

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

111 (PROCEEDINGS THROUGH V.C.)

CM-15949-C-2019 &

CM-15950-C-2019 &

CM-15951-C-2019 &

CM-4561-C-2020 &

RSA-5608-2019

Date of decision: 02.09.2020

DR. VIKAS GOUR AND ANOTHER

...APPELLANTS

V/S

NAVAL KISHORE AND OTHERS

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Mohit Jaggi, Advocate,
for the applicant-appellants.

AUGUSTINE GEORGE MASIH, J.

CM-15949-C-2019

Prayer in this application is for making good the deficiency in Court fee.

Since the deficiency in the Court fee has been made good by the applicant-appellants, the present application is allowed. The Court fee as made good is taken on record.

Application stands disposed of accordingly.

CM-15950-C-2019

Prayer in this application is for condonation of delay of 58 days in refiling the appeal.

For the reasons mentioned in the application, which is supported by the affidavit of the applicant-appellant No. 1, the same is allowed. Delay of 58 days in refiling the appeal stands condoned.

CM-4561-C-2020

For the reasons mentioned in the application for listing the case, the same is allowed and the appeal is taken on Board for consideration.

RSA-5608-2019 (O&M)

This Regular Second Appeal has been filed by the appellants-plaintiffs challenging the judgment and decree passed by the Civil Judge (Junior Division), Chandigarh dated 06.11.2015, whereby the suit for declaration, possession, recovery of use and occupation charges/mesne profits and for permanent prohibitory and mandatory injunction filed by the appellants-plaintiffs stands dismissed whereas counter-claim of Naval Kishore son of Raj Kumar-respondent No. 1-defendant No. 1 was partly decreed declaring him to be the owner to the tune of 50% share of House No. 3233, Sector 21-D, Chandigarh on the basis of registered Will dated 11.01.1984. Further plaintiffs were restrained from interfering in possession of two rooms, kitchen and common area on the ground floor and two rooms, kitchen and common area on the first floor of House No. 3233, Sector 21-D, Chandigarh in possession of respondent No. 1-defendant No. 1 except in due course of law, appeal against which preferred by the appellants has also been dismissed by the Additional District Judge, Chandigarh vide judgment dated 04.02.2019.

2. It is the contention of the learned counsel for the appellants that the suit of the appellants-plaintiffs has been wrongly dismissed by the Courts below without taking into consideration the settled preposition of law that the latest Will has to prevail over the earlier Will. He contends that although the earlier Will executed by Smt. Raj Kumari in favour of

respondent No. 1-defendant No. 1-Naval Kishore dated 11.01.1984 was a registered Will, however, subsequent Will, which has been executed by her in favour of the appellants-plaintiffs dated 28.12.2006 although unregistered, stands duly proved as per the requirement of the law. Assertion has been made that the provisions of Section 68 of the Indian Evidence Act have been fulfilled and the Will dated 28.12.2006 duly proved on examining one of the witnesses of the Will. Merely because the subsequent Will, which has been executed by Smt. Raj Kumari, was unregistered would not make much of a difference. It has been submitted by the counsel for the appellants that there was no reason to disbelieve this Will dated 28.12.2006 especially when the defendants have nowhere stated that this Will was not signed by the deceased. There was ample evidence produced by the appellants-plaintiffs that there was love and affection of the appellants with the deceased Raj Kumari as they had rendered service to her during her last days. There was every reason for the deceased to execute the subsequent Will dated 28.12.2006 in favour of the appellants. The Courts below have failed to take into consideration and appreciate the fact that the respondent No. 1-defendant No. 1 was serving in Marfied and used to reside at Kapurthala and, therefore, it is but natural that the appellants have taken care of the old and infirm lady being their maternal grandmother (*Nani*) and she had executed the Will dated 28.12.2006 in their favour. The Will has been said to be under suspicious circumstances which is absolutely wrong as the Courts below have wrongly relied upon the fact that in the subsequent Will i.e. 28.12.2006, there is no reference of the earlier Will dated 11.01.1984 executed in favour of respondent No. 1-defendant No. 1. Merely because of non-mentioning of

the said aspect/fact would not render the subsequent Will illegal. The Courts below have not properly appreciated the evidence led by the appellants-plaintiffs leading to the misreading of the evidence which renders the judgments passed by the Courts below illegal, therefore, the present appeal deserves to be allowed.

3. In support of these contentions, counsel for the appellants has placed reliance upon judgments of this Court in **Shingara Singh vs. Nasib Kaur through LRs Karamjit Kaur and others**, 2015 (3) PLJ 589, **Joginder Pal Sharma and others vs. Vinod Kumar Sharma and others**, 2009 (10) RCR (Civil) 452, **Gurditta Mal (Dead) through LRs vs. Veer Bhan**, 2013 (5) RCR (Civil) 235, **Harbans Singh and others vs. German Singh (Dead) through his LR and others**, 2011 (5) RCR (Civil) 799 and **Karmi wd/o Jai Chand vs. Sital and another**, 2015 (2) RCR (Civil) 63.

4. I have considered the submissions made by the learned counsel for the appellants and with his assistance, have gone through the judgments, on which he has placed reliance, but do not find myself in agreement with the contentions raised by him.

5. The facts, which are not disputed in this case, are that House No. 3233, Sector 21-D, Chandigarh belonged to one Sh. Amar Chand Sharma. He married Sheela in the year 1936, out of which wedlock, was born Prem Lata Sharma who is defendant No. 2. Smt. Sheela died in the year 1942 leaving behind Prem Lata Sharma-defendant No. 2. Amar Chand Sharma solemnized second marriage with Vidya who died issueless in the year 1946. Third marriage was solemnized by Sh. Amar Chand Sharma with Raj Kumari who remained issueless. Therefore, Amar Chand Sharma had only one daughter i.e. Prem Lata Sharma-respondent No. 2-defendant

No. 2 who has two issues, namely, Dr. Vikas Gour and Sanjeev Gour-appellant-plaintiff No. 1 and appellant-plaintiff No. 2 respectively. Sh. Amar Chand Sharma died on 09.10.1978 leaving behind his third wife Smt. Raj Kumari and daughter Prem Lata Sharma as his legal heirs.

Raj Kumari did not accept Prem Lata Sharma as daughter of Late Sh. Amar Chand Sharma. This forced Prem Lata Sharma-defendant No. 2 to file a suit for declaration that she was the daughter of deceased Sh. Amar Chand Sharma and is owner of half share of the suit property. The said civil suit was decreed by Sub-Judge Ist Class, Chandigarh vide judgment dated 05.03.1980 (Ex. D8). This judgment was challenged by Smt. Raj Kumari by filing an appeal which was dismissed by the then Senior Sub-Judge with enhanced appellate powers vide judgment dated 29.05.1981 (Ex. P1=Ex. D9). In pursuance to the said decree, Smt. Prem Lata Sharma having proved herself to be the daughter of Sh. Amar Chand Sharma, got half of the share transferred of the suit property in her name. The half share in House No. 3233, Sector 21-D, Chandigarh undisputedly went to the share of Prem Lata Sharma (daughter) and the remaining half was the share of Smt. Raj Kumari (third wife of Sh. Amar Chand Sharma).

6. The appellants-plaintiffs filed the present suit alleging that they along with their parents had served late Smt. Raj Kumari in her old age and out of love and affection, who executed a Will dated 28.12.2006 (Ex. PA) bequeathing her share in the suit property in their favour. It is on the basis of the said Will that the present suit has been filed against Naval Kishore, respondent-defendant No. 1, who was occupying a portion of the said suit property, their mother Prem Lata Sharma, respondent-defendant No. 2 and the U.T. Administration, Chandigarh, respondent-defendant No. 3.

This suit was contested by the respondents-defendant No. 1 on the ground that Late. Smt. Raj Kumari being his paternal aunt executed a registered Will qua her share in favour of respondent-defendant No. 1- Naval Kishore on 11.01.1984 (Ex. D7/A). He put forth his counter claim that he be declared the absolute owner of the entire suit property.

7. On the basis of the evidence, which has been led by the parties, the Courts below have come to a conclusion that the Will dated 28.12.2006 (Ex. PA) has been executed in suspicious circumstances, the genuineness whereof, therefore, has not been established and there is no sufficient evidence to establish the validity of the Will. The conscience of the Courts below has not been satisfied so as the Courts could arrive at a conclusion with regard to the subsequent Will dated 28.12.2006 being a genuine one. The precedence has, thus, been given to Will dated 11.01.1984, which is a registered Will and duly proved on the basis of the evidence led by the respondents-defendant No. 1. The said evidence has been dealt with in detail by the Courts below.

8. There can be no dispute with regard to the assertion of the counsel for the appellants-plaintiffs that merely because the subsequent Will is unregistered would not be a ground in itself to discard the same and can be given precedence over a registered Will propounded earlier in time provided the same is not surrounded with suspicious circumstances. The judgments, on which reliance has been placed by the counsel for the appellants, are based upon these prepositions and, therefore, in the given facts and circumstances of those cases, where Courts have come to a specific conclusion with regard to the genuineness and validity of the unregistered Will, which was duly proved in accordance with law, the same

need to be accepted. It can, therefore, be said that each Will has to be firstly proved to be duly executed in accordance with law and thereafter, its genuineness has also to be assessed. It is under these circumstances that the Court has to satisfy its own conscience with regard to the genuineness or otherwise of the Will evaluating and considering the surrounding circumstances leading to the execution of the said Will. If there are suspicious circumstances surrounding the Will, the Court can, on the basis of the evidence before it, even come to a conclusion with regard to the registered Will being not genuine. These principles have to be kept in mind while considering and evaluating the pleadings and evidence of the parties.

9. The Courts below have, after considering and evaluating the evidence and the surrounding circumstances leading to the execution of the Wills dated 28.12.2006 (Ex. PA) and 11.01.1984 (Ex. D7/A), have come to a conclusion that the conscience of the Court is not satisfied and the appellants-plaintiffs have failed to dispel all suspicious circumstances surrounding the execution of the subsequent Will dated 28.12.2006 by cogent and satisfactory evidence. The Courts below have placed reliance upon the observations of this Court in **Lakhbir Singh vs. Binder Singh**, 1995 (1) Civil Court Cases, 604 (P&H) as also a judgment of the Supreme Court in **Ram Piari vs. Bhagwant and others**, 1990 Civil Court Cases, 370 (SC). The reasons and circumstances, which have cast shadow and suspicion with regard to the genuineness of the Will dated 28.12.2006 (Ex. PA), which has been relied upon by the appellants-plaintiffs, have been culled out in para-15 of the judgment passed by the Lower Appellate Court which reads as follows:-

“15. At the cost of repetition, it is added that in order to

repel the claim of the plaintiffs, the defendant No. 1 has relied upon already registered Will dated 11.1.1984 having been duly executed by his paternal aunt namely Smt. Raj Kumari in his favour. To proceed further with the merits of this case, the circumstances which would ultimately guide the conscience of the Court to arrive at a conclusion that whether the alleged Will dated 28.12.2006 (Ex. PA) set up by plaintiffs is genuine or not, deserves to be taken care of. In this regard, the following peculiar circumstances in respect of Will dated 28.12.2006, relied upon by plaintiffs, are as under:-

(i) Admittedly, it is not the case of the plaintiffs that they have strained relationship with their mother-Prem Lata (defendant No. 2). Said Prem Lata after the death of Smt. Raj Kumari had moved an application to Estate Officer, UT, Chandigarh on 25.6.2007 (Ex.D1) seeking transfer of 50% share belonging to Smt. Raj Kumari in her favour being her only legal heir and had specifically mentioned therein that Smt. Raj Kumari had died intestate. To this effect, her affidavit Ex. D2 is also available on record. However, plaintiff no. 1- Dr. Vikash Gour moved another application dated 20.7.2007 before the Estate Officer for transfer of 25% share belonging to Smt. Raj Kumari in his favour on the basis of an unregistered Will dated 2.6.2007, though no such Will is on record. Had

such Will been in existence, then the mother of plaintiff No. 1 would not have mentioned in her application that Smt. Raj Kumari died intestate.

(ii) That it stands proved on record that late Smt. Raj Kumari was not even accepting Smt. Prem Lata to be daughter of late Amar Chand Sharma, that is why Smt. Prem Lata (defendant No. 2) had sought a declaration to this effect by way of filing a suit which was decreed vide judgment dated 5.3.1980 and aggrieved by the said judgment Smt. Raj Kumari had preferred an appeal as well. Therefore, it is highly improbable that once Smt. Raj Kumari was not accepting Smt. Prem Lata to be her daughter, then as to why she would bequeath her share in the suit property in favour of her sons vide Will dated 28.12.2006.

(iii) that the factum of collusion between plaintiffs and their mother (defendant No. 2) is apparent on record from the fact that despite service she chose herself to be proceeded against ex-parte and as such, did not dare to bring the true picture on record.

(iv) that a careful scrutiny of the evidence of the plaintiff no. 1 (PW1) reveals that he remained completely silent to the effect that who had scribed the Will dated 28.12.2006. In fact, it was scribe

who could have proved it on record that he had typed the contents of the Will on the dictation of its executant i.e. Smt. Raj Kumari, who had allegedly signed the same after understanding the contents thereof. Moreover, had it been genuine, the executant would have mentioned therein that the previous Will executed by her in favour of defendant no. 1 be treated as cancelled and that her last Will would prevail.

(v) that an attesting witness of Will dated 28.12.2006 namely Sh. Ashok Kumar had attested the indemnity bond dated 25.6.2007 Ex. D3 which was furnished by defendant no. 2 before the Estate Officer mentioning therein that Smt. Raj Kumari had died intestate, at the time of getting her share in the suit property transferred in her name. Meaning thereby if the Will dated 28.12.2006 was already in existence, then there was no occasion for Sh. Ashok Kumar, an attesting witness of the Will to attest the fact that Smt. Raj Kumari had died intestate.

(vi) that the second attesting witness of the Will dated 28.12.2006 namely Sh. Vishwa Mitter Sehgal was not examined by the plaintiffs and in fact defendant No. 1 proved an affidavit Ex. DW3/A through the testimony of Ms. Ramanjeet

Kaur (DW3), Notary, District Courts, Chandigarh whereby Vishwa Mitter Sehgal had sworn the said affidavit to the effect that he had signed the Will as witness at the request of Sh. Ramesh Dutt Gour (father of the plaintiff) and that Smt. Raj Kumari had not signed the Will in his presence nor she had accompanied Ramesh Dutt when he brought the Will for his signatures.

(vii) that once the execution of Will was disputed by the plaintiffs, it was the bounden duty of the appellants to have proved its due execution by getting the signatures of Smt. Raj Kumari, compared with her standard signatures from a handwriting and finger print expert so as to add authenticity to such document but this was not done.

The cumulative effect of the above mentioned unexplained circumstances shows that Will dated 28.12.2006 is surrounded by suspicious circumstances, which are quite strong to make execution of Will doubtful. It may also added here that in *Bharpur Singh v. Shamsher Singh*:2009 (1) R.C.R. (Civil) 826, the Hon'ble Apex Court held that when the Will is allegedly shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and defendant and that an adversarial proceeding in such cases becomes a matter of Court's conscience and propounder of the Will has to remove all

suspicious circumstances to satisfy that Will was duly executed by testator wherefor cogent and convincing explanation of suspicious circumstance shrouding the making of Will must be offered. It is not out of place to mention here it is fairly settled in law that once a party propound a Will, in that case, the said party has to prove the fact that the same is a legal and valid document and is the last testamentary of deceased. Here, in the instant case, the appellants have failed to dispel the aforesaid suspicious circumstances.”

10. The Lower Appellate Court has further proceeded in para-16 to assess and evaluate the evidence which has been led by the respondent-defendant No. 1-Naval Kishore, which, in the considered opinion of this Court, cannot be faulted with.

11. The judgments and decree, therefore, passed by the Courts below being in accordance with law do not call for any interference by this Court.

12. It may be added here that there are concurrent findings recorded by the Courts below and there being no question of law, which requires consideration of this Court, the present appeal, therefore, deserves dismissal.

13. In view of the above, the present appeal being devoid of merit stands dismissed.

September 02, 2020
pj

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No