

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

RSA-5006-2011(O&M)

Date of decision:-25.3.2019

Smt.Balvir Kaur and another

...Appellants

Versus

Smt.Gurdeep Kaur and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.P.S. Dhaliwal, Advocate
for the appellants.

Mr.Kapil Aggarwal, Advocate
for respondent No.1.

Mr.G.L.Bajaj, Advocate
for respondent No.2.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiffs Smt.Gurdeep Kaur alias Devi, a married daughter of Sh.Nama Ram and Sh.Kishan aged about 30 years son of Uttam Ram, a brother of Sh.Nama Ram had brought a suit against defendants i.e. Smt.Balvir Kaur wife of Sh.Lekh Raj and Smt.Paramjit Kaur wife of Sh.Santokh Ram seeking a declaration that plaintiff No.1 – Smt.Gurdeep Kaur alias Devi to the extent of 5/6 share and plaintiff No.2 – Sh.Kishan to the extent of 1/6 share, are owners of land measuring 17 kanals 8 marlas situated in village

Burj Mahamad Shah, Tehsil Zira, on the basis of valid registered Will dated 15.4.1998 executed by Sh.Nama Ram son of Ralla Ram, resident of Dera Baba Jaimal Singh, Tehsil Baba Bakala and that order of Assistant Collector Ist Grade, Zira dated 13.7.2004 sanctioning mutation of inheritance of Sh.Nama Ram on the basis of natural succession, is illegal, null and void; in addition to that seeking consequential relief of symbolic possession as owners of the suit land besides craving for grant of permanent injunction restraining the defendants from interfering in peaceful possession of the plaintiffs over the suit land and making alienation thereof in any manner.

As per the case of the plaintiffs, the suit land was owned by Sh.Nama Ram, who died on 14.7.2003 at Dera Baba Jaimal Singh, Tehsil Baba Bakala leaving behind plaintiff No.1 Smt.Gurdeep Kaur @ Devi as his daughter; that Sh.Nama Ram had another daughter by the name of Smt.Jindo, who had predeceased him; that the defendants Smt.Balvir Kaur and Smt.Paramjit Kaur are daughters of Smt.Jindo; that plaintiff No.2 is son of Sh.Uttam Ram, a brother of Sh.Nama Ram; that Sh.Nama Ram used to reside at Dera Baba Jaimal Singh of Radha Soami Sect at Beas; that plaintiff No.1 Smt.Gurdeep Kaur @ Devi along with her family had also been residing at the said Dera; that she used to serve her father Sh.Nama Ram in old age and Sh.Nama Ram had love and affection for her; that Sh.Nama Ram used to stay with his nephew plaintiff No.2 Sh.Kishan whenever he visited village Burj Mahamad Shah, Tehsil Zira and plaintiff No.2 – Sh.Kishan used to look after the property of Sh.Nama Ram in his absence, so Sh.Nama Ram had love and affection for him also;

that Sh.Nama Ram had snapped his relations with the defendants after death of their mother Smt.Jindo, who was daughter of Sh.Nama Ram; that Sh.Nama Ram had strained relations with father of the defendants; as a matter of fact the defendants neither resided with Sh.Nama Ram nor served him in his old age; that pleased with services of the plaintiffs, Sh.Nama Ram had executed a valid registered Will in favour of the plaintiffs, which was scribed by Sh.Harjinderpal Sharma, Document Writer and witnessed by Sh.Amrik Singh, Lambardar and Sh.Narinder Singh son of Devi Singh, residents of village Dera Baba Jaimal Singh; that the Will was duly registered in the office of Sub Registrar, Baba Bakala on 28.4.1998; that the Will had been executed by Sh.Nama Ram in his sound disposing mind out of his free will and without any pressure, so it is a genuine document; that it was got registered on 15.4.1998, as such after death of Sh.Nama Ram, the plaintiffs stepped into his shoes as owners of the land in dispute, however, the revenue authorities wrongly sanctioned mutation No.620 regarding inheritance of Sh.Nama Ram on the basis of natural succession, ignoring the legal and valid Will executed by Sh.Nama Ram in favour of the plaintiffs. According to the plaintiffs, such order passed by Assistant Collector Ist Grade, Zira is illegal, null and void and liable to be set aside; that after death of Sh.Nama Ram, plaintiffs are owners of the suit land; that the defendants by taking undue advantage of the wrong mutation threatened to dispossess the plaintiffs from the suit land by use of force besides holding out threats to alienate the suit property in any manner they liked, giving rise to a cause of action to the plaintiffs to bring the suit.

Notice of the suit was given to the defendants, who appeared and filed written statement contesting the suit though admitting plaintiff No.1 to be daughter and plaintiff No.2 to be nephew of the deceased and defendants being maternal granddaughters of the deceased, however the defendants denied that the deceased to be resided at Dera Baba Jaimal Singh, Beas permanently, though stating that he used to visit that Dera occasionally. The defendants further denied that plaintiff No.1 used to serve Sh.Nama Ram as he used to reside at village Gurali. The defendants further contended that they were not married at that time and they used to serve said Sh.Nama Ram but at the time of visit of Sh.Nama Ram in the Dera, Beas, food was provided to him by the Dera and not by plaintiff No.1; that Sh.Nama Ram never stayed with plaintiff No.1 in Dera and he used to reside separately; that the deceased had equal love and affection for plaintiff No.1 and the defendants; it was denied that deceased had strained relations with father of the defendants; it was further denied that plaintiff No.2 used to look after the property of Sh.Nama Ram; that the defendants offered denial to the claim of the plaintiffs that Sh.Nama Ram had executed a Will in favour of the plaintiffs, which was got registered by him on 15.4.1998. According to the defendants, the alleged Will is a result of fraud and undue influence got executed by the plaintiffs getting undue advantage of old age of Sh.Nama Ram and it is not the result of free Will of the deceased. According to the defendants, during his last days, Sh.Nama Ram was not in state of good health and his senses were not working properly; the Will was surrounded by suspicious circumstances and the revenue authorities were justified in ignoring the

Will and sanctioning of the mutation on the basis of natural succession; that the plaintiffs are not in possession of the disputed land, rather all the natural heirs of Sh.Nama Ram are in possession of said land; that the entries made are wrong and are result of fraud. Refuting the remaining allegations in the plaint, the defendants prayed for dismissal of the suit.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiffs are entitled for declaration as prayed for in the heading of the plaint? OPP.
2. Whether the plaintiffs are entitled for symbolic possession as prayed for in the heading of the plaint? OPP.
3. Whether the plaintiffs are entitled for permanent injunction as prayed for in the heading of the plaint? OPP.
4. Whether Nama Ram deceased executed registered Will in favour of plaintiffs on 15.4.1998? OPP.
5. Whether will is forged and fabricated document? OPP.
6. Relief.

In order to prove their case, the plaintiff No.1 Smt.Gurdeep Kaur got her statement recorded as PW1 besides examining Sh.Harjinderpal Sharma, Document Writer as PW2 and Sh.Narinder Singh as PW3.

On the other hand, the defendant No.2 – Smt.Paramjit Kaur had got her statement recorded as DW1 in addition to examining Sh.Harbans Singh as DW2.

After hearing learned counsel for the parties, the trial Court

decided issues No.1 to 4 against the plaintiffs, issue No.5 in favour of defendants. Resultantly, suit of the plaintiffs was dismissed with costs. This was so done vide judgment and decree dated 20.4.2009. The trial Court was of the view that the execution of the Will is surrounded by mysterious and suspicious circumstances, therefore it cannot be given effect to.

Feeling aggrieved by the said judgment and decree, the plaintiffs had filed an appeal in the Court of District Judge, Ferozepur which was assigned to Additional District Judge, Ferozepur, who vide judgment and decree dated 1.9.2011 accepted the appeal, set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiffs.

Now it was the turn of the defendants to feel dissatisfied with the judgment and decree passed by Additional District Judge, Ferozepur and they have knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, resultantly the impugned judgment and decree passed by Additional District Judge, Ferozepur be set aside.

On getting notice of regular second appeal, the respondents/plaintiffs have appeared before this Court through counsel.

I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the appeal.

A perusal of the judgment passed by the trial Court goes to show that though the plaintiffs beneficiaries had duly proved the

execution of the Will, which was a registered document but the trial Court wrongly rejected the Will inventing some reasons, which according to him were suspicious circumstances. To say the least such finding is contrary to the legal and factual position, rather a futile attempt to find fault with the Will. The trial Court did not give due weightage to the fact that the Will had been scribed by a regular Deed Writer and attested by two witnesses. As is borne out from the record and admitted by the defendants though half heartedly, the deceased was residing at Dera Baba Jaimal Singh of Radha Soami Sect at Baba Bakala. He had executed the Will at Baba Bakala and it was witnessed by Sh.Amrik Singh, Lambardar and Sh.Narinder Singh of Dera Baba Jaimal Singh. PW2 Sh.Harjinderpal Sharma, Document Writer through his affidavit Ex.PW2/A had testified on oath with regard to having scribed the Will dated 15.4.1998 got executed by Sh.Nama Ram in favour of Smt.Gurdeep Kaur @ Devi and Sh.Kishan son of Uttam Ram in presence of Sh.Amrik Singh, Lambardar and Sh.Narinder Singh, residents of Dera Baba Jaimal Singh stating that he had entered contents of the Will in his register at serial No.157. PW3 Sh.Narinder Singh, an attesting witness vide his affidavit Ex.PW3/A had stated about Sh.Nama Ram having executed the Will in question in favour of his daughter Smt.Gurdeep Kaur @ Devi to the extent of 5/6 share and nephew Sh.Kishan to the extent of 1/6 share; that the Will having been scribed by Sh.Harjinderpal Sharma, Document Writer and Sh.Nama Ram having signed the same after admitting the contents as correct in his presence and in presence of another witness Sh.Amrik Singh besides scribe of the Will. The plaintiff Smt.Gurdeep Kaur appearing as PW1 had

repeated on oath the case of the plaintiffs as given in the plaint. The Will contains photograph of the testator, therefore there cannot be any dispute with regard to the identity of the testator. The testator had specifically mentioned that he was being looked after by his surviving daughter as well as plaintiff No.2 and he was pleased with their services. He also mentioned that one of his daughters had expired. The Will appears to be a natural document. It having been scribed by a regular Deed Writer with relevant entry in his register rules out the possibility of forgery or fabrication later on. Since one of the attesting witness deposed regarding execution of the Will, the requirements of Section 68 of the Evidence Act stand duly proved. The Will is a registered document, which gives presumption of due execution since Sub Register registering the document in discharge of his official duties would not have registered it unless he was satisfied that the testator had executed the Will in sound disposing mind without any pressure or undue influence from any quarter. The endorsement of the Sub Register goes to show that he had read over the contents of the Will to the testator, who had heard and understood the same and thereafter appended signatures in his presence and that of attesting witnesses. The endorsement bears signatures of the testator and attesting witnesses. Therefore, the plea put up by the defendants that the testator was not in sound disposing mind at the relevant time and Will is not a valid legal document pale into insignificance. The testator had every reason to execute the Will in favour of his surviving daughter and his nephew ignoring the daughters of his predeceased daughter, who were married and with whose father, he had statedly not having good relations.

The trial Court has wrongly come to the conclusion that there was non-compliance of Section 63 of the Indian Succession Act. If we see affidavit Ex.PW2/A of scribe Sh.Harjinderpal Sharma, he has clearly stated in para No.1 that he had read over and explained the contents to Sh.Nama Ram, who had signed the Will in Urdu script after admitting it as correct in presence of Sh.Amrik Singh, Lambardar and Sh.Narinder Singh and that Sh.Nama Ram was in disposing state of mind at the time of Will and he had executed the Will of his own free will; that the Will also bears his photographs of the testator; that he had entered the contents of the Will in his register at Sr.No.157 and Sh.Nama Ram also signed in his register against relevant entry. PW3 Sh.Narinder Singh in para No.2 of his affidavit Ex.PW3/A had also contended so.

The reasoning given by the trial Court for discarding the Will is most unconvincing and does not appeal to reason. The trial Court had made much of delay of 13 days in registration of the Will taking it as a suspicious circumstance, when no such suspicion is found to arise for the said reason. The endorsement of Sub-Registrar bears signatures of testator and attesting witnesses and no reason is there to find fault with it. The testator having himself presented the Will for registration in presence of attesting witnesses, though after delay of 13 days does not constitute any doubtful circumstances in my view. The trial Court was swayed away by the fact that there is no mention of the defendants in the Will. May it be so, the testator was not required to make mention of each and every relative whosoever distantly related he or she may be in the Will. His bequeathing his land in favour of surviving daughter and his real nephew

pleased with the services rendered by them, comes out to be natural and plausible disposition. The trial Court had ignored the established legal position on the subject while rejecting the Will.

The First Appellate Court by adopting proper legal and judicious approach had adjudicated the controversy in an appropriate manner finding that the Will in question was a legal and valid document and the trial Court was not justified in rejecting it for the reasons, which as a matter of fact do not exist.

Learned counsel for the appellants has referred to authority **S.R.Srinivasa and Ors. Versus S.Padmavathamma, 2010(3) Civil Court Cases 0359** by the Apex Court wherein it was observed that registration of Will by itself is not sufficient to remove the suspicion. However, this authority does not come to help the appellants since no suspicious circumstances surrounding the Will is found to be there. As per facts of the case the testator had excluded his two daughters from the property and propounder of the Will was present at the time of execution and registration of the Will whereas nothing of that sort is found to be here.

As regards the next authority **Bharpur Singh & Ors. Versus Shamsher Singh, 2009(1) Civil Court Cases 0804** by the Apex Court, again that authority is not applicable to the present case due to different facts and circumstances. The suspicious circumstances with regard to Will have been enumerated as under:

Will - Suspicious circumstances – (i) The signature of the testator may be very shaky and doubtful or not appear to be his usual signature; (ii) The condition of the testator's

mind may be very feeble and debilitated at the relevant time; (iii) The disposition may be unnatural, improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate provisions for the natural heirs without any reason; (iv) The dispositions may not appear to be the result of the testator's free will and mind; (v) The propounder takes a prominent part in the execution of the Will; (vi) The testator used to sign blank papers; (vii) The Will did not see the light of the day for long; (viii) Incorrect recitals of essential facts – These suspicious circumstances are not exhaustive – Subject to offer of reasonable explanation, existence thereof must be taken into consideration for the purpose of arriving at a finding as to whether the execution of the Will had duly been proved or not.

None of these circumstances are found to be there. As such this authority does not help the appellants in any manner.

On the other hand, learned counsel for the respondents had also referred to various judgments first being **Rabindra Nath Mukherjee Versus Panchanan Banerjee (dead) by LRs., 1995(3) RRR 520** by the Apex Court wherein it was observed that where the Will has been registered and Registrar has given his certificate on it that the same was read over to the executant and admitted by him, the witnesses being interested loses significance. In the second authority cited by learned counsel for the respondents i.e. **Amar Kaur Versus Paramjit Kaur,**

2003(3) RCR(Civil)213 by a Co-ordinate Bench of this Court wherein it was observed that findings of facts cannot be interfered in second appeal unless the same are based on no evidence or are so perverse that no reasonable person would return the same. It was further observed that mere deprivation of natural heirs by the testator would not in itself be a suspicious circumstance surrounding execution of a Will and the whole idea behind execution of a Will is to interfere with the normal line of succession, so natural heirs may be excluded in a case of Will. It was further observed that registration of Will goes a long way to prove its authenticity since a Sub-Registrar certifies that the Will was read over to its executor who admitted the contents.

In support of his contention that no substantial question of law arises in this case and therefore this Court may not interfere with the judgment passed by the First Appellate Court, learned counsel for the respondents has pressed into service authority Gurdev Kaur & Ors. Versus Kaki & Ors., 2006(2) RCR(Civil) 561 by Hon'ble Supreme Court wherein it was observed that even if the First Appellate Court commits an error in recording a finding of fact, that itself will not be a ground for the High Court to upset the same and the High Court is to entertain second appeal on substantial question of law having substance, essential, real, of sound worth, important or considerable. In this authority, it was observed that it was decision of the testator to bequeath the property in favour of wife ignoring the married daughters and that the Court does not sit in appeal over the testator's decision and that the Court's role is limited to examine as to whether the instrument propounded as the last Will of the

deceased is or is not that by the testator and whether it is the product of the free and sound disposing mind.

No substantial question of law arises in this appeal.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgment passed by the Additional District Judge, Ferozepur.

The appeal stands dismissed accordingly.

25.3.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No