

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

RSA No.3799 of 2017(O&M)

Date of decision: 6.7.2018

Onkar Singh and another

....Appellants

VERSUS

Guro Kaur Thind @ Gurcharan Kaur

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Kanwal Goyal, Advocate for the appellants.

Mrs. Rupinder Kaur Thind, Advocate for caveator/respondent.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against the judgments and decrees dated 14.01.2015 passed by the Additional Civil Judge (Senior Division), Shaheed Bhagat Singh Nagar and dated 17.12.2016 by the Additional District Judge, Shaheed Bhagat Singh Nagar whereby the suit for declaration, permanent injunction and joint possession filed by the respondent/plaintiff was decreed by the trial Court and the appeal preferred by the unsuccessful defendants (appellants herein) did not find favour with the Appellate Court.

The present *lis* pertains to inheritance to the estate of Sh. Gurbachan Singh and Karam Kaur, parents of appellant Onkar Singh and respondent Guro Kaur Thind @ Gurcharan Kaur and appellant No.2 is the son of Onkar Singh. Guro Kaur Thind has claimed half share in the estate left behind by Gurbachan Singh and Karam Kaur on the basis of natural succession. On the contrary, the appellants have set up registered Will

dated 11.03.1988 purported to be executed by Gurbachan Singh and Will dated 05.03.1988 registered on 11.03.1988 executed by Smt. Karam Kaur. Smt. Karam Kaur passed away on 30.07.1994 and mutation in respect of land owned by her was sanctioned in the year 1995 on the basis of Will propounded by the appellants. Gurbachan Singh died on 22.12.2003 and mutation qua inheritance to Gurbachan Singh was sanctioned on the basis of Will dated 11.03.1988. The instant suit was filed by Guro Kaur Thind in August 2006, claiming the relief of declaration and consequential relief of permanent injunction and in the alternative suit for joint possession. The Courts below have consistently recorded findings rejecting the testaments set up by the appellants.

Counsel for the appellants would argue that both the Wills were attested by Chint Ram Namberdar and Parsa Singh. It has been proved on record that both the attesting witnesses have passed away, therefore, they could not be produced before the trial Court for proving the Wills in accordance with law under Section 68 of the Indian Evidence Act, 1872 (in short 'the Act'). It is further submitted that the appellants examined Harpal Singh DW-4 to prove the signatures of Parsa Singh, one of the attesting witnesses who had appended his signatures in Urdu. They also examined Sukhwinder Singh Dhillon, the then Naib Tehsildar/Joint Sub Registrar, Banga to prove the endorsement Ex.D1 and D2 qua registration of the Wills in question. It is vehemently argued that testimonies of Harpal Singh DW-4 and Sukhwinder Singh Dhillon DW-1 are sufficient to prove the Wills in compliance with provisions of Section 69 of the Act, in the given scenario that both the attesting witnesses of the Will were not alive for examination before the Court. In support of his

contention, he has relied upon judgment of Hon'ble the Supreme Court **Ved Mitra Verma Vs. Dharam Deo Verma, 2014(4) RCR (Civil) 568.**

Counsel representing the respondents has supported the judgments passed by the Courts with the submission that the appellants not only failed to prove the Wills in compliance with Section 69 of the Act but the Wills are shrouded by suspicious circumstances noticed by the Courts below and the appellants have miserably failed to dispel those suspicious circumstances, therefore, findings recorded by the Courts are liable to be affirmed. It is further submitted that both the children of Sh. Gurbachan Singh and Karam Kaur are residing abroad and there was no reason for Gurbachan Singh and Karam Kaur to exclude their only daughter from inheritance.

I have heard counsel for the parties, perused the paper-book and records.

Before advertng to the submissions made by counsel for the parties, it is appropriate to extract Section 69 of the Act, relevant in the present context:-

“Proof where no attesting witness found.—If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.”

A plain reading of the aforesaid extract makes it apparent that if no such attesting witness can be found, it must be proved that attestation of one attesting witness at least is in his handwriting and that the signatures of the person executing the document is in the handwriting of that person.

The question that calls for determination is whether the appellants have been able to prove that the Will executed by Gurbachan Singh bears his signatures and thumb impressions and Will of Karam Kaur has thumb impression of testator Karam Kaur. Counsel for the appellants has fairly conceded that they have not examined any witness conversant with the handwriting/signature of Gurbachan Singh. They have also not examined an expert witness on the basis of comparison of disputed thumb impressions with standard impressions of Gurbachan Singh and/or Karam Kaur. In this view of the matter, it can be safely held that the appellants have failed to prove that the signature/thumb impression of the person executing the document is in the handwriting of that person.

Another question involved in the present case is whether testimony of Sukhwinder Singh Dhillon can be construed as necessary compliance with Section 69 of the Act qua proving the signature/thumb impressions of Gurbachan Singh and Smt. Karam Kaur. Sukhwinder Singh Dhillon in his affidavit Ex.DW1/A has stated that the Wills were attested and registered by him after due verification and identification of the testators by Sh. Chint Ram Namberdar. In his cross examination, he has candidly admitted that Gurbachan Singh and Karam Kaur were not personally known to him. As Sh. Sukhwinder Singh Dhillon did not know Gurbachan Singh and Smt. Karam Kaur, his testimony is not at all sufficient to prove the Wills in compliance with Section 69 of the Act that the signature/thumb impression on the Wills in question have been appended by Sh. Gurbachan Singh and Smt. Karam Kaur. In this view of the matter, I have no hesitation to conclude that the appellants have failed to prove the Wills in compliance with Section 69 of the Act.

To be fair to counsel for the appellants, he has relied upon judgment of Hon'ble the Supreme Court in **Ved Mitra Verma's case** (supra). Counsel for the appellants has read the judgment in extenso but failed to convince this Court as to how anything said by Hon'ble the Supreme Court in the said authority can lend assistance to plea of the appellants with regard to proving of the Wills in consonance with the requirements of Section 69 of the Act. That being so, the appellants cannot derive any advantage to their contentions from the referred authority. As the appellants have failed to prove the Wills in accordance with law, this Court need not to dilate on the question, whether the Wills are shrouded by suspicious circumstances or otherwise and further whether they have been able to dispel those suspicious circumstances. I would hasten to add that concurrent findings of fact recorded by the Courts are not amenable to intervention in the second appeal unless they suffer from perversity or raise a question of law for determination. In the case at hand, counsel for the appellants has failed to advance any argument much less meaningful that concurrent findings suffer from perversity or give rise to a question of law that need determination in the second appeal. Analysed from any angle, the appeal sans merit and liable to be dismissed.

For the foregoing reasons, the appeal fails and is accordingly dismissed with costs.

JULY 6, 2018

'D. Gulati'

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no