

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

103

RSA No.5108 of 2003 (O&M)
Date of decision: 04.02.2019

Varinder Singh

..... Appellant

Versus

Mohinder Devi and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Arun Jain, Sr. Advocate with
Mr. Abhishek Dhull, Advocate
for the appellant.

Mr. S.S. Rangi, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the regular second appeal against the judgments passed by the Courts below dismissing the suit filed by him for declaration claiming that he and defendant No.7 (his brother) are owners of the property on the basis of a testament dated 12.01.1991 executed by their mother late Smt. Daulati Devi. Defendants No.1 to 6 are sisters of the plaintiff.

In the considered opinion of this Court, the following substantial questions of law arises for consideration:-

1. Whether it was incumbent on the plaintiff who was claiming property on the basis of a testament to disclose in the plaint that a lease deed was also executed on the same day by his mother failing it would be treated as a suspicious circumstance effecting the validity of the testament?

2. Whether a testament executed can be ignored by the Courts on the basis of suspicious circumstances which does not have substance?

Some facts are required to be noticed. Smt. Daulati Devi, widow of Ajmer Singh was having two sons and six daughters. Smt. Sharda, one of the daughter had pre-deceased Smt. Daulati Devi. All the five daughters had been married and settled in their respective families (families in which they were married). Smt. Daulati Devi is alleged to have executed a testament dated 12.01.1991 bequeathing her entire property equally in favour of her two sons namely Varinder Singh and Mohinder Singh. In the testament, she has referred to all the five daughters and specifically mentioned that all the five daughters are married.

The testament has been proved through examination of Narinder Singh, attesting witness as PW-3 and Balwant Singh, scribe as PW-2. Both have supported the case of the plaintiff.

Learned First Appellate Court while recording that the Will is surrounded by suspicious circumstances has noticed the following circumstances:-

1. On the same day, Smt. Daulati Devi, the testator who had also executed a lease deed in favour of her son Varinder Singh-plaintiff but the same has not been disclosed in the plaint.
2. The lease deed has not been produced on the file of this suit.
3. Once it is the case of Varinder Singh that lease deed was executed in the Tehsil Complex, why the Will was not got executed there and then.
4. The evidence on record suggest that the plaintiff, one of the beneficiary was present at the time of execution of the testament.

There are signatures of the plaintiff against entry No.25 in the register of the scribe and therefore, presence of the plaintiff, one of the beneficiary is proved.

5. When the proceedings for mutation on the basis of Will started, the attesting witness did not support the testament.
6. There are serious contradictions in the statement of the scribe and the attesting witness. The scribe has stated that he had scribed the Will while sitting in Court yard whereas the testator was sitting in the adjoining room and thumb impressions of the testator were obtained in the room where she was sitting whereas Narinder Singh, the attesting witness has stated that the signatures of the attesting witnesses were obtained in baithak (drawing room) where the testator was lying on the cot. PW-2, scribe has stated that the Will was not read over to the testator. The Court has also observed that once the testament had been scribed while sitting in Court yard, question of dictation by the testator does not arise.
7. The signatures of the testator, Smt. Daulati Devi is against entry No.25 which is of lease. No evidence has come on record that the plaintiff ever got his mother treated in old age.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

It will be noted here that the original Will is Ex.P-1. It is written with hand by the scribe in Gurmukhi i.e. Punjabi language signed by Smt. Daulati Devi. The Will is attested by two attesting witnesses. One Narinder Singh and other Bachan Singh, Nambardar. It was scribed by Balwant Singh.

He is a professional scribe. He has produced entry in his register (Notebook). The entry of lease is at serial No.25 and it is signed by Smt. Daulati Devi as well as marginal witnesses. On the same page, entry No.26 is with respect to Will which is spread over to next page of the register. Against entry No.26, Smt. Daulati Devi has once again signed and both the attesting witnesses have also signed/thumb marked the entry in the register. The Will has been executed bequeathing the property in favour of two sons while specifically recording that all the five daughters have already been married. Smt. Daulati Devi after execution of the Will has remained alive for more than 4 years as she died on 25.04.1995. It is admitted fact that relationship of Smt. Daulati Devi with her sons and daughters were cordial as admitted by DW-1 Ranjot Singh. The plaintiff has also produced on file Ration Card which prove that she used to reside with the plaintiff i.e. Varinder Singh. The officials of the Food and Supply Department has also been examined to prove that fact.

On careful perusal of the register maintained by the scribe which in original is part of the trial Court file clearly prove that First Appellate Court erred in recording a finding that Smt. Daulati Devi had only signed against the entry of lease deed in the register. As noticed, Smt. Daulati Devi has signed not only against the entry of lease but also against entry of the Will, therefore, the finding of the First Appellate Court in this respect is factually incorrect.

Learned First Appellate Court has held that since the lease deed has not been pleaded and the lease deed has not been produced, although, executed on the same day, therefore, it is a suspicious circumstance. Present suit was filed by the plaintiff claiming declaration with regard to title. The lease deed was executed by his mother for a period of one year, which had long come to an end, much before the filing of the suit. Therefore, the lease deed had nothing to do with the claim made in the suit. Hence, the lease deed

was not required to be pleaded and produced on file. Rather it shows that the mother had cordial relations with the son and therefore, she had executed a lease deed with respect to her property for a period of one year in favour of the plaintiff.

Next reason assigned by the Court is that why Smt. Daulati Devi travelled to Teshil Complex and executed only a lease deed as stated by the plaintiff but did not get the Will executed and registered. In this respect, it will be noticed that the plaintiff certainly has fumbled in cross-examination on this aspect. However, the Court has to see whether such evidence is aberration creating a suspicion on the correctness of the Will executed. The scribe has appeared in evidence and produced his regularly maintained register in evidence. It is the same scribe who had also executed the lease deed. The scribe has stated that the lease deed as well as the testament was executed by him on the instructions of Smt. Daulati Devi in the Court yard of the house where Smt. Daulati Devi used to reside. When the scribe appeared in evidence, he was not asked any question in this respect and his statement on this aspect has not been challenged in the cross-examination.

Next reason assigned by the Court is with reference to the presence of the plaintiff when the testament was executed. Mere presence of one of the beneficiary would not itself make the execution of the Will doubtful unless there is evidence that the beneficiary has played an active part or has been instrumental in influencing the decision of the testator. Through the testament, Smt. Daulati Devi has bequeathed the property in favour of her two sons equally. The allegation is that Varinder Singh was present. He has got the property equivalent to the brother who was admittedly not present. Had Varinder Singh influenced the decision, he would have got bequeathed the entire property in his favour. The testator has recorded this fact in the

testament itself that all daughters are married. Hence, mere presence of Varinder Singh would not make the Will doubtful.

Now let us deal with the contradictions. As per Balwant Singh-scribe has stated that he scribed the Will while sitting in a Court yard although, the testator was sitting in the adjoining room. The Courts below have drawn a conclusion that the Will has not been scribed on the dictation of the testator. The conclusion is farfetched. Smt. Daulati Devi, the testator would have told in her own words what she wants to do. The dictation would not mean that she had dictated the testament literally. It is clearly stated by Balwant Singh-scribe of the Will that the signatures of the testator late Smt. Daulati Devi were obtained in the room where she was sitting. Narinder Singh, the attesting witness has also stated that the signatures were obtained from the drawing room where the testator was lying on the cot.

Learned Court has further held that since Balwant Singh has not stated that the Will was read over to the testator, hence, the execution of the Will is not proved. Section 63(c) does not provide that complete Will/testament should be read over to the testator. The testament has been written in a local language and there is no evidence that Smt. Daulati Devi, the testator did not understand the aforesaid language. Smt. Daulati Devi has signed the testament in Hindi.

Next reason assigned by the Court is that there is no evidence that Varinder Singh-plaintiff, one of the beneficiary had ever got her mother treated from Doctor. In this respect, it will be noticed that the plaintiff in his statement has stated that he along with his wife were present at the time of death of Smt. Daulati Devi and they both have taken Smt. Daulati Devi to a Homeopathic Doctor, however, the plaintiff had failed to disclose the location of the clinic and the name of the Doctor while appearing in evidence.

Learned First Appellate Court has clearly erred. Smt. Daulati Devi died when she was in the house of her daughter-Veena at Nangal Township whereas the plaintiff is resident of Village Rattangarh. He has merely stated that he was there when she breathe her last and he took the mother to a Homeopathic Doctor. He was not resident of Nangal City, his evidence have been doubted on his failure to disclose the location and name of the Doctor.

Still further, the attesting witness-Narinder Singh when appeared in Court as witness to prove the testament has explained that when proceedings for sanction of the mutation were started, he was pressurized and therefore, he did not support the Will. Hence, the statement before the revenue authorities stands explained.

A testament is a document which operates after the death of the testator. No doubt, the propounder is required to not only prove the execution of the Will but also explain all the suspicious circumstances. However, the alleged suspicious circumstances has to have some basis. The suspicious circumstances cannot be based upon the conjectures and surmises. It is well known rule that the Court has to sit on the arm chair of the testator and thereafter, visualize whether the Will is genuine or not and whether the suspicious circumstances propounded by the other party stand explained or not. As noted above, in the present case, the testament is in favour of two sons. It is proved on file that the testator was living with the plaintiff, one of the beneficiary. Still further, she remained alive for a period of 4 years after the execution of the Will. Further, on the same day, she also executed a lease deed in favour of her son that clearly proves that she was having cordial relations with her son. The execution of lease deed was never challenged or disputed.

It will be noted that the scribe was never cross-examined on the

aspect of execution of the lease deed on the same day one after the other at the same place. He has specifically stated that the Will as well as lease deed were executed in village at 10.00 AM and he had explained the Will to the executant but did not read over the complete Will. The attesting witness has also stated that the Will was read over and explained to the testator. Even attesting witness of the Will was also not cross-examined on aspect of execution of the lease deed at the same time.

Learned Courts below have laid much emphasis on the statement of the plaintiff wherein he has stated that he was not present at the time of execution of the Will. He has also stated in evidence that the lease deed was executed in Tehsil Complex. The effort of the plaintiff appears to be to deny his presence at the time of execution of the Will. Once, the attesting witness and scribe both have stated that the testament as well as the lease deed were scribed at the residence of the testator and in cross-examination, both have not been questioned about the execution of the lease deed, therefore, the Courts committed an error in disbelieving the due execution of the Will on the discrepancy in the statement of the plaintiff who is neither the attesting witness nor scribe of the Will.

Hence, questions of law framed, are answered in favour of the plaintiff-appellant.

In view of the discussion made above, the judgments passed by both the Courts below are set aside.

The pending application, if any, shall stand disposed of.

Regular Second Appeal is allowed.

(ANIL KSHETARPAL)
JUDGE

04.02.2019

Dinesh Bansal

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No