singh, Meera Rosh Sunder Singh and Nicholas Romeen Lampen Sunder Singh (present appellants) and his brother defendant Padamjit Singh (respondent before this Court), is over a house built over a plot measuring six kanals described in the head note of the plaint. The plaintiff had filed a suit for declaration to the effect that plaintiff is the owner of 3/4th share in this house and seeking a decree of permanent/perpetual injunction restraining the defendant from dispossessing the plaintiff in any manner except in due course of law and also restraining the defendant from interfering into peaceful possession of the plaintiff in respect of the said house. The plaintiff having faced ignominy, firstly before the trial Court of learned Sub-Judge (Junior Division),

Chandigarh whereby through judgment and decree dated 22.09.2010, the house was equally divided between the plaintiff and the defendant in equal shares. Appeal preferred by the unsuccessful appellants too stood dismissed vide impugned judgment and decree dated 07.11.2013 by the Court of learned Additional District Judge, Chandigarh. Still aggrieved over these consecutive findings of the two courts below, the unsuccessful plaintiffs have knocked at the doors of this Court through the instant regular second appeal.

Heard Mr. Raman Mahajan, Advocate for the appellants; Mr. Charanjit Singh Bakhshi, Advocate representing the respondent and perused the records of the case.

From the arguments advanced by the two sides, it trickles down to the residue that the house in question was initially owned by one Sunder Singh who has since died and happened to be the father of the plaintiff as well as the defendant. It is the claim of the plaintiff that Sunder Singh executed a Will dated 09.09.1984 bequeathing the house in question to the plaintiff and his daughter Miss Veera Sunder Singh in equal shares and that their mother had earlier died on 25.03.1983 while Sunder Singh passed away on 01.05.1986. Thus, in short the claim of the plaintiff is that he along with his sister detailed above have inherited the house in question in equal shares and thus upon death of Ms.Veera Sunder Singh (also known as Priya Rajvansh) who had executed a Will dated 16.06.1994 of her estate in favour of the plaintiff and defendant in

equal shares, the plaintiff became owner to the extent of 3/4th while the defendant became owner of 1/4th share of this house.

The stand of the defendant admits to the fact that their father late Sunder Singh was the exclusive owner of the house in question and claims that throughout he had been regularly visiting the house though he is permanently residing in United States of America and had disputed the Will being a fabricated document attacking it on the grounds of forgery, fabrication, fraud and coercion. Upon usual process at the trial, the Court below framed the following issues:

1. Whether late Shri Sunder Singh father of the parties had executed a valid and genuine Sill dated 09.09.1984 in favour of the plaintiff? OPP
2. Whether the plaintiff is in actual physical possession of the entire house as alleged, if so from when? OPP
3. Whether the plaintiff is entitled for any declaration and permanent injunction with regard to entire house against the respondent as alleged? OPD
4. Whether the plaintiff has not affixed sufficient Court fees? OPD
5. Relief.

The plaintiff in his evidence, examined himself as PW-1 and tendered his affidavit Ex.PW1/A proving documents Ex.P1 to Ex.P11 and then one of the attesting witnesses of the Will, Mr. Justice S.S.

Sodhi appeared as PW-2 and proved the Will as Ex.P12. Thereafter, plaintiff closed its evidence.

In defence, defendant himself appeared as DW-1 by means of affidavit as Ex.DW-1/A and proved documents Ex.DW1/A to Ex.D12. Thereafter, the defendant examined DW-2 Dr. Jassy Anand, Documents Expert, who testified having examined the Will Ex.P12 and proved his report Ex.DW2/1 along with the photographs/negatives taken during examination of this witness as Ex.DW2/4 to Ex.DW2/6 and opined that the signatures of the executant was an outcome of copied forgery. Thereafter, the defendant closed its evidence, leading to passing of the impugned judgment.

Appreciating the submissions of the two sides, it is by now a well settled proposition of law having regard to the provisions of Section 63 of the Indian Succession Act and Section 68 of the Evidence Act, that one who propounds a Will, must establish the competence of the testator to make the Will at the time when it was executed and when due execution of the Will as contemplated by law stands proved it is for the other party opposing the Will to prove the evidence to prima facie show otherwise, and the onus would again shift back upon the propounder to satisfy the Court that it was a legally and validly executed document. Reliance placed on '**Madhukar D. Shende v. Tarabai Aba Shedage**' **2002(1) RCR (Civil) 724.**

Reverting back to the disputed document, i.e. the Will Ex.P12, bears out even to the naked eye that it comprises of two pages, the first page does not carry the signatures of the alleged testator which are there only on the second page. The alleged signatures of the executant on the first page and the second page purported to be of Sunder Singh (deceased) clearly shows marked difference in the signatures on the two pages, which are quite visible to the naked eye, which has also been observed in the impugned findings by the learned first appellate Court. When taking into consideration for a moment, the report of the handwriting expert, it reflects from these two signatures that the formation of the first word of the name on the two pages and the first alphabet of the word 'Singh' on the two pages are poles apart, besides the manner of writing slant so on and so forth. To the very specific query of the Court, Mr.Raman Mahajan, learned counsel for the appellants could not satisfy the Court for what reasons there is such a disparity between the two signatures alleged to be of the same very person and also alleged to have been appendised at the same point of time. The report of the expert DW-2 Dr. Jassy Anand, Ex.DW2/1 based on photographs and their negatives Ex.DW2/2 to Ex.DW2/6 also opines these signatures on these two pages to be of different type and the learned counsel for the appellants could not pinpoint anything adverse that has come in the cross-examination of this witness, which could be of any help to the appellant side, and therefore, the observations of this

Court upon examining the Will certainly corroborate the opinion of the expert. Besides the fact that admittedly it is an unregistered Will and therefore, having been executed by a literate person and alleged to have been attested by two persons, who too are well-read and understand the legal implications, certainly is a distressing feature for the appellants, besides the fact, as has been argued on behalf of the respondent side by Mr.Charanjit Singh Bakhshi that it was incumbent upon the attesting witnesses to have signed both the pages of the alleged Will. The first page does not carry signatures of the attesting witnesses, certainly casts a serious doubt over the veracity of the first page of the Will and which has its own implications upon the Will in totality. The testimony of PW-2 certainly becomes self-contradictory to the stand of the plaintiff when the alleged Will is purported to have been executed on 09.09.1984 but it is the claim of the plaintiff as well that wife of the executant i.e. mother of the plaintiff and defendant passed away on 25.03.1983 and Sunder Singh died on 01.05.1986, how this witness in his cross-examination states that when he went to sign the Will, he recollects that Sunder Singh (the executant) besides his wife were present at his house. How could the wife be there, when the Will was executed on 09.09.1984 and she died way back on 25.03.1983, certainly puts the testimony of this witness in a bad light, besides the fact as has been observed by the learned trial Court that the unregistered Will did not see the light of the day and it was only in the year 2003-04 when it was put before the

Estate Office, UT Chandigarh for transfer of the house in question, certainly creates another suspicious circumstance and thus, remained in oblivion for a period of nineteen years, are peculiar circumstances adding to the suspicious nature of the Will. The Will never, as per the observations of the Court below, came either from the executant or from the attesting witnesses and how after such a long period it has been put forth, needs to be satisfactorily explained by the propounder of the Will, which he has failed to do so. Besides this, it has been observed by the Court below in the impugned judgment that the photostat copy of this Will earlier placed on record as Mark-A does not appear to be the true photostat copy of the alleged original Will as it was observed by the Court that signatures of the testator were scored off and then second signatures were made on the photostat copy in a different direction as well as at a different place than the original Will, strengthens the suspicion of the Court that all was not well with the story of the plaintiff. Further observation that the Will came from the custody of one Ranjit Singh Walia, Advocate who was never examined nor any satisfactory explanation is forthcoming for reasons how this Will came in the hands of an Advocate who was never associated with the Will in any manner and capacity.

Thus, from what has been detailed and discussed above and the serious lacunas in the case of the plaintiff, the draw-backs in the alleged Will so set up by the plaintiff and which has been consistently

observed by the two Courts below whereby they have returned uniform and consistent findings, creates a serious doubt and suspicion in the mind of the Court that the Will certainly does not qualifies the test of acceptance. In the light of these observations, the findings of the two Courts below needs to be upheld. The present appeal being wholly devoid of merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

July 30, 2018
rps

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