

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

-.-

RSA 1357 of 2015 (O&M)

Date of decision: 17.09.2019

Sharmila

.....Appellant

Versus

Satpal and others

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. R N Lohan, Advocate and
Ms Neha Rana, Advocate
for the appellant

Mr. Narinder Pal Bhardwaj, Advocate
for respondents No. 1 and 2

Mr. Yogesh Saini, Advocate for
Mr. Deepak Kundu, Advocate
for respondent No. 7

-.-

Rekha Mittal, J. (Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for declaration with consequential relief of permanent injunction by assailing Will dated 19.11.1991, purported to be executed by Baljeet Singh (since deceased), to be null and void, thus, is not binding on rights of the respondents/plaintiffs was dismissed by the trial Court vide judgment and decree dated 01.03.2014 that came to be affirmed in appeal by the Additional District Judge, Karnal vide judgment and decree dated 04.02.2015.

As per case set up by the appellant/plaintiff, Baljeet Singh son

of Antu Ram son of Khem Lal was a Government employee in Education Department and owned agricultural land, residential house, baras as well as movable assets. Plaintiffs No.1 to 4 and defendants No.1 and 2 are successors-in-interest of Khem Lal who had two sons namely Singhu and Antu. Singhu had a son namely Amar Singh. Antu performed first marriage with Surji and then *kareva* marriage with Manhori.

The plaintiffs challenged Will dated 19.11.1991 on the ground that Baljeet Singh was suffering from acute chronic kidney disease which severely affected his mental faculties and he was not in a position to exercise his discretion. The Will is said to be the result of fraud played upon Baljeet Singh who died on 03.09.2002. There was no occasion for Baljeet Singh to execute the Will in favour of defendants No. 1 and 2, in preference to his natural heirs. Baljeet Singh solemnized marriage with Sharmila who had a son namely Ravi from her previous husband, later adopted by Baljeet Singh.

The respondents/defendants filed the written statement, raising preliminary objections regarding locus standi, suit being not maintainable, cause of action, jurisdiction of the Court and suit has not been filed in accordance with amended provisions of the Code of Civil Procedure. On merits, it is submitted that they have become owners of land in dispute on the basis of Will dated 19.11.1991 executed by Baljeet Singh. It is further submitted that Baljeet Singh was residing with them and looked after by the defendants. The land in dispute was given to the plaintiffs on lease for cultivation purposes during life time of Baljeet Singh. They denied material averments on the basis whereof, the plaintiffs sought to assail validity and

correctness of the Will in question.

The trial Court framed issues, reproduced in para 5 of the judgment of said Court. The parties were permitted to adduce evidence in support of their respective contentions, referred to, in paras 6 to 8 of the trial Court's judgment. The trial Court accepted the Will in dispute under which the respondents/defendants are the beneficiaries and as a consequence, the suit was dismissed. The appeal preferred by Sharmila and Ravi Kumar (minor) did not find favour with the Additional District Judge, Karnal and the appellate Court affirmed findings of the trial Court without variance.

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

The first question that invites consideration is '*whether propounders of the Will have successfully proved the same in compliance with the provisions of Section 69 of the Indian Evidence Act, 1872 (in short 'the Act')?*'

In the instant case, both the attesting witnesses of the Will are stated to have passed away, therefore, could not be examined, to comply with the provisions of Section 68 of the Act. In the given circumstances, the Will was required to be proved in consonance with the provisions of Section 69 of the Act, reproduced hereunder, for facility of reference:-

“69. Proof where no attesting witness found—If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his

handwriting, and that the signature of the person executing the document is in the handwriting of that person.”

The trial Court, in para 13 of the judgment, has held that execution of the Will has been proved by its propounder under Section 69 of the Act by calling Mahabir Gupta, DWA, in whose presence the Will was signed and written. In para 14 of the judgment, by taking into consideration testimony of Gulab Singh son of Ran Singh (one of the attesting witnesses of the Will), the Court has held that attestation of one attesting witness has been proved by Gulab Singh son of Ran Singh as he was acquainted with thumb impression of his father - Ran Singh and secondly, he was present at the time when thumb impression was affixed on the impugned Will by his father.

The appellate Court, without adverting to testimonies of Mahabir Gupta, DWA and Gulab Singh, DWB, has disposed of this issue with the observations read thus:-

“.....it has also been held by the learned Court below that the propounder of the Will had been able to prove the signatures of the executant on the Will, as required under Section 69 of the Indian Evidence Act which stands proved by examining Mahabir Gupta in whose presence the Will was executed. However, it was argued by the learned counsel for the appellants that identification of the signatures of executant as well as that of attesting witnesses was not made in accordance with Section 69 of the Indian Evidence Act and as such the impugned Will remains unproved but the argument of the

learned counsel for the appellants is not tenable in the facts and circumstances of the case in hand in view of Section 69 of the Indian Evidence Act, but I disagree with the said contentions and accordingly the Will in question is as per statutory requirements stands proved.

The appellate Court, for the reasons best known, neither adverted to testimony of Mahabir Gupta nor Section 69 of the Act and disposed of contentions of the appellant in a slipshod manner merely by writing that the Court does not agree with the said contentions and the Will in question stands proved as per the statutory requirements. The manner in which the appellate Court has disposed of this issue shows the appellate Court in poor light. The appellate Court has failed to discharge its obligation in law to adjudicate upon disputed factual controversy by appreciating evidence on record when otherwise the first appellate Court is the final Court of fact.

Counsel for the appellant would argue that both the attesting witnesses of the Will have passed away and as such could not be examined before the Court. The respondents/defendants examined Mahabir Gupta, scribe of the Will and Gulab Singh son of Ran Singh, Numberdar to prove attestation of Ran Singh, Numberdar. Vinod Kumar, Registry Clerk, DW2, was examined to prove on the basis of record qua factum of registration of the Will in dispute.

Mahabir Gupta, the scribe in his cross examination had candidly stated that he did not know Baljeet Singh personally. Meaning thereby that testimony of Mahabir Gupta, Deed Writer would not enure to

benefit of the respondents to prove that the Will in question was scribed at the behest of Baljeet Singh or it was executed by said Baljeet Singh. Similarly, statement of Vinod Kumar, Registry Clerk is not relevant to prove execution and registration of the Will at the behest of Baljeet Singh because he has admitted that he did not know Baljeet Singh personally nor Baljeet Singh signed the Will in his presence. In this view of the matter, the respondents cannot derive any advantage to their contentions to prove the Will on the basis of evidence of Mahabir Gupta, scribe and Vinod Kumar, Registry Clerk.

This brings the Court to testimony of Gulab Singh son of Ran Singh, DWB, examined to prove that the Will was attested by his father Ran Singh. Both the Courts have not relied upon testimony of Gulab Singh to prove the Will having been signed or thumb marked by testator Baljeet Singh. However, counsel for the respondents has tried to draw some mileage from testimony of Gulab Singh by contending that Gulab Singh has proved that the Will in question was signed by Baljeet Singh in his presence.

Gulab Singh, admittedly, has not signed the Will in question nor he signed the relevant entry in the register of Deed Writer in regard to the Will. He has deposed that on 19.11.1991, he along with his father late Shri Ran Singh, Nambardaar went to Gharonda tehsil on the seat of Mahabir, Vasika Navis. Late Shri Baljeet Singh son of late Shri Anant Ram got typed a Will in his presence from Mahabir, Vasika Navis. After reading the Will, Baljeet Singh signed in Hindi. At that time, Baljeet Singh had good health. In cross examination, he had stated that his father had taken

him along with because of his old age and sometime he had been taking his brother. In further cross examination, the witness had stated that he cannot tell the month or year when he had gone with his father at the time of any other registry or month in which any other registry was prepared. Gulab Singh appeared in the witness box on 01.02.2014 to depose about his presence at the time of execution and registration of the Will in question on 19.11.1991. As has been noticed hereinbefore, but for the sake of repetition, Gulab Singh had not appended his signatures either on the Will or any other document in respect of his presence with his father on that date. It is highly improbable nay impossible that a person would be in a position to depose that more than twenty years ago, he had gone with his father at the time of execution or registration of a document. The testimony of Gulab Singh gets falsified and belied from the fact that he did not remember month of any other document when he accompanied his father for the purpose of registry etc. In this view of the matter, the Courts have rightly ignored testimony of Gulab Singh with regard to proving signatures of the testator on the Will in question. That being so, testimony of Gulab Singh is not at all sufficient to prove that the Will bears signatures of deceased Baljeet Singh. It is not stand of Gulab Singh that he was conversant with the signatures of Baljeet Singh or had seen him writing and signing, thus, can identify signatures of Baljeet Singh on the disputed Will. In this view of the matter, the respondents cannot seek any aid from testimony of Gulab Singh to prove the Will under Section 69 of Evidence Act. No sooner, testimony of Gulab Singh is ignored to prove sign of testator, evidence of other two witnesses namely Mahabir Gupta and Vinod Kumar, by no stretch of imagination, can

prove the Will in question. I have no hesitation to hold that the Courts have committed a gross error rather perversity by holding that Will in question has been proved on the basis of testimony of Mahabir Gupta, Deed Writer, DWA. The Courts, for the reasons best known, ignored a vital admission of Mahabir Gupta that he did not know Baljeet Singh personally. Since Mahabir Gupta, Deed Writer did not know Baljeet Singh personally, his testimony, has no evidentiary value that the Will in question was prepared at the behest of Baljeet Singh or it was signed/thumb marked by Baljeet Singh. In this view of the matter, I find merit in contention of the appellant that the respondents/defendants have failed to prove the Will in compliance with the provisions of Section 69 of the Act. Accordingly, the aforesaid question is answered in favour of the appellant and against the respondents. As the respondents failed to prove the Will in accordance with law, estate left behind by Baljeet Singh would be inherited by his legal heirs, in accordance with the provisions of the Hindu Succession Act, 1956.

In view of what has been discussed hereinbefore, the appeal is allowed, judgments and decrees passed by the Courts are set aside. The suit filed by the plaintiffs is decreed to the effect that Will dated 19.11.1991 was not executed by Baljeet Singh and the same is not binding upon right of his legal heirs in view of the provisions of the Hindu Succession Act, 1956. As a natural corollary, legal heirs of Baljeet Singh shall be entitle to inherit to his estate.

(Rekha Mittal)
Judge

17.09.2019
Mohan Bimbra

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