

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No.5474 of 2014 (O&M)

Date of Decision:10.08.2018

Madhu Bala and another

...Appellants

Versus

Charanjit Kumar and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arun Jain, Senior Advocate with
Mr.Dhruv Mittal, Advocate for the appellants.

Mr.Ashok Sharma, Advocate for the respondents.

ANIL KSHETARPAL, J.

The plaintiffs-appellants are 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 regard to the estate of late Shri Raj Kumar Prashar, who had executed a registered testament (Will) in favour of his two sons from first wife. Second wife and her daughter have challenged the validity of the testament.

Learned senior counsel appearing on behalf of the appellants has submitted that the execution and registration of the testament has not been proved in accordance with Section 68 of the Evidence Act, 1872. He has further submitted that Lakha Singh, attesting witness, is beneficiary under the sale-deed, executed by late Shri Raj Kumar Prashar and, therefore, his evidence cannot be relied upon. He has next submitted that the sale-deed executed by late Shri Raj

Kumar Prashar is also doubtful as Lakha Singh was not able to produce a copy of

the sale-deed. He has further submitted that photograph of the Sub-Registrar with the attesting witnesses has not been affixed on the testament, as per instructions. He has finally argued that second attesting witness namely Maan Singh has not been examined.

On the other hand, learned counsel for the respondents, while referring to the evidence of Lakha Singh, has pointed out that Lakha Singh, the attesting witness, has fulfilled the requirements of Section 68 of the Evidence Act. He has further contended that late Shri Raj Kumar Prashar had executed the testament after making sufficient arrangement for the plaintiffs. It has come on record that late Shri Raj Kumar Prashar purchased a house out of which 1/4th share was purchased in the name of the plaintiff No.1. Still further Raj Kumar Prashar also got purchased Property No.74-75, Transport Nagar, Jalandhar in the name of plaintiff No.1, which is fetching good rent. It has also come in the evidence that the plaintiff No.1 also purchased a plot with the finance provided by late Shri Raj Kumar Sharma in New Baradari Nedar Medical College, Garha Road, Jalandhar. He has next submitted that Lakha Singh was not only purchaser of the property instead he was one among the many purchasers of the property. Therefore, non-production of sale-deed would not be taken as a ground to hold that the testament is surrounded by suspicious circumstances.

Before this Court deals with the argument of learned senior counsel for the appellants, it may be significant to note here that the testament was executed on 20.12.2000 and it was registered on 21.12.2000, that is the next day. Photograph of the executants and photograph of witnesses are printed on the reverse side of the testament. It has come in the evidence that photograph is of late Shri Raj Kumar Prashar. On 20.12.2000 late Shri Raj Kumar Prashar sold the land measuring 3 kanals and few marlas. The aforesaid sale-deed was also registered on 21.12.2000, that is the next day. On both the aforesaid documents

i.e. sale-deed and the testament, photograph of the executant has been printed while standing with the Sub-Registrar. The validity of the sale-deed has not been challenged by the plaintiffs.

With regard to the first argument of learned senior counsel for the appellants, it may be noted that Lakha Singh when appeared in the witness box, he stated that it had read over and after admitting the contents thereof as correct, Raj Kumar Prashar signed the testament in his presence as well as in the presence of other attesting witness namely Maan Singh, Lambardar. He further stated that both the attesting witnesses signed in the presence of Raj Kumar Prashar, executant as well as in the presence of each other and Raj Kumar Sharma also signed at the bottom of the testament. Raj Kumar Prashar also signed the testament on 21.12.2000 in the presence of Sub-Registrar when registration of the testament took place. Even attesting witnesses have appeared before the Sub-Registrar and signed the testament.

Learned senior counsel for the appellants, while drawing attention of the Court to the statement of Lakha Singh to the effect that the testament was written in his absence, wants this Court to infer that Lakha Singh was not present. However only thing is admitted by the witnesses that the testament was scribed in his absence. However, learned senior counsel for the appellants could not draw attention of the Court to any part of the statement of Lakha Singh where he stated that the testament had already been signed or it was not signed in his presence.

As per Section 63 of the Indian Succession Act, 1925, the testament is required to be attested by two or more witnesses. Each of whom has seen the testator signing or affixing his mark to the testament or has seen some other person signing the testament, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or

mark and each witness shall sign the testament in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time.

Section 68 of the Evidence Act makes a provision that if one attesting witness is examined for the purpose of proving its execution who is able to satisfy the requirement of Section 63 of the Succession Act, 1925, then evidence of second witness is not necessary. In the present case, it has come on record that Maan Singh, the second attesting witness, has died.

Next argument of learned senior counsel for the appellants that evidence of Lakha Singh cannot be relied upon because he is beneficiary in the sale-deed also, is to be noted and rejected as Lakha Singh alone was not the only purchaser of the property. He alongwith certain other persons had purchased only a small piece of land measuring 3 kanals and few marlas. Similar is the position with regard to argument of learned counsel that Lakha Singh could not produce copy of the original sale-deed. It may be significant to note here that once there are more than one vendees, the original sale-deed can be in possession of any one and if during the cross-examination, a question was asked with regard to availability of the sale-deed to the witness had not only replied that he is not in possession of sale-deed, rather he clarified that there are seven persons who had purchased the property and the sale-deed was in the possession of Amarjeet Singh, who has died.

Next argument of learned senior counsel for the appellants is with regard to absence of photographs of witnesses with the Sub-Registrar. The Government, with a view to ensure that the documents are executed by genuine persons, has issued directions. There is no requirement under the Registration Act, 1908 that photographs of the witnesses alongwith the Sub-Registrar should be printed on the testament. The photograph of the executants along with the

Sub-Registrar has been printed. Photograph of both the attesting witnesses has also been printed. In such circumstances, validity of the testament cannot be doubted on the ground that photographs of the witnesses are not alongwith the Sub-Registrar.

Next argument of the learned senior counsel for the appellants that Maan Singh has not been produced in evidence is just to be noted and rejected as it has come in the evidence that Maan singh has already died. Learned senior counsel has further pointed out that endorsements on the reverse page of the testament are with respect to a mortgage. It is only a small irregularity committed by the official of the Registration Office. That would not make a testament suspicious or invalid. The testament has been executed on 20.12.2000 in the presence of two attesting witnesses. Scribe Harish Chander has also been examined who has also stated that the testament was executed on 20.12.2000 in the presence of attesting witnesses. The act of registration of the testament is optional as registration of the testament is not compulsory. It is not the case of anyone that mortgage deed was to be registered. In such circumstances, this Court does not find any substance even in this argument of learned senior counsel for the appellants.

Learned counsel for the appellants, while relying upon the judgment passed by Hon'ble the Supreme Court in ***Gopal Swaroop Vs. Krishna Murari Mangal and others, 2011 (1) RCR (Civil) 249*** has submitted that the witnesses are required to be sign the testament on the direction of the testator. Since this aspect is missing, therefore, the Will-testament cannot be said to be proved.

This Court has carefully read the judgment passed by Hon'ble the Supreme Court alongwith Section 63 of the Indian Succession Act and Section 68 of the Evidence Act. Once a witness has been called to attest the testament and such witness has signed the testament, directions of the testator are implicit.

Still further, Section 63 of the Indian Succession Act, 1925 does not provide that the testament can only be attested on the direction of the testator. The `direction' word used in Section 63 deals with the situation when the testament is signed by someone else on behalf of the testator.

No other argument was raised.

In view of the above discussion, there is no ground to interfere with the concurrent findings of fact arrived at by the courts below. Regular Second Appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

10.08.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:Yes/No

Whether Reportable: Yes/No