

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

**RSA No.2666 of 1989 (O&M)
Date of decision:18.3.2019**

Gian Singh
Vs. ... Appellant(s)

Avtar Singh and others ... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Amit Jain, Advocate
for the appellant.

Mr. N.S.Rapri, Advocate
for the respondents.

AMIT RAWAL J.

The present regular second appeal is directed against the judgment and decree of the Lower Appellate Court whereby suit of the respondent-plaintiffs seeking declaration by laying challenge to the Will dated 14.10.1984 registered on 12.4.1985 executed by Jagta @ Jagat Singh to be invalid, void, ineffective and inoperative against the the proprietary and possessory rights and claimed devolution on the basis of natural inheritance alongwith permanent injunction restraining the defendants no.1 to 3 from creating third party rights or alienation, dismissed by the trial Court has been decreed.

It was alleged that Jagta alias Jagat Singh, father of the plaintiffs and defendants no.1 to 6 and husband of defendant no.7, was owner of the properties left by him as well as the amount lying in the bank and after his death on 8.11.1984, on the basis of natural inheritance,

mutation was sanctioned on 6.12.1984. Defendants no.1 to 3 manufactured the Will dated 14.10.1984 alleged to have been executed by Jagat Singh in their favour which was invalid and illegal as he was in unsound mind at the relevant point of time.

Defendants no.1, 2, 5 and 6 opposed the suit by filing joint written statement and propounded the Will to be valid and genuine. After receipt of the replication, the trial Court framed the following issues:-

- “1. Whether the suit is not maintainable in the present form?OPD
2. Whether Jagta @ Jagat Singh executed a valid Will dated 14.10.1984 in favour of defendants no.1 to 3?OPD
3. Whether the plaintiffs are entitled to declaration and injunction prayed for?OP
4. Relief.”

Since the onus of the Will was upon the plaintiffs, defendants examined DW1-Bahadur Singh-Scribe, DW2-Joinger Singh, marginal witness. On the other hand, plaintiffs examined Balbir Singh as PW1, Joginder Kaur as PW2, Avtar Singh as PW3, Sardara Singh Parmar, document expert as PW4, Sagli Ram as PW5 and tendered into evidence mutation, jamabandi etc.

The trial Court while noticing the fact that Will in question was earlier examined by one K.S.Puri and eminent document expert of Patiala, since he was not toeing to the line of the plaintiff, examined other expert who was disbelieved and dismissed the suit.

Mr. Amit Jain, learned counsel appearing on behalf of the appellants submitted that Will aforementioned has been proved through the testimony of scribe, DW1-Bahadur Singh and attesting witness-Joginder Singh. Both the aforementioned witnesses in examination-in-chief were consistent that Will was signed by the testator and Joginder Singh and Bagh Singh also put their signatures, thus, there was compliance of provisions of Section 68 of Indian Evidence Act, 1872 (for short “1872 Act”) and Section 63(c) of Indian Succession Act, 1925 (for short “1925 Act”) but the Lower Appellate Court without any evidence on record erroneously found the Will to be surrounded by suspicious circumstances owing to the fact of active participation of the beneficiary, its registration on 12.04.1985 and non-examination of other attesting witnesses but fact of the matter is that it has come on record that plaintiffs were deviated from the line of succession as had been living separately and had been taken care of. There is no embargo of registration of the Will after about six months of its execution.

Per contra, Mr. N.S.Rapri, learned counsel appearing on behalf of the respondents supported the judgment and decree of the Lower Appellate Court and urged that statement of other attesting witness was not in conformity with the provisions of Section 63 © of 1925 Act. He did not state as to whether the other witness namely Bhag Singh signed/thumb marked in the presence of the testator which is mandatory requirement of law. It is settled that once the mutation was already sanctioned on the basis of natural succession and if at all, there was Will, nothing prevented the defendants to produce the same before the revenue authorities. It was an

after thought. There was admission of defendants regarding spacing in the lines of Will and thus, urged this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of the Courts below and of the view that following Substantial Question of Law arises for adjudication of the present appeal:-

“Whether the appellant-defendants have been able to prove the execution of the impugned Will dated 14.10.1984 registered on 12.04.1985, in accordance with law i.e. compliance of Section 63(c) of 1925 Act.”

It would be apt to reproduce the provisions of Section 63(c) of 1925 Act:-

Section 63-C of Indian Succession Act -Execution of unprivileged Wills- xxx

(a)

(b)

(c) **The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the**

presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

On plain and simple reading of the aforementioned provisions, there are two requirements of law; the Will has to be attested by two or more witnesses, each of whom has seen the testator fixing the sign or thumb mark on the Will and on the direction of the testator but on the perusal of the testimony of Joginder Singh, one of the attesting witnesses, remained silent as to whether Bhag Singh had also appended the impression in the presence of the testator. The examination-in-chief of Joginder Singh reads thus:-

DW2-On S.A.

Joginder Singh son of Rala Ram aged 40 years resident of Akal Garh village

“The Will Ex.D1 bears my signatures. I identify my signatures on it. The Will was scribed by Bahadur Singh on the instructions of Jagat Singh. Jagat Singh put his thumb impressions in my presence. The Will Ex.D1 was read over and explained by the Scribe Bahadur Singh to Jagat Singh and the executant Jagat Singh had admitted it to be correct and after fully understanding its contents, put his thumb impression. Bhag Singh also put his thumb impressions as a attesting witness in my presence. I also appeared before the Sub

Registrar, Phagwara as a witness at the time of registration of the Will Ex.D1 and deposed about the execution of the Will.

Similarly, examination-in-chief of scribe Bahadur Singh is also to the same effect which reads thus:-

DW1-On S.A.

Bahadaur Singh son of Amar Singh aged 28 years resident of Phagwara

“The Will Ex.D1 is scribed by me. It is signed by me as scribe (obj.to). It was scribed on the saying of Jagat Singh. It was read over and explained to Jagat Singh executant, who after admitting the contents of the same to be correct put his thumb impression. Joginder Singh and Bagh Singh were the attesting witnesses. Joginder Singh put his signatures and Bhag Singh Panch of Akal Garh put his thumb impressions in my presence. I also appeared before the Sub Registrar as a witness and deposed about the execution of Will dated 14.10.84.”

The law with regard to Will is no longer res integra in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **Janki Narayan Bhoir Vs. Narayan Namdeo Kadam 2003(2) SCC 91; 2003(1) RCR (Civil) 409**. For the sake of brevity, paragraphs 8 and 10 of the same read thus:-

8. To say will has been duly executed the requirements mentioned in clauses (a), (b) and (c) of [Section 63](#) of the

Succession Act are to be complied with i.e., (a) the testator has to sign or affix his mark to the will, or it has got to be signed by some other person in his presence and by his direction; (b) that the signature or mark of the testator, or the signature of the person signing at his direction, has to appear at a place from which it could appear that by that mark or signature the document is intended to have effect as a will; (c) the most important point with which we are presently concerned in this appeal, is that the will has to be attested by two or more witnesses and each of these witnesses must have seen the testator sign or affix his mark to the Will, or must have seen some other person sign the Will in the presence and by the direction of the testator, or must have received from the testator a personal acknowledgement of signature or mark, or of the signature of such other person, and each of the witnesses has to sign the Will in the presence of the testator.

[10.Section 68](#) of the Evidence Act speaks of as to how a document required by law to be attested can be proved. According to the said Section, a document required by law to be attested shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving an evidence. It flows from this Section that if there be an attesting witness

alive capable of giving evidence and subject to the process of the Court, has to be necessarily examined before the document required by law to be attested can be used in an evidence. On a combined reading of [Section 63](#) of the Succession Act with [Section 68](#) of the Evidence Act, it appears that a person propounding the will has got to prove that the will was duly and validly executed. That cannot be done by simply proving that the signature on the will was that of the testator but must also prove that attestations were also made properly as required by clause (c) of [Section 63](#) of the Succession Act. It is true that [Section 68](#) of Evidence Act does not say that both or all the attesting witnesses must be examined. But at least one attesting witness has to be called for proving due execution of the Will as envisaged in [Section 63](#). Although [Section 63](#) of the Succession Act requires that a will has to be attested at least by two witnesses, [Section 68](#) of the Evidence Act provides that a document, which is required by law to be attested, shall not be used as evidence until one attesting witness at least has been examined for the purpose of proving its due execution if such witness is alive and capable of giving evidence and subject to the process of the Court. In a way, [Section 68](#) gives a concession to those who want to prove and establish a will in a Court of law by examining at least one attesting witness even though will has to be attested at least by two witnesses

mandatorily under [Section 63](#) of the Succession Act. But what is significant and to be noted is that that one attesting witness examined should be in a position to prove the execution of a will. To put in other words, if one attesting witness can prove execution of the will in terms of clause (c) of [Section 63](#), viz., attestation by two attesting witnesses in the manner contemplated therein, the examination of other attesting witness can be dispensed with. The one attesting witness examined, in his evidence has to satisfy the attestation of a will by him and the other attesting witness in order to prove there was due execution of the will. If the attesting witness examined besides his attestation does not, in his evidence, satisfy the requirements of attestation of the will by other witness also it falls short of attestation of will at least by two witnesses for the simple reason that the execution of the will does not merely mean the signing of it by the testator but it means fulfilling and proof of all the formalities required under [Section 63](#) of the Succession Act. Where one attesting witness examined to prove the will under [Section 68](#) of the Evidence Act fails to prove the due execution of the will then the other available attesting witness has to be called to supplement his evidence to make it complete in all respects. Where one attesting witness is examined and he fails to prove the attestation of the will by the

other witness there will be deficiency in meeting the mandatory requirements of [Section 68](#) of the Evidence Act.”

Since both the witnesses feigned ignorance qua Will, the same has rightly been discarded by the Lower Appellate Court on this point and also on being surrounded by suspicious circumstances which I do not deem it appropriate to deal in view of reasoning aforesaid. The substantial question of law aforementioned is answered in favour of the respondents and against the appellants. The judgment and decree of the Lower Appellate Court is upheld.

The regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 18, 2019

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No