

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

RSA No. 3145 of 1997(O&M)

Date of decision : February , 2019

Gulzari Ram (deceased) through legal representativesAppellant

Versus

Lekh Raj and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

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

Mr. B.S. Jaswal, Advocate
for the respondents.

LISA GILL, J.

Appellant – defendant No. 1/Gulzari Ram is aggrieved of judgment and decree dated 14.06.1997 passed by the learned District Judge, Hoshiarpur whereby judgment and decree dated 15.02.1994 passed by the learned Sub Judge IInd Class, Hoshiarpur has been set aside. Consequently suit for declaration filed by the plaintiffs (respondents No. 1 to 3) has been decreed.

Brief facts necessary for adjudication of the case are that plaintiffs – respondent Lekh Raj son of Kaudu Ram, Kehar Singh, Rattan Chand sons of Maru Ram filed a suit for declaration that the plaintiffs alongwith defendant No. 2 Hans Raj son of Maru Ram were joint owners in possession of the land as detailed in the plaint and as per jamabandi for the year 1987-88. It was pleaded that Nihal Singh had four sons namely Kirpa Ram, Maru Ram, Mal Ram and Kaudu Ram. Kirpa Ram had one son Gulzari Ram (appellant – defendant No. 1). Maru Ram had three sons Kehar Singh, Rattan Chand (plaintiffs No. 2 and 3) and Hans Raj (defendant No.

2). Mal Ram had one son Daulat Ram who died issueless on 27.10.1990. Kaudu Ram had one son Lekh Raj (plaintiff No. 1). It was further stated that Daulat Ram was owner of substantial share in the suit land. He did not leave behind any class I heir on his death on 27.10.1990. The plaintiffs and the defendants, it was pleaded, being first cousins were entitled to succeed to the share of property of Daulat Ram in equal share i.e. $1/5^{\text{th}}$ share each. Defendant No. 1 – Gulzari Lal, it was stated, set up an invalid will in his favour on the basis of which land was wrongly mutated in his name. Plaintiffs stated that they did not admit the execution and validity of the Will, if any, in favour of the defendant No. 1 – appellant. Mutation on the basis of the said Will was also pleaded to be illegal and not binding on the rights of the plaintiffs, who were claimed to be joint owners in possession of the suit land. When defendants refused to admit their claim, suit was filed.

Upon notice, the suit was contested only by defendant No. 1 – appellant/Gulzari Lal. All the other defendants were proceeded against exparte. Various preliminary objections were raised in the written statement filed by defendant No.1. Averments on merits were controverted. Pedigree table furnished by the plaintiffs was controverted on the ground that Maru Ram had a daughter – Vidya Devi, who was succeeded by her two sons and two daughters. Kirpa Ram had a daughter as well. While admitting that Daulat Ram died issueless not leaving behind any class I heir on 27.10.1990, it was pleaded that Daulat Ram used to reside with Gulzari Lal (defendant No. 1) and was served by him. Daulat Ram was enlisted as a voter and ration card holder in the family of defendant No. 1. In lieu of the services rendered and out of love and affection, Daulat Ram executed a registered will dated 31.05.1974 in favour of Gulzari Ram, bequeathing his

entire property in his favour. Last rites of Daulat Ram were also performed by defendant No. 1. Affidavit dated 18.10.1990 was also executed by Gulzari Ram. Suit land was mutated in favour of Gulzari Ram (defendant No. 1 – appellant). Dismissal of the suit was prayed for.

Replication was filed. Following issues were framed by the learned trial Court on the basis of the pleading:-

- i) Whether the plaintiffs alongwith defendant No. 2 are owners in possession to the extent of 1/5 share of the property in dispute being successor of Daulat Ram?OPP.
- ii) Whether Daulat Ram deceased executed will on 31.05.1974 in favour of defendant No. 1? If so what effect?OPD
- iii) Whether suit is not maintainable in the present form? OPD.
- iv) Whether the property in dispute has not been correctly described in the plaint? OPD.
- v) Whether the plaintiffs are estopped from filing the present suit by their own act and conduct?OPD
- vi) Whether the suit is bad for non-joinder of necessary parties?OPD
- vii) Whether the plaintiffs have made unauthorised amendments in the amended plaint? If so what effect? OPD
- viii) Whether the plaintiffs are entitled to relief of declaration as prayed for in the plaint?OPP
- ix) Relief.

Evidence was led by both the parties.

Learned trial Court on considering the evidence on record, facts and circumstances concluded that registered will dated 31.05.1974 was duly proved on record to have been executed by Daulat Ram in his sound disposing mind out of his own free will and volition. The plaintiffs, it was held, failed to prove that the said document was a forged and fabricated one. Therefore, suit filed by the plaintiffs was dismissed.

Appeal preferred by the plaintiffs was allowed by the learned District Judge, Hoshiapur vide judgment and decree dated 14.06.1997 while observing that the Will in question is shrouded in suspicion circumstances, therefore, said Will dated 31.05.1974 was not proved to be a valid Will executed by Daulat Ram in favour of defendant – appellant. Appeal was, accordingly, allowed and suit filed by the plaintiffs decreed. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that once registered will dated 31.05.1974 is proved in terms of Sections 63 and 68 of the Indian Evidence Act, it cannot be rejected on mere conjectures, presumptions and so-called suspicious circumstances. It is further contended that reliance by the learned District Judge, Hoshiarpur on the documents Ex. P3 (gift deed in favour of Shanti) and Ex.P4 (relinquishment by Shanti Devi) is clearly illegal and unjustified as the said documents were not proved in accordance with law and are also beyond the pleadings of the plaintiffs. Moreover, the plaintiffs did not question the Will on the basis of being surrounded by suspicious circumstances in the plaint. None of the plaintiffs even stepped in the witness box to prove their case. The so-called discrepancies in the statements of the witnesses are clearly irrelevant and not sufficient to discredit the said Will. The witnesses, in this case, had deposed nearly 16 years after the execution of the Will, therefore, minor discrepancies are bound to creep in. Furthermore, execution of affidavit dated 18.10.1990 (Ex.DW5/A) cannot be a suspicious circumstance. It is merely a reflection of the anxiety of the testator Daulat Ram to ensure that there should be no question mark on the Will, which was executed way back in 1974. It is, thus, prayed that this appeal be allowed, impugned

judgment and decree dated 14.06.1997 passed by the learned District Judge, Hoshiarpur be set aside and judgment and decree dated 15.02.1994 passed by the learned Sub Judge IInd Class, Hoshiarpur be upheld. Consequently, the suit filed by the plaintiffs be dismissed throughout.

Per contra learned counsel for the respondents submits that the property in question could not have been bequeathed by Daulat Ram to the appellant – Gulzari Lal for the simple reason that it is proved on record that property in question stood gifted by Daulat Ram in 1962 itself to Shanti Devi i.e. sister of the defendant-appellant. Though Ex.P4 reveals relinquishment of her rights by Shanti Devi, the same is not a valid document as it should have been registered. Furthermore, Will dated 31.05.1974 is not proved in accordance with law and it is rightly held by the learned District Judge, Hoshiarpur that this Will is surrounded by suspicious circumstances. Learned District Judge, Hoshiarpur, it is submitted, has rightly held that there are material discrepancies in the statements of the attesting witnesses - DW1 Nathu Ram and DW2 Gurbux Ram. DW1 Nathu Ram stated that they had gone for registration of the Will after four days of scribing of the Will on 31.05.1974 whereas DW2 Gurbux Ram stated that they had gone for registration of Will on the next day. It is, thus, rightly concluded that registration of the Will was done in a perfunctory manner and nobody appeared before the the Sub Registrar, therefore, registration of the Will is not sufficient to prove its due execution. Furthermore, execution of affidavit dated 18.10.1990 casts a doubt over the execution of the Will. There was no necessity of executing such an affidavit in case the Will was in fact executed by the testator Daulat Ram. Moreover, a perusal of the said affidavit, it is contended, reveals that the writing has been adjusted on

signed papers. It is, thus, prayed that judgment and decree dated 14.06.1997 passed by the learned District Judge, Hoshiarpur be upheld.

I have heard learned counsel for the parties and have gone through the file with their able assistance.

The questions of law formulated for consideration in this appeal are:

- (i)Whether once a Will is duly proved in terms of Sections 63 and 68 of the Indian Evidence Act it can be rejected on mere conjectures, presumptions or suspicious circumstances?
- (ii)Whether there is misreading of evidence especially in regard to so-called discrepancies in the depositions of DW1 and DW2 who had deposed after 16 years of the execution of the will?
- (iii)Whether learned District Judge has erred in relying upon documents Exs. P3 and P4 which are admittedly beyond pleadings and not proved in accordance with law?
- (iv)Whether in the absence of pleadings regarding suspicious circumstances surrounding the will and none of the plaintiffs stepping in the witness box, Will dated 31.05.1974 could be discarded?

Pedigree table set forth by the plaintiffs in the plaint is reproduced as hereunder:-

Nihal Singh			
!			

/	/	/	/
Kirpa Ram	Maru Ram	Mal Ram	Kaudu Ram
/	!	/	/
Gulzari Ram	!	Daulat Ram (died	Lekh Raj
(Defendant No.1)	!	issueless on 27.10.90)	(Plaintiff No.1)
	!		

/	/	/	
Kehar Singh	Rattan Chand	Hans Raj	
(Plaintiff No.2)	(Plaintiff No.3)	(Defendant No.2)	

It is, however, not in dispute that Gulzari Lal had one sister

Shanti Devi. Maru Ram apart from his three sons had a daughter Vidya Devi (since deceased) survived by her four children – two daughters and two sons. Plaintiffs claimed to be the owners of the estate left behind by Daulat Ram, who admittedly died issueless on 27.10.1990, leaving behind no class I heir. A perusal of the plaint reveals that the plaintiffs have taken a categorical stand that claim of defendant No. 1- appellant Gulzari Lal on the basis of the Will is not binding on their rights. Plaintiffs claimed to be joint owners in possession of the suit land and stated that they did not admit the execution and validity of the Will, if any, in favour of defendant No. 1. There is indeed no mention about the daughters of Kirpa Ram and Maru Ram in the plaint. None of the plaintiffs stepped in the witness box to substantiate their case. The plaintiffs' lawyer tendered into evidence Ex.P1 (Pedigree table) and Ex.P2 (jamabandi for the year 1987-88) on 28.07.1993 and closed the plaintiffs' evidence.

Defendant – appellant in order to prove Will dated 31.05.1974 (Ex.D1) examined two attesting witnesses i.e. DW1 Nathu Ram, Lambardar and DW2 Gurbux Ram as well as DW3 Sham Kumar son of Khushbharat Rai. DW3 is the son of the deed writer who had since passed away. DW1 and DW2 specifically stated that Will dated 31.05.1974 was executed by Daulat Ram in favour of Gulzari Ram. The Will was got scribed from a deed writer by Daulat Ram at Bhunga. Both the said witnesses stated that the Will was read over to Daulat Ram by the scribe after scribing the same , Daulat Ram appended his signatures upon the Will in their presence and they also appended their signatures in the presence of each other and Daulat Ram. DW1 Nath Ram, Lambardar in his cross examination stated that Daulat Ram had come to him at about 7 o'clock in the morning. Both of

them went to the bus stop at village Manhota. The other witness also reached the bus stop and they boarded the bus at 8.00 a.m. They reached Bhunga at 8.30 a.m. The scribe was already there and he completed the writing work within an hour. Thereafter, they reached the office of Sub Registrar but the Will could not be registered on account of rush of work and due to the reason that the Sub Registrar spent his entire day towards registration of sale deeds only. It is on 04.06.1974 that he (DW3) alongwith Daulat Ram and DW2 went to the office of Sub Registrar again. The stamps etc. on the Will had been obtained on 31.05.1974 itself and it was signatures of the Sub Registrar which had to be affixed on the Will. Endorsement (Ex.D1/A) was also made on 31.05.1974. Signatures on the Will were obtained on the day of registration of the Will. DW1 specifically stated that the Will was produced before the Sub Registrar. Daulat Ram was identified by DW1 and Sub Registrar appended his signatures on the Will. DW1 further stated that the house in which Gulzari Lal and Daulat Ram were living was a joint construction and Daulat Ram was living with Gulzari Lal. It was denied that Daulat Ram was a simpleton kind of person. DW2 Gurbux Ram also deposed regarding execution of the Will. The so-called discrepancy regarding the time of registration of the Will was clearly irrelevant. Minor discrepancy regarding whether DW2 or DW1 went to the house of Daulat Ram and who came to the bus stop is irrelevant as DW2 also stated that he alongwith Daulat Ram and DW1 - Nathu Ram boarded the bus from village Manhota for Bhunga at about 8.00 a.m. DW2 further stated that the Will was scribed by the scribe at Bhunga. It took about 1½ hours to reach Bhunga. The Will could not be registered at the office of Sub Registrar where they reached at about 4/5 p.m. due to a huge rush. They,

thus, returned to their village. It is wrongly observed by the learned District Judge, Hoshiarpur that DW2 stated that he had gone for registration of the Will on the next day. DW2 Gurbux Ram in this respect stated that the will could not be registered on the day it was scribed. Due to heavy rush on the 'second occasion' i.e. the date of registration of the Will they again boarded the bus at about 8.00 a.m. from Manhota and came to the scribe. In his examination-in-chief, DW2 categorically stated that the Will could not be registered on the day it was scribed and they came for registration of Will about 3-4 days thereafter. There is, thus, clear misreading of evidence by the learned Additional District Judge, Hoshiarpur. DW2 further stated that Daulat Ram died at the house of Gulzari Lal and his last rites were performed by Gulzari Lal.

DW3 son of the scribe has proved the entries in the register of the scribe regarding execution of the Will by Daulat Ram in favour of Gulzari Lal. Merely because the document in question is recorded to be the sixth document of the day, it cannot be presumed that the said document is a forged and fabricated document. Moreover, observation of the learned District Judge that statement of DW2 Gurbux Ram shows that registration was done in a perfunctory manner and none in fact appeared before the Sub Registrar, is indeed an irresponsible observation un-substantiated by the evidence on record. There is no such evidence on record which justifies such a finding which is clearly perverse.

Furthermore, there is merit in the argument raised by learned counsel for the appellant that reliance by the learned District Judge upon the documents Exs. P3 and P4 is unjustified. Statement dated 28.07.1993 of the plaintiff's advocate Sh. Devinder Mohan Sharma has been perused. Learned

Advocate tendered Ex.P1 and Ex.P2, jamabandi for the year 1987-88 and closed the plaintiffs evidence. There is no mention of the document Ex.P3, the alleged gift deed by Daulat Ram in favour of Shanti Devi sister of Gulzari Lal and Ex.P4 i.e. the relinquishment of the rights by Shanti Devi pursuant to which the land in question continued to be reflected under the ownership of Daulat Ram. Much stress has been laid by learned counsel for the respondents on the so-called admission of the said documents (Exs.P3 and P4) by the defendant – appellant. It is, thus, submitted that the said documents were not required to be proved.

Admittedly, there are no pleadings in the plaint in this regard. There is not even a whisper to this effect therein. It is further a matter of record that none of the plaintiffs stepped in the witness box to prove their case. Be that as it may, perusal of document Ex.P3 reveals that it is a gift deed dated 16.10.1962 in favour of Shanti Devi daughter of Kirpa Ram (sister of Gulzari Lal – defendant). Ex.P4 is a document dated 14.05.1963 wherein Shanti Devi has relinquished all her rights in the property so gifted to her by Daulat Ram on 16.10.1962. It is mentioned that she has no objection in case the mutation is entered in favour of Daulat Ram. A perusal of jamabandi for year 1987-88 (Ex.P2), relied upon by the plaintiffs themselves reveals that Daulat Ram is recorded to be the owner of the property in question. The plaintiffs on one hand rely on Ex.P2 to assert their rights and on the other hand, argument being raised is that Daulat Ram had no existing right in the property, thus, rendering him incapable of bequeathing the property in favour of Gulzari Lal. It is pertinent to note that apart from the fact that the documents in question were not proved on record and none of the plaintiffs stepped into the witness box to prove their

case, Shanti Devi at no stage ever raised any objection to the execution of Will dated 31.05.1974 and neither has she never staked her claim to the property in question on the basis of gift deed dated 16.10.1962. Furthermore, even if it is assumed that Daulat Ram stood divested of any rights in the property, having gifted it to Shanti Devi who became its absolute owner, it is not understandable how the suit could have been decreed in favour of the plaintiffs. Therefore, learned District Judge has wrongly held that at the time of execution of Will dated 31.05.1974 Daulat Ram had no right in the property in question. It is further wrongly held that Shanti Devi has not validly relinquished her rights in the suit property by simply making the statement before the revenue authorities and that she had become an absolute owner thereof, thus, Daulat Ram stood divested the ownership of the property in the year 1962 itself.

The Hon'ble Supreme Court in **Madhukar D. Shende versus Tarabai Aba Shedage 2002(1) RCR (Civil) 724** has observed that:-

“ The law of evidence does not permit conjecture or suspicion having the place of legal proof nor permit them to demolish a fact otherwise proved by legal and convincing evidence. Well founded suspicion may be a ground for closer scrutiny of evidence but suspicion alone cannot form the foundation of a judicial verdict – positive or negative.”

Findings returned by the learned District Judge are indeed perverse and cannot be sustained. There is clear and cogent evidence on record in favour of appellant – defendant No. 1.

No other argument has been raised.

The substantial questions of law, as formulated are, thus, answered in favour of the appellant.

Accordingly, this appeal is allowed.

Judgment and decree dated 14.06.1997 passed by the learned District Judge, Hoshiarpur is set aside and judgment and decree dated 15.02.1994 passed by the learned Sub Judge IInd Class, Hoshiarpur is upheld. Suit filed by the plaintiffs is, accordingly, dismissed.

February 21, 2019
rts

(Lisa Gill)
Judge

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