

In the High Court of Punjab and Haryana at Chandigarh

RSA- 2158 of 2003 (O&M)
Date of Decision:28.1.2020

Jarnail Singh and others

---Appellants

vs.

Darshan Singh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Ms. Aashna Gill, Advocate
for the appellants

Mr. G.S.Attariwala, Advocate
Mr. Khushdeep Mann, Advocate
Mr. Vishal Gupta, Advocate
for the respondents

Rekha Mittal, J.
CM No.5977-C of 2003

Prayer in this application is for condoning delay of 25 days in
refiling the appeal.

Heard.

Allowed as prayed for. Delay of 25 days in refiling the appeal
stands condoned.

Main case

Challenge in the present appeal has been directed against
judgment and decree dated 21.12.2002 passed by the Additional District
Judge, Moga whereby appeal against judgment and decree dated 14.6.1997
passed by the trial court was accepted, impugned decree and judgment was

set aside and suit filed by the appellants-plaintiffs claiming ownership to suit land measuring 76 kanal 17 marlas on the basis of Will dated 26.1.1991, was dismissed.

The present litigation pertains to estate left behind by Darbara Singh son of Saudagar Singh who died on 11.5.1991. The appellants-plaintiffs are the nephews (brother's sons of said Darbara Singh) who claimed suit property to the extent of half share out of land measuring 153 kanal 14 marlas i.e. 76 kanal 17 marlas on the basis of aforesaid Will by excluding class-I heirs of deceased namely Ranjit Kaur, widow and Sham Kaur, mother.

The trial court accepted claim of the appellants with regard to their entitlement to succeed to Sh. Darbara Singh on the basis of testamentary succession. In appeal filed by Ranjit Kaur widow and Gurmail Singh (purchaser of land in dispute from Ranjit Kaur), the Appellate Court rejected the Will by holding that the same is shrouded by suspicious circumstances. The Appellate Court, from para 11 onwards of the judgment has noticed various suspicious circumstances shrouding the Will, detailed hereunder:-

1. Darbara Singh admittedly met with an accident in front of house of the appellants and died instantaneously. At that time, he was hale and hearty and aged 60 years only. There was no urgency for Darbara Singh to have executed the impugned Will in favour of the appellants.
2. There is false recitation in the Will that testator used to remain ill but no cogent evidence has been adduced to prove

the same.

3. The Will is unnatural and unofficious because no sufficient reason had been given for depriving Ranjit Kaur and Sham Kaur who were not given a marla of land out of land measuring 9½ acres.
4. The provision of maintenance to wife and mother @ Rs. 5000/- and Rs. 3000/- per annum respectively had been intentionally made to give natural colour to the Will and the same had been cleverly introduced under some legal advice.
5. The Will is an unregistered document and no explanation has been furnished as to why it was not got registered either on the date it was executed or immediately thereafter.
6. It is the case of the appellants that Darbara Singh was being looked after by them and their family members and they used to cultivate his land because Darbara Singh was unable to do so. No ration card or voter list has been produced to prove that Darbara Singh was residing with the appellants.
7. The revenue record also contradicts plea of the appellants that they were cultivating his land.
8. Harbans Singh PW2, scribe of the Will and Lachhman Singh PW3 had stated that Darbara Singh was served by his wife. Jarnail Singh PW1 also stated that there was no dispute between Darbara Singh and Ranjit Kaur.
9. The Will was not scribed by a regular deed writer but was scribed by Harbans Singh PW2 who admitted that he was

not keeping any register of writing documents and is not a licensed deed writer.

10.The scribe and attesting witnesses belong to different villages. Harbans Singh scribe PW2 and Lachhman Singh attesting witness PW3 belong to village Rajiana while Sukhdev Singh PW4 belongs to village Pakhar Wadh. No evidence has been adduced as to how they came together at the time of execution of Will.

11.A bare look at the Will shows that wide margin of spacing has been made on its second page. The spacing in the last six lines is narrow as compared to the preceding lines. The same appears to have been done to accommodate already existing thumb impression on blank paper to bring the subject matter of the Will within the available space. Due to paucity of space, the description of the executant has not been properly given and it is not given in what capacity Darbara Singh had thumb marked . The words 'ANGUTHA NISHAN DARBARA SINGH' are much smaller in size than body of the writing. For this reason, addresses of attesting witnesses had not been mentioned and word 'BIKKAR SINGH' had been written just over thumb impression already existing. The date 26.1.1991 and the words 'LIKHARI HARBANS SINGH' are also tried to be adjusted within the available space. For this purpose, reliance has been placed on judgment of Hon'ble the Supreme Court **Ramchandra**

Rambux vs. Champabai and others AIR 1965 SC 354.

12. The Court has, however, held that mere genuineness of signatures/thumb impression of the testator on the Will is not a guarantee of its execution. The propounders of the Will have to prove that impugned Will was executed by the testator in his sound disposing mind and no suspicious circumstance stands attached to it.

13. Similarly, producing of pass book of bank account of Darbara Singh by the appellants does not prove their case because pass book shows only 2-3 entries being made therein. It is quite possible that the account book may have fallen into the hands of the appellants but the same is not sufficient to prove that Darbara Singh had executed legal and valid Will Ex. P1

14. With regard to proving of thumb impression on the Will Ex. P1 by producing handwriting and finger prints expert, it is held that Darbara Singh met with an accident in front of house of the appellants and they might have obtained his thumb impression on a blank paper and later fabricated Will Ex. P1.

Counsel for the appellants would argue that the circumstances held to be suspicious can not stand the test of judicial scrutiny. It is argued that merely because Darbara Singh was hale and hearty or 60 years of age is not a premise to create suspicion regarding correctness of the Will. In support of her contention, she has relied upon judgment of Hon'ble the

Supreme Court **Vrindavanibai Sambhaji Mane vs. Ramchandra Vithal Ganeshkar 1995 (3) RRR 622.**

Another submission made by counsel is that though the Appellate Court has held that registration of Will is not compulsory but at the same time the court has held that non-registration of the Will is also one of the suspicious circumstances. Counsel would argue that the Court has recorded contradictory findings while examining the aspect of non-registration of the disputed Will. It is further argued that Will is executed by the testator in order to deviate from natural line of succession, as such, non giving of share to widow and mother of the deceased cannot be taken as a circumstance to entertain the Will with suspicion. For this purpose, reference has been made to judgment of this Court **Gurditta Mal (Dead) through L.Rs vs. Veer Bhan 2013(5) RCR (Civil) 235.**

Counsel would further argue that as per testimony of the witnesses examined by the appellants, the disputed Will was executed by the deceased at his residence. In cross examination, the witnesses have deposed that mother and widow of the deceased were also available in the house at the time the Will was executed by the deceased. It is vehemently argued that neither Sh. Ranjit Kaur nor Sham Kaur appeared in the witness box to controvert the aforesaid facts elicited in statements of witnesses examined by the appellants. It is further argued that as Sham Kaur and Ranjit Kaur have kept themselves away from the witness box without any tangible explanation, an adverse inference is liable to be drawn against the respondents.

Counsel would further argue that Darbara Singh had no child.

In agriculturist community of Punjab, people believe in keeping the property in their family, therefore, there is nothing unnatural if the deceased had not bequeathed any part of his land in favour of his widow. In this context, reference has been made to judgment of this Court **Surjit Kaur vs. Nirver Singh (Dead) through Lrs 2005(1) RCR (Civil) 316**. It is further argued that the appellants adduced overwhelming evidence by leading direct and opinion evidence to establish that disputed Will was executed by Darbara Singh in his sound disposing mind wherein a provision was made for maintenance of his wife Ranjit Kaur and mother Sham Kaur.

Counsel representing the respondents, on the contrary, has supported the decree and judgment passed by the Court in Appeal. It is argued that disputed Will is shrouded by suspicious circumstances and the Appellate Court has rightly held that the appellants failed to dispel those suspicious circumstances or to say that they failed to convince conscience of the Court that disputed Will represents the true wish of the testator as to how his estate would be dealt with after his departure from the world. However, it has been conceded that non-registration of the Will may not be a suspicious circumstance and even if the same is ignored there are various other suspicious circumstances which cast cloud qua validity and genuineness of the Will in question.

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

The Appellate Court in para 24 of the judgment has recorded its observations with regard to spacing in between lines and failure to give proper description of the executant and attested witnesses etc. A bare look

at the Will Ex. P1 reveals that it is prepared on a plain paper. There is no thumb impression of the testator on front side of the page. It is not mentioned if thumb impression of Darbara Singh is LTI or RTI. Similarly, there is no such mention of thumb impressions of Lachhman Singh and Sukhdev Singh. This Court can not overlook the fact that a person who is writing a document in hand may not be accurate in maintaining same spacing in between the lines but the manner in which the space has been left on the front page and back page particularly the last 3-4 lines, leaves no manner of doubt that scribe of the Will tried to adjust the subject matter in a manner that the same is finished upto thumb impression available on back side of the page. Had this Will been executed by the deceased and his thumb impression had been affixed after subject matter of the Will was scribed by its writer, there was no reason for the scribe to leave such irregular spacing in few lines on the first page, second page and hardly any spacing in between last three/four lines. Even the words 'ANGUTHA NISHAN DARBARA SINGH' is either above or just touching the upper ridges of the purported thumb impression of testator Darbara Singh. In the words, 'ANGUTHA NISHAN LACHHMAN SINGH SON OF BIKKAR SINGH' part of *matra of sihari in punjabi* is on the purported thumb impression of Lachhman Singh.

To be fair to the appellants, counsel sought to contend that since there was space available below thumb impression of Lachhman Singh and Darbara Singh, the scribe could mention the words 'ANGUTHA NISHAN LACHHMAN SINGH SON OF BIKKAR SINGH' beneath his thumb impression and 'ANGUTHA NISHAN DARBAR SINGH' under the

thumb impression of Darbar Singh.

No doubt, there was space available below the purported thumb impression of Lachhman Singh and Darbar Singh but this Court is not oblivious of the fact that a person forging a document is bound to leave some traces of forgery from which the same can be detected by a Judge or an expert. Taking into consideration the aforesaid, in my considered opinion, the manner in which the disputed Will has been prepared is a strong telling circumstance that this Will was not executed by the deceased but the same has been prepared on a thumb impression obtained on a blank paper, may be, at the time when deceased met with an accident in front of house of the appellants or otherwise because appellants are not strangers to family of the deceased, being sons of brother of Darbara Singh. The Will Ex. P1 can be rejected on this score alone even if other circumstances are not taken into account.

One of the recitals in the Will is that Ranjit Kur is the wife of testator and she is a simpleton woman. There is no evidence that Ranjit Kaur is simpleton. Merely because a person is illiterate and lives in a village, he cannot be said to be simpleton. The appellate Court has rightly held that it has been recorded in Will that Darbara Singh is not keeping good health or he remained sick but there is no evidence adduced to prove that Darbara Singh was suffering from any ailment much less a serious one.

Another recital in the Will is that Darbara Singh was being served by his brother Gulzar Singh and his five sons and being happy with their services, the land would be property of nephews of the deceased. No

evidence has been adduced by the appellants to establish that they ever rendered services to the deceased. One of the appellants namely Jarnail Singh-plaintiff No. 1 appeared in the witness box but his testimony is conspicuously silent if the deceased ever resided in their house or was being served by Gulzar Singh or his family. On the contrary, it has been proved on record, in view of facts elicited in cross examination of witnesses of the appellants, that deceased had been residing in separate house with his wife and mother. There is not even an iota of evidence that deceased did not maintain cordial relations with his wife or he was not being rendered services by his wife Ranjit Kaur. These facts go a long way to show that recitals in the Will are incorrect, thus, create a doubt if the same was scribed at the behest of Darbara Singh.

Not only this, in the Will, name of testator is mentioned as Darbar Singh in the first line as well as while describing 'ANGUTHA NISHAN DARBAR SINGH'. It is never the case of appellants that Darbara Singh was ever known as Darbar Singh. This fact also creates a serious doubt if the Will was scribed at the behest of Darbara Singh or the same was thumb marked by the deceased after admitting and understanding its contents to be correct.

The Will also contains a recital that Ranjit Kaur his wife would be paid Rs. 5000/- per annum and Sham Kaur his mother would be paid Rs. 3000/- per annum for maintenance by beneficiaries under the Will. Since the deceased was having good relations with his wife and mother and if he was really interested to make a provision for maintenance to his wife and mother, there was less likelihood of his having made a provision of

paltry sum of Rs. 5000/- per annum i.e. less than Rs. 450/- per month as maintenance to his wife and Rs. 250/- per month to his mother despite his being owner of land more than 9 acres. As has been rightly held by the Appellate Court, this provision with regard to maintenance to wife and mother appears to have been introduced under some legal advice to give true colour to the Will. Taking a cumulative view of the aforesaid, it can safely be held that there is no escape from conclusion that appellants have failed to satisfy conscience of the Court that disputed Will was executed by the deceased after understanding contents of the testament or the same represents true expression of wish of the deceased as to how his property would be dealt with after his demise. It may be true that some of the circumstances taken note of by Appellate Court may not have a strong bearing on the disputed Will but at the same time, the appellants can not be heard to say that disputed Will was executed by Sh. Darbara Singh with an intent to bequeath his property in favour of appellants-plaintiffs. The judgments relied upon by counsel for the appellants have been rendered in view of peculiar facts and circumstances of each case. As has been discussed hereinbefore that even if some of the circumstances noticed by the Appellate Court are taken out of consideration, the same would be of no consequence for the appellants to press their right that the Will in dispute is genuine and valid or they are entitle to inherit to Sh. Darbara Singh on the basis of testamentary succession. In this view of the matter, I do not find any reason to differ with conclusions of the Appellate Court that Will in question is shrouded by suspicious circumstances, thus, can not stand the test of judicial scrutiny.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

28.1.2020
paramjit

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