

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

RSA No.3894 of 2000 (O&M)

Date of decision : 17.01.2019

Sewa Kaur

...Appellant

Versus

Mohan Singh (deceased) through his LRs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Munish Gupta, Advocate for the appellant.

Mr. H.S. Grewal, Advocate for legal heirs of respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the Regular Second Appeal against the judgment passed by the learned First Appellate Court dismissing her suit for declaration that she is joint owner in possession of land measuring 17 kanals and 10 marlas.

Dispute in the present case is with regard to the estate of Kartar Singh who is alleged to have executed the testament in favour of his two sons namely Mohan Singh and Kabul Singh on 10.09.1970. The plaintiff-appellant is daughter of Kartar Singh. She filed the suit after a period of approximately 25 years when succession opened. Kartar Singh is stated to have died in the year 1970 itself.

Both the Courts have recorded a finding that the Will has been proved in accordance with Section 68 of the Indian Evidence Act, 1872 as

attesting witness-Bishan Singh has been examined as DW1. However, the trial Court decreed the suit finding that the Will is surrounded by suspicious circumstances. The First Appellate Court on re-appreciation of the evidence have found otherwise. The suspicious circumstances as noticed by the trial Court are as under:-

- 1) Testament is not scribed by a regular professional scribe.
- 2) Testament is not registered.
- 3) Attesting witness-Bishan Singh has stated in his evidence that one of the beneficiary i.e. Mohan Singh called him for attesting the Will.
- 4) Sewa Kaur-plaintiff-appellant, the then unmarried daughter was not given any share in the property.

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

Learned counsel for the appellant has submitted that the signatures of Kartar Singh has not been proved by examining a Handwriting and Finger Print Expert. Bishan Singh has appeared in evidence and has stated that Kartar Singh signed in his presence when they went for execution of the Will. The signatures are not required to be proved only through Handwriting and Finger Print Expert as these experts can only give an opinion which is not binding on the Court. Once direct evidence is available in the form of statement/testimony of attesting witness, such evidence is sufficient unless they have failed to prove to the satisfaction of the Court that the Testator had not signed.

Now let us deal with the reasons given by the trial Court.

First reason that the Will is not scribed by a regular professional scribe is clearly erroneous as the present Will has been executed in the village by a rustic villager. The Executant was residing in the village and the Will is stated to have executed at the residence of Sarpanch of the village. There is no requirement that the Will must be scribed by a regular Scribe.

Equally erroneous is the second reason that the Will is not registered. Will is not mandatorily required to be registered. The Registration Act does not make the Will compulsorily registrable rather registration of the Will is optional as per Section 18 of the Registration Act, 1908.

Next reason assigned by the trial Court to ignore the Will although have some substance and needs re-examination of evidence but on careful perusal of the evidence, it is established that the beneficiary has not played any role in the execution of the Will except calling the attesting witness. The Will is in favour of two sons Mohan Singh and Kabul Singh bequeathing equally amongst two sons as third son has been given in adoption and was not the member of the family. The only family member who has been ignored is the plaintiff-appellant Sewa Kaur who at the time of execution of the Will was unmarried and father had specifically got recorded in the Will that it shall be the responsibility of both the sons to marry off his daughter. It is also not in dispute that both the sons fulfilled the wish of the father and married off their sister somewhere in the year 1976. Had Mohan Singh played any effective role in execution of the Will, he could have got entire property bequeathed in his favour. In such

circumstances, the reason given by the trial Court is erroneous.

Similarly, fourth reason assigned is also equally erroneous as in the testament, the Executant (Testator) has specifically referred to her unmarried daughter and has directed his two sons to marry off their sister. As already noticed, she has already been married off. Still further, the testament is being doubted by the plaintiff for the first time after the period of 20 years from the date of death of Kartar Singh.

Learned counsel for the appellant has submitted that the mutation of the Will was entered and sanctioned in the year 1983. Although, mutation does not give rise to cause of action, anyhow even thereafter the suit has been filed after a period of 12 years. In such circumstances, this Court does not find any good ground to interfere.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

17.01.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No