

In the High Court of Punjab and Haryana at Chandigarh

RSA- 3437 of 2010 (O&M)
Date of Decision:13..12.2019

Chand Rani and others

---Appellants

vs.

Joginder Pal and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Jai Bhagwan, Advocate
for the appellants

Mr. M.S.Bedi, Senior Advocate with
Ms. Gagandeep Kaur, Advocate
for respondents No. 1 to 6

Mr A.S.Khinda, Advocate
for respondents No. 8 to 17

Rekha Mittal, J.

The present is an unfortunate legal battle between sons of Beli Ram on one side and progeny of their sister Ms. Shanti Devi with regard to inheritance to land measuring 13 acre 14 marlas, inherited by Ms. Shanti Devi on the death of her father Sh. Beli Ram. Sh. Beli Ram was succeeded by three sons and one daughter namely Shanti Devi. The appellants-plaintiffs have ventured to exclude children of Ms. Shanti Devi from inheritance to her estate by setting up registered Will dated 6.5.1983, purported to be executed by Ms. Shanti Devi in her sound disposing mind. The courts have rejected the Will with the findings that the same is shrouded by suspicious circumstances which the appellants have failed to

successfully dispel and explain.

There is no dispute between the parties with regard to relationship between the appellants-plaintiffs and defendants. Ms. Shanti Devi passed away on 30.6.1994. There was litigation between the parties with regard to sanction of mutation qua share of Ms. Shanti Devi to the extent of 13 acre and 14 marlas.

The whole controversy in the present appeal revolves around, whether findings of the courts rejecting the aforesaid Will are the result of perversity and liable to be interfered with.

Counsel for the appellants would argue that in order to prove the Will, the appellants examined Chand Singh son of Rasila Ram PW2, Labh Singh son of Dhani Ram PW5 attesting witnesses of the Will, Amarnath, Wasika Navis (Deed Writer) PW1 and Prabh Dayal, Registry Clerk from tehsil office, Gurdaspur PW3. It is vehemently argued that in view of evidence on record coupled with that Will is registered, the courts have seriously erred in discarding the Will and plea of the appellants to inherit to Ms. Shanti Devi on the basis of testamentary succession. It is further argued that the Will was executed in the year 1983 and Ms. Shanti Devi remained alive till 1994 but she never raised any issue with regard to correctness of the Will nor executed another Will superseding the present one. The Will set up by the respondents-defendants has been discarded but findings of the courts in this regard have not been assailed. There is no material on record that Ms. Shanti Devi had any difference with the appellants till she remained alive. Darshan Lal, one of the defendants and the only witness examined by the respondents had admitted that his father

died when he was a child and appellants-plaintiffs used to look after their family after death of his father. He further admitted that appellants are cultivating the suit land. His mother used to come and reside with the appellants during her life time. According to counsel, since Ms. Shanti Devi inherited the suit property on death of her father and she was extended every kind of help by her paternal family after unfortunate death of her husband at a very young age and suit land continued to be cultivated by the appellants, there is nothing unnatural and abnormal if Ms. Shanti Devi has excluded her children from inheritance more particularly in the circumstances that reasons for exclusion of children are clearly stated in the Will (Ex.P1).

Counsel would argue that even if testimony of Chand Singh PW2 is not taken into consideration, attestation of Will by one witness and testimony of Labh Singh, the then Sarpanch of village Dhoot is sufficient to comply with the requirements of Section 63(c) of the Indian Succession Act, 1925 (in short “the Act”) and Section 68 of the Evidence Act. It is further argued that Will is executed by the testator to deviate from natural line of succession, therefore, exclusion of class-I heirs of the deceased can neither be taken as a suspicious circumstance nor can be construed as a ground to discard the Will. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court **Rabindra Nath Mukherjee and another vs. Panchanam Banerjee (dead) by LR's and others 1995(2) Civil Court Cases 396**, **Krishan Kumar Birla vs. Rajendra Singh Lodha and others 2009(1) Civil Court Cases 257** and **Benga Behera and another vs. Braja Kishore Nanda and others 2007 (3) RCR (Civil)240**. Further reference

has been made to judgments of this Court **Lila Dhar vs. Smt. Badho and another 1994(1) Civil Court Cases 214** and **Dayal Singh vs. Atma Singh and others 1996 (1) Civil Court Cases 560.**

Counsel would further argue that statements made before the revenue officer can not be read into evidence because the same are not recorded on oath nor taken in the civil court and statements made before the Court of Law are to be preferred. In this context, reference has been made to judgment of this Court **Bhajan Singh vs. Jaswant Kaur 1996 (1) Civil Court Cases 628.** In addition, it is argued that mutation neither confers title upon a person in whose favour it is so attested nor mutation proceedings are judicial proceedings. For this purpose, reference has been made to judgment of the Himachal Pradesh High Court **Mohammad Iqbal vs. Government of India and others 1997 (Suppl.) Civil Court Cases 445.**

Counsel representing the respondents-defendants have supported concurrent findings recorded by the courts. It is argued that appellants have miserably failed to prove execution of the Will by alleged testator in her sound disposing mind much less after understanding the contents thereof. It is further argued that statements of Amarnath PW1, Chand Singh PW2 and Labh Singh PW5 can not be relied upon even to establish identity of the testator. It is further argued that there is nothing on record suggestive of the fact that deceased had any hostility/animosity against her children, therefore, there was no reason for her to prefer her brothers viz-a-viz her children who lost their father when they were very young. It is further submitted that even no such material is available on record that Ms. Shanti Devi had any other property besides the property in

dispute which has been inherited by her natural heirs. Counsel would further submit that concurrent findings recorded by the courts do not warrant intervention as the appellants have failed to make out a case that the same suffer from perversity or a question of law emerges for determination. The last submission made by counsel is that judgments relied upon by counsel for the appellants are rendered in view of peculiar facts and circumstances involved therein and the same can not apply to the given facts and circumstances.

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

There cannot be dispute about the settled position in law that concurrent findings of facts recorded by the courts can not be intervened merely because a different view is possible on re-appreciation of evidence. Equally settled is that it is the obligation of propounder of the Will to prove the same, in accordance with law and dispel the suspicious circumstances shrouding the testament.

Reverting to the case at hand, no doubt, the appellants examined Amarnath Deed Writer PW1 scribe of the Will, Chand Singh and Labh Singh, attesting witnesses of the Will and Prabh Dayal, an official from tehsil office, Gurdaspur who deposed on the basis of record but without having personal knowledge of registration of the document.

The question for consideration is, whether testimonies of attesting witnesses along with statement of Amarnath PW1 are sufficient to prove the Will in consonance with the provisions of Section 68 of the Evidence Act. The answer, at the outset, appears to be in the negative.

Amarnath Deed Writer has candidly admitted in cross examination that he did not know testator of the Will personally, therefore, his testimony can not be considered for establishing identity of the testator or to say that the Will was scribed at the behest of Ms. Shanti Devi. Chand Singh, attesting witness in the opening line of his examination in chief had stated that he knew Ms. Shanti Devi and she executed Will in favour of his brothers. A relevant extract from cross examination in Punjabi, translated in English, reads thus:-

“I do not know how much land she had. I do not know who cultivates her land. I saw Shanti Devi for the first time when Ex. P1 was made. Hans Raj and his other brothers told me that this is Shanti Devi. I had gone to tehsil for my personal work. Hans Raj was my classmate. Labh Singh was also my classmate. They called me and I put my signatures at their instance.”

He has further deposed that he did not know Shanti Devi personally. He was told by Hans Raj that she was Shanti Devi.

A plain but careful reading of the aforesaid facts brought forth in cross examination of Chand Singh leaves no manner of doubt that Chand Singh did not know Ms. Shanti Devi personally and he attested the document at the behest of Hans Raj and his brothers. One thing more that can be gathered from his cross examination is that beneficiaries of the Will had taken active part in preparing the document and that also creates a doubt if the Will represents true and genuine expression of wish of the testator. In this view of the matter, it can safely be held that testimony of

Chand Singh cannot be relied upon that he attested the Will being conversant with identity of the alleged testator. The appellants cannot derive any advantage to their contention from testimony of Chand Singh to prove that Will Ex. P1 was executed by Ms. Shanti Devi. This apart, since Chand Singh did not know Ms. Shanti Devi, his testimony can not be considered as an attesting witness of the Will. Once statement of Chand Singh is taken out of consideration qua identity of the executant, natural consequence would be that the Will is attested only by one witness namely Labh Singh. That being so, another natural consequence is that the Will in question has not been prepared in compliance with the provisions of Section 63(c) of the Act.

Contention raised by counsel for the appellants that the Will can be attested by one witness only is patently misconceived and result of misreading of provisions of Section 63(c) of the Act and judgment of Hon'ble the Supreme Court **Benga Behera and another's case (supra)** particularly para 21 thereof.

This brings the court to statement of Labh Singh PW5, attesting witness of the Will. Labh Singh supported cause of the appellants in his examination in chief. However, the facts elicited in his cross examination particularly his testimony in the mutation proceedings, certified copy whereof is Ex. D1 and portions thereof with which the witness was confronted, makes it evident that Labh Singh is not a truthful witness and his testimony is not worthy of credence and reliance. Labh Singh had stated that he made a statement on oath before the Assistant Collector Ist Grade, Gurdaspur on 16.2.1996 that Will dated 6.5.1983 bears his signatures. A

relevant extract therefrom reads as follows:-

“ I had not stated before the AC Ist Gurdaspur that I do not know who had scribed the Will, (confronted with portion A to A of the statement of the witness dated 16.2.1996 Ex. D1 where it is so recorded). I had not stated in my statement dated 16.2.96 that I do not know who had got the will scribed. (confronted with portion B to B where is so recorded). I had not stated in my statement before AC Ist that I had appended my signatures over will Ex. P1 at the asking of Hans Raj (confronted with portion C to C of statement Ex. D1 where it is so recorded). I had not stated in my said statement that no one had signed the will in my presence or affixed thumb impression over the same in my presence (confronted with portion D to D of my statement where it is so recorded). I had not stated before the AC I that I had not appeared before the tehsildar at the time of the alleged registration of the will (confronted with portion E to E where it is so recorded in Ex. D1).

On due consideration of deposition of Labh Singh particularly that he was examined to prove validity and genuineness of the Will purported to be executed by a person who is no more in the world, it can safely be held that the court in appeal rightly refused to rely upon statement of Labh Singh for proving the Will, in accordance with law.

As an upshot of the aforesaid discussion, it can be concluded without slightest of hesitation that evidence adduced by the appellants is not sufficient much less of sterling quality to satisfy conscience of the court

that Will in question was executed by Ms. Shanti Devi much less after understanding the contents and consequences thereof. No sooner the appellants failed to prove the Will, in accordance with law, nothing survives for consideration if the Will is shrouded by suspicious circumstances or otherwise.

There cannot be any dispute that Will is executed in order to break the natural line of succession, thus, excluding natural heirs from inheritance *ipso facto* may not be a ground to discard the testament. However, in the present case, the testator denied right of succession to her natural heirs. It is difficult to digest that a lady who had one daughter and three sons and was their only parent since their early childhood would deprive them of her only property even if she was supported by her paternal family in her bad days when she lost her husband at a young age. As has been rightly argued by counsel for the respondents that there is nothing on record suggestive of the fact that Ms. Shanti Devi did not have cordial relations with her sons or she had other property(s) left for her children. The mere fact that the sons are settled in their business would not be a ground for their exclusion more specifically that the beneficiaries are not proved to be financially weak or under financial stress. Indeed, the appellants are owners of land which they inherited from their father and each one of them inherited share equal to Ms. Shanti Devi. In the given circumstances, judgments of Hon'ble the Supreme Court **Krishan Kumar Birla's case (supra)** and **Rabindra Nath Mukherjee and another's case (supra)** have got no bearing on the facts of the case at hand.

The judgment in **Rabindra Nath Mukherjee and another's**

case (supra) dealing with testimony of Sub Registrar or its evidential value cannot be attracted as appellants did not examine the registering authority. On the contrary, the appellants cannot even derive any advantage of registration of the Will as Labh Singh in the earlier proceedings qua mutation had stated that he had not appeared before the tehsildar at the time of registration of the Will. Labh Singh in his statement before the trial court would depose that Sub Registrar did not read over the Will but affixed the seals.

To be fair to the appellants, counsel has relied upon judgment of this Court in **Bhajan Singh's case (supra)** in respect of evidential value of statement made before revenue officer. This judgment has got no bearing on the case at hand as Labh Singh stated that his statement in mutation proceedings was recorded on oath and he was also confronted with his previous statement during the course of cross examination. Counsel for the appellants has failed to make any submissions as to how judgment in **Mohammad Iqbal's case (supra)** is relevant in the context of controversy involved in the present appeal. In view of the above, I do not find an error much less perversity in consistent findings recorded by the courts rejecting the Will and claim of the appellants to inherit to Ms. Shanti Devi on the basis of testamentary succession. That being so, decrees and judgments passed by the courts are liable to be affirmed and ordered accordingly.

Before parting with this order, I can not help but to express my concern that maternal uncles of children of Ms. Shanti Devi could not digest and reconcile with the situation that part of property owned by their father had gone to their widowed sister, who had a family consisting of three sons

and one daughter. They started the legal battle in the year 1996 and perpetuated agony of the respondents-defendants for the past more than two decades. Despite having lost before the two courts below, they continued playing with psyche of the defendants who have not been able to get any fruits/returns of land left by their mother, cultivated by the plaintiffs-appellants. The litigation initiated by the appellants is nothing short of their greed for the land to which unfortunately their sister became entitle on the basis of inheritance to their father.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed with costs.

(Rekha Mittal)
Judge

13.12.2019
paramjit

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