

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-728-2013(O&M)

Date of decision: 03.02.2020

Kiran Bala and others

.....Appellants

Versus

Barkha Ram and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Sunil Panwar, Advocate and
Mr. Gopal Sharma, Advocate for the appellants

Mr. Santosh Sharma, Advocate for the respondents

ANIL KSHETARPAL, J.

The defendants-appellants have filed Regular Second Appeal against the judgment passed by learned First Appellate Court. Learned First Appellate Court has reversed the findings of the learned Trial Court.

In the considered view of this Court, following question of law arise for consideration:-

“Whether it is appropriate for the Court to discard a registered Will (Testamentary disposition) on the ground that it is surrounded by suspicious circumstances which do not have either the foundation or substance therein?”

Facts:-

Late Sh. Sadhu Ram was common ancestor of the parties to this litigation. Late Sh. Sadhu Ram initially married with Jatan Devi. Late Sh. Sadhu Ram was elected as member of Legislative Assembly

(MLA) for two terms. He was also a freedom fighter and Chairman of the Freedom Fighters Board. From the wedlock with Jatan Devi, two sons were born namely Sardara Singh and Barkha Ram. Jatan Devi is stated to have died. Late Sh. Sadhu Ram got purchased two separate parcels of land in favour of Sardara Singh and Barkha Ram, his sons through two sale deed, first dated 16.2.1959 with respect to land measuring 24 bighas and 19 biswas, whereas, second dated 18.3.1963 with respect to 73 kanals 7 marlas of land. In the aforesaid sale deed, half share of the land was purchased in the name of wife of Ganga Ram (brother of Sadhu Ram) and remaining half was purchased in the name of Sardara Singh and Barkha Ram. Sadhu Ram is stated to have married with Smt. Jawantri Devi after the death of 1st wife Jatan Devi. From second marriage, three sons namely Ram Niwas, Varinder Pal and Sushil Kumar and four daughters namely Santosh Kumar, Sudesh, Kusum and Rita were born.

Sadhu Ram is alleged to have executed a registered Will (testament) on 27.8.2003. He also executed a general power of attorney on the same day, authorizing his son Ram Niwas to act on his behalf by authorizing him to deal with the property in any manner. Ram Niwas as General Power of Attorney of Sadhu Ram executed two gift deeds one in favour of his mother Jawantri Devi with respect to land measuring 29 kanals 13 marlas, whereas second gift deed was executed in favour of two brothers and his own wife with respect to land measuring 89 kanals and 6 marlas.

Plaintiffs namely Sardara Singh and Barkha Ram filed the

present suit challenging correctness of the Will, the general power of attorney and the gift deeds. They claimed that the Will and general power of attorney are forged and fabricated documents. The plaintiffs, thus, claimed that as per natural succession they are entitled to share in the property.

Defendants contested the suit and pleaded that the plaintiffs have concealed the fact that Sadhu Ram had purchased the land referred to above in the years 1959 and 1963, in the name of Sardara Singh and Barkha Ram. It was further pleaded that the plaintiffs have been living separately for many years and they were not in touch with Sadhu Ram, their father.

The learned Trial Court after drawing the issues involved in the present case permitted the parties to lead evidence. Plaintiff No.2 Barkha Ram appeared in evidence as PW1 and admitted that Sadhu Ram, their father had got purchased two parcels of land, as noted above, in their names. He also admitted that his father was an important political leader in the politics of Haryana State and he was not only known in Tehsil Naraingarh but in the entire states of Punjab and Haryana. He also admitted that he was not present when Sadhu Ram was admitted in hospital or was discharged. He also admitted that since he has shifted from the village for quite some time, therefore, he does not know much facts. It may be noted here that Barkha Ram claimed that he is in legal profession (practising Advocate at Naraingarh since 1979). He admitted that in 1987 he shifted his residence to Naraingarh.

Defendants in order to prove their case examined Sushil

Kumar – DW 3 (son of late Sh. Sadhu Ram), Harbhajan Singh, attesting witness of the registered Will, the General Power of Attorney and gift deeds. Harbhajan Singh, Nambardar, has supported the case of the defendants and had proved execution and registration of the Will, the General Power of Attorney as well as gift deeds. Sh. Harbhajan Singh is Nambardar of village Kandaiwala where late Sh. Sadhu Ram used to reside. Tirlok Nath- File Restorer from Government Medical College, Sector 32, Chandigarh has been examined as DW3 to prove that Late Sh. Sadhu Ram was admitted in hospital on 7.8.2003 and discharged on 6.9.2003. He further proved that Sadhu Ram was granted permission to leave the hospital, for a short period between 3P M to 5:00 P.M on 27.8.2003. He proved Ex.D10 and D11, the certificates issued by the Government Hospital allowing permission to Late Sh. Sadhu Ram to leave the hospital. Parveen Kumar, scribe has also been examined as DW4. He is scribe of two gift deeds executed and registered on 29.8.2003. Kabul Chand has been examined as DW5 who has translated sale deed no. 163 Ex. D3. Gurcharan Singh, another marginal witness of both the gift deeds has been examined as DW6. Pardeep Kumar, scribe of the Will and General Power of Attorney has also been examined as DW7. He is a licensed document writer (scribe) and has produced copy of the note book proving entry of the Will and the General Power of Attorney, having been scribed by him. Jai Lal, another attesting witness of the Will and General Power of Attorney has been examined as DW8. Ram Niwas, registration Clerk from the office of Sub Registrar has been examined as DW9.

Learned Trial Court on appreciation of evidence found that the testament executed and registered by late Sh. Sadhu Ram is proved and it is not surrounded by suspicious circumstances. Trial Court also upheld the General Power of Attorney executed and registered by late Sh. Sadhu Ram in favour of his son. Consequently, the gift deeds dated 29.8.2003 were also upheld.

However, in appeal learned First Appellate Court has reversed the judgment and decree passed by the learned Trial Court while recording the following reasons:-

i) Defendants have not examined any doctor to prove that testator Late Sh. Sadhu Ram was conscious, alert and capable of executing the Will.

ii) The Will and General Power of Attorney have been executed on the same day i.e 27.8.2003, which create a suspicion.

iii) The photograph of attesting witness Harbhajan Singh is not among the photographs of the witnesses printed on the reverse side of papers on which the Will and General Power of Attorney are scribed and therefore, the presence of Harbhajan Singh at the time of execution of the document, is doubtful.

iv) After a gap of only two days, two gift deeds were executed by Ram Niwas on behalf of his father Sadhu Ram. No reason is forthcoming as to why Sadhu Ram himself did not execute the alleged gift deeds.

v) Son of the legatee- Ram Niwas was present at the time of execution of the Will.

This Court has heard learned counsel for the parties at length and with their able assistance, gone through the judgments passed by the Courts below and the record.

Learned counsel for the appellants on the one hand has submitted that the plaintiffs had concealed the fact that late Sh. Sadhu Ram has got property purchased in their names. Harbhajan Singh is Nambardar of Village Kandoiwala where Sadhu Ram used to reside. The Will is signed by three attesting witnesses and photographs of two out of the three attesting witnesses have been printed on the Will as well as on the General Power of Attorney. He further drew attention of the Court to the signatures of Harbhajan Singh, Nambardar in the presence of the Sub Registrar when the Will was registered. He, hence, submits that there can hardly be any doubt about the presence of Harbhajan Singh. He further submitted that Jai Lal, Advocate, another attesting witness of the Will as well as General Power of Attorney has also appeared in evidence and proved the execution and registration of the aforesaid document. He further submitted that two gift deeds executed were only to secure the interest of everyone as Sadhu Ram had expressed that although he had executed Will in favour of his three sons but since no provision has been made for Jawantri Devi, second wife, therefore, Ram Niwas should get some land transferred in the name of his wife Jawantri Devi. Accordingly, the gift deeds were executed, transferring land measuring 29 kanals 13 marlas in favour of Smt. Jawantri Devi. He, hence, submits that the judgment passed by the learned First Appellate Court is erroneous.

On the other hand, learned counsel for the respondents has submitted that Barkha Ram has appeared in evidence and has stated that he was regularly in touch with his father. He further submitted that a bare look at the photograph of late Sh. Sadhu Ram printed on the reverse page of the Will and General Power of Attorney will show that Sadhu Ram was not wearing spectacles at that time, although, Sadhu Ram used to wear spectacles regularly. He further submitted that Ex.D10 and D11, permission of the hospital to Sh. Sadhu Ram, to leave the hospital for two hours has not been proved. He further submitted that Jai Lal, the attesting witness has admitted that he used to sign the documents as told by the scribe. Hence, he is not an independent witness.

Let us first analyze the reasons given by the learned First Appellate Court. Non examination of the doctor is certainly a factor to take note of. However, in absence of examination of the doctor, it cannot be said that late Sh. Sadhu Ram is not proved to be mentally alert at the time when the alleged Will and General Power of Attorney was executed and registered. It may be noted here that on careful reading of Ex.D11, it is specifically written that the patient is fully conscious, but unable to walk. The aforesaid document has been proved through the evidence of Tirlok Nath, an official from the hospital, who recognized the signatures of the doctor. It has also come in evidence that Sadhu Ram was discharged from the hospital on 6.9.2003. Sadhu Ram died on 11.9.2003. As noted above, Sadhu Ram was an eminent person. He was an elected member of the Legislative Assembly twice over. He was in active politics. He was also a freedom fighter as well as Chairman of the

Freedom Fighters' Board. In such circumstances, merely because Sadhu Ram was admitted in the hospital and had come from the hospital to execute and get register the Will would not be sufficient to hold that the registered Will is surrounded by suspicious circumstances and , therefore, liable to be ignored, particularly, when the Will has been executed bequeathing the property in favour of his three sons. It is proved on file and admitted by Barkha Ram-plaintiff No.2 that Sadhu Ram had also purchased property in two different parcels in their names when they were minors. Thus, late sh. Sadhu Ram regulated distribution of his property. In these circumstances, the first reason assigned by the learned First Appellate Court is erroneous.

Second reason assigned by the learned First Appellate Court is equally erroneous. Once Late Sh. Sadhu Ram sought and was granted permission to leave the hospital for two hours, particularly, when he was diagnosed to be suffering from renal failure, the execution and registration of the Will as well as General Power of Attorney on the same day cannot be doubted. Obviously, Sadhu Ram, who was admitted in the hospital, wanted to make arrangement for managing his property, after he leaves this world. In these circumstances, the execution and registration of the Will and the General Power of Attorney on the same day does not give rise to any suspicious circumstance sufficient to ignore a registered Will.

Next reason assigned by the learned First Appellate Court that the presence of Harbhajan Singh is not proved as his photograph was not printed on the Will. It may be noted here that on careful perusal of

the Will, it is apparent that Will is attested by three attesting witnesses namely Ram Singh, Harbhajan Singh and Jai Lal. Harbhajan Singh and Jai Lal have appeared in evidence. Harbhajan Singh has also signed before the Sub Registrar at the time of registration. In these circumstances, it cannot be said that Harbhajan Singh was not present. Joint photograph of Ram Singh and Jai Lal has been printed in the box meant for photograph of the witnesses. Hence, presence of Harbhajan Singh at the time of execution and registration of the Will and General Power of Attorney is proved. The learned First Appellate Court erred in doubting the presence of Harbhajan Singh only on the ground that his photograph has not been printed. In the facts and circumstances of the present case, once photograph of two attesting witnesses has been printed, absence of photograph of Harbhajan Singh cannot be viewed with suspicion, particularly, when normally Will is attested by two witnesses.

Learned First Appellate Court has further erred in doubting the correctness of the gift deeds on the ground that the aforesaid gift deeds have been executed after two days of the execution of the Will and why Sadhu Ram himself did not execute the gift deeds. This aspect has to be examined in the context of facts and circumstances of the present case. It has come in evidence that Sadhu Ram was admitted in hospital and he was granted permission to leave the hospital only for two hours. In those two hours, he has got executed and registered the Will as well as General Power of Attorney. Once he had authorized to his son Ram Niwas to act on his behalf, the execution and registration of the gift deeds

through attorney cannot be viewed with suspicion.

Last reason assigned by the learned First Appellate Court that Ram Niwas was present at the time of execution and registration of the Will and he was the person who had arranged for transportation of Sadhu Ram from hospital to office of Sub Registrar, shows that Ram Niwas was taking care of Sadhu Ram. There is no evidence that Ram Niwas influenced the wish of Sadhu Ram. Sadhu Ram was not an ordinary person. He had seen the life. He had achieved a status in the society. In these circumstances, it would not be appropriate for the Court to assume that merely because his son was present at the time of execution and registration of the Will, Sadhu Ram could not exercise his free will and volition.

Similarly, argument of learned counsel for the respondent that Late Sh. Sadhu Ram was not wearing spectacles is to be noticed and rejected in absence of evidence to the effect that Sadhu Ram used to wear spectacles always even at the time of getting photograph clicked.

There is another aspect of the case which is required to be noticed. On 27.8.2003 Sadhu Ram has signed at four different places the General Power of Attorney as well as the Will in fluent English. His two photographs have been printed on the Will as well as General Power of Attorney. Keeping in view the aforesaid facts, the execution of the Will stands proved and it is not surrounded by any suspicious circumstance. The Court before declaring that a registered testamentary disposition is surrounded by suspicious circumstance, is required to critically analyze the evidence in the context of each case and thereafter record a finding on

this aspect. The Court has also to keep in mind the education, financial position and status of the executant in the society. In a given case with respect to a testator, who is illiterate and a rustic villager, the suspicious circumstances can be different from a Will by a person of high stature , sufficiently educated.

Accordingly, it is held that a registered testamentary disposition should not be ignored by the Court merely on the basis of alleged suspicious circumstances having no foundation or base.

Keeping in view the aforesaid facts, the judgment by learned First Appellate Court is set aside and that of learned Trial court is restored. Appeal is allowed.

03.02 .2020

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)**JUDGE**

Yes / No

Yes / No