

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

1. RSA No.3728 of 2014 (O&M)
Date of decision : 27.02.2019

Balwant and others ...Appellants

Versus

Laxmi Devi and others ...Respondents

2. RSA No.3761 of 2014 (O&M)
Date of decision : 27.02.2019

Balwant and others ...Appellants

Versus

Kashmiri Devi and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Saurabh Bajaj, Advocate for the appellants
(In both the appeals)

Mr. Akshay Jindal, Advocate and
Mr. Gopal Soni, Advocate for the respondents
(In RSA No.3728 of 2014)

Mr. R.S. Mamli, Advocate for the respondents
(In RSA No.3761 of 2014)

ANIL KSHETARPAL, J. (ORAL)

By this judgment, RSA Nos.3728 and 3761 of 2014 shall stand
disposed of.

Although, both the appeals are arising out of from different
suits, however, question with regard to validity of the Will executed by late
Sh. Ram Parkash is required to be examined in both the cases.

Question which needs consideration is “whether the registered

Will executed by late Sh. Ram Parkash on 02.01.1997 registered on 03.01.1997 is valid and enforceable or surrounded by the suspicious circumstances?”

Ram Parkash died on 02.12.1997. He allegedly executed a registered Will in favour of his four sons and a grandson from a pre-deceased son divesting his three married daughters and wife from inheritance of his property. One married daughter i.e. Laxmi filed one suit. Second suit was filed by Kashmiri Devi and others claiming to be second wife of late Sh. Ram Parkash. She claims that she was widow of brother of Ram Parkash i.e. Mehar Chand and after the death of Mehar Chand, she contacted marriage with Ram Parkash who was already married.

Execution of the Will has been proved in accordance with Section 68 of the Indian Evidence Act on examination of attesting witnesses namely Prem Lal as DW4, Scribe Ramesh Kumar as DW2 and Karambir, Clerk from the Registration Office as DW3.

In both the suits which were tried separately, the trial Court upheld the Will and dismissed the suit. However, learned First Appellate Court has reversed the judgment passed by the trial Court in both the suits on following grounds:-

- a) Prem Lal, attesting witness has admitted the signatures on the affidavit Ex.DY wherein he has stated that Ram Parkash was neither able to hear or understand nor he was in senses when the Will was executed.
- b) The attesting witness has not stated that after the scribe had read over the Will, he signed the Will after understanding the correctness

thereof.

- c) In the second suit, there is additional ground that the property is ancestral in nature and, therefore, could not be willed away.

This Court has heard 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.

It may be noted that the registered Will has a photograph of the Executant which is thumb marked in a manner that half of the thumb impression is on the photograph whereas remaining half is on the paper on which the Will has been scribed. The thumb impression of the Executant is on each page and also at the time of registration which took place on the next date i.e. 03.01.1997, although the Will was scribed on 02.01.1997. The Will is attested by two witnesses:-

- 1) Prem Chand, Lambardar,
- 2) Prem Lal.

Prem Lal has appeared in evidence and supported the Will. He proved the execution and registration of the Will in accordance with the provision of Section 63(c) of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872.

Now let us deal with the reasons given by the Courts to upset the finding of the trial Court.

First reason is that Prem Lal had admitted his signatures on the affidavit Ex.DY. The aforesaid affidavit is dated 05.12.2005 whereas the statement of Sh. Prem Lal was recorded in the year 2010. In the affidavit filed in lieu of examination-in-chief in the suit, he supported the execution

and registration of the Will in accordance with law. In the cross-examination, he has stated that he is educated upto 6th Class and he can understand little bit of English. He has stated that Ram Parkash had come to him while riding a cycle himself. He has further stated that Ram Parkash was not able to walk. When he was confronted with the affidavit, he explained that Ram Parkash at that time could see and hear normally. When he was given suggestion that Ram Parkash could not see or hear properly, he denied the same. However, he admitted his signatures on the affidavit. In the cross-examination, no doubt, he has fumbled as at one stage, he admitted the signatures whereas on the other hand he has denied, however, in the later part of the statement, he has stated that whatever has been written in the affidavit Ex.DY, is not correct.

Learned First Appellate Court has held that the Will is surrounded by suspicious circumstances in view of this affidavit. This Court is of the view that such conclusion is not correct particularly when the witness has explained under what circumstances the aforesaid affidavit was executed. He has stated in his statement that Laxmi Devi, plaintiff in one suit had asked him to give this affidavit by stating that Ram Parkash was forcibly brought to execute the Will. In view of the aforesaid circumstances, question is whether it will be correct for the Court to ignore the Will particularly when it is registered and attesting witness while appearing in the Court has also supported the Will. The answer in the opinion of this Court has to be positive. Attesting witnesses cannot be allowed to hijack the registered testament in this manner. The attesting witnesses are made to sign the Will or attest the same in order to add to the credibility of the document.

Validity of such document cannot be left to mercy on statement of attesting witnesses given here or there. In the present case, the statement of the attesting witness has to be read in entirety to understand what he wants to say. Few lines in the cross-examination cannot be read in isolation of the remaining statement which is detailed one. Hence, the First Appellate Court erred in recording a finding that the Will is surrounded by suspicious circumstances.

As regards second reason, it is apparent that when the attesting witness filed his affidavit in chief, he has stated that the Will was executed in his presence and also in the presence of other attesting witness and the testator. He has specifically stated that the testator had put his thumb impression in his presence as well as in the presence of other attesting witness and thereafter he had signed the Will and he recognizes his signatures on the Will. He has further stated that the scribe of the Will had read over the contents of the Will to the deceased and after signing, the Will was produced before the Sub-Registrar, Karnal and testator had put his signatures before the Sub-Registrar in the presence of the attesting witness at the time of registration. Hence, it was not necessary for the attesting witness to state that the testator had signed the Will after understanding the contents thereof. The aforesaid fact has to be inferred particularly when the Will has been read over. In the cross-examination, there is no suggestion to the attesting witness that the testator put his thumb impression without understanding the contents of the Will. Still further, as noticed above, the Will is in favour of four sons (who were alive) and one grandson of pre-deceased son. The testator had specifically mentioned that he has already

married off his daughters.

Next reason assigned by the Court that the property is ancestral in the suit filed by Kashmiri Devi and others, is also erroneous because the Court has held that since the property had come from Duli Ram father of Ram Parkash, the testator, therefore, the property was ancestral. In the considered view of this Court, such finding is not correct. Still further, the Court has to take notice of the fact that both the suits were filed after almost 8 years of the death of Ram Parkash. It has come in evidence of the attesting witness Prem Lal that the beneficiaries under the Will except Ram Parkash, had already sold the property. Subsequent vendees are also not party to the suit.

Keeping in view the aforesaid facts, the judgments passed by the First Appellate Court in both the suits are not sustainable and hence, set aside. The judgments passed by the learned trial Court in both the suits are also restored. Question which has been framed earlier is answered in favour of the appellants and against the respondents.

In view of the above, both the Regular Second Appeals are allowed.

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

27.02.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No