

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4447-2014(O&M)
Date of decision: 21.01.2020

Balbir Singh and others
.....Appellants

Versus

Baljit Singh (since deceased) through LRs and others
.....Respondents

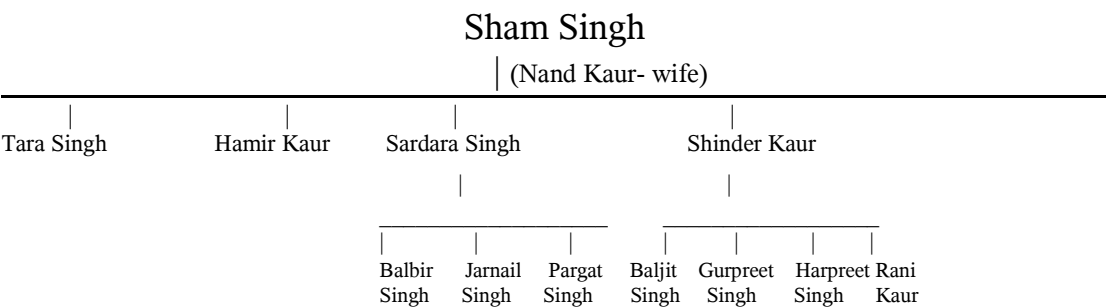
CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Aakash Singla, Advocate, for the appellants
Respondents no.1(a) to (c) proceeded against ex parte vide
order dated 13.7.2018.
Mr. Ashok Khunger, Advocate for respondent Nos. 2 to 4

ANIL KSHETARPAL, J.

Plaintiffs-appellants are in Regular Second Appeal against judgment passed by learned First Appellate Court reversing the judgment and decree passed by the learned Trial Court. The question which arises for consideration is that whether a duly registered testamentary disposition (Will) can be disbelieved by the Court on conjectures and surmises.

A small pedigree table would facilitate to understand the inter se relationship between the parties.



Dispute in the present case is with regard to a registered

Will, Ex.P-1 (testamentary disposition), executed by late Smt. Shinder Kaur/Chinder Kaur on 18.8.1989 in favour of plaintiffs, namely three sons of Sardara Singh. Smt. Shinder Kaur died on 31.7.2003. Through the Will she has bequeathed the property inherited from late Sh. Sham Singh (her father) to three sons of her brother-Sardara Singh.

Both the Courts on appreciation of evidence have found that execution and registration of the Will has been proved in accordance with law. In order to prove the execution and registration of Will by Smt. Shinder Kaur, Hardev Singh, one of the attesting witness has been examined as PW4 whereas scribe Jant Singh has also been examined.

It may be significant to note here that Smt. Hamir Kaur has appeared in evidence on behalf of the defendants and has stated that both the sisters namely Hamir Kaur-herself and Shinder Kaur had decided to give the property inherited by them from their father to the family of their brothers. She (Hamir Kaur) has transferred her share inherited from late sh. Sham Singh to Tara Singh whereas Shinder Kaur was to give her share in the property to Sardara Singh.

On careful perusal of the Will Ex.P1 it is apparent that the Will also has the photograph of the testator. On reading of the Will it is apparent that she has disclosed that she is having three children but she wants to give the land inherited from her father (late Sh. Sham Singh) to her brother-Sardara Singh.

Now let us examine the reasons given by learned First Appellate Court. First reason assigned by learned First Appellate Court to disbelieve a registered Will, is that no evidence has been led to prove

that the beneficiaries of the Will used to serve Smt. Shinder Kaur (their 'Bua'-sister of their father). It has been observed by the learned First Appellate Court that Smt. Shinder Kaur used to reside in Shri Ganganagar (Rajasthan) whereas the plaintiffs (her nephews) were residing in village Patti Kudo Jaitu Tehsil Jaitu, District Faridkot.

In the peculiar facts of the case, this Court is of the considered view that the First Appellate Court has erred. As noticed above, Smt. Hamir Kaur, the other sister of Smt. Shinder Kaur has specifically deposed that both the sisters had taken a decision to transfer their share of the property inherited from late Sh. Sham Singh (their father) to both the brothers and Smt. Hamir Kaur had herself transferred her share in favour of Tara Singh, one of the two brothers. In that context the reason recited in the Will is required to be examined. It is not the case of the defendants that she never used to come to residence of her brothers or the village to which she belonged. It is not unusual that daughters of the family, do transfer their share in the property inherited from their parents in favour of their brothers so as to keep the agricultural land intact. It has come in evidence that the family in which Smt. Shinder Kaur was married, was having sufficient agricultural land of their own. In these circumstances, learned First Appellate Court has erred in discarding a registered Will.

Second reason given by the learned First Appellate Court is equally erroneous. Learned First Appellate Court has observed that it has come in evidence that Smt. Shinder Kaur used to sign whereas the testamentary disposition bears thumb impression. The observation made

by the learned First Appellate Court is on the basis of statement of Smt. Hamir Kaur that Smt. Shinder Kaur was educated upto 3/4th class. The Court has also relied upon Ex.D-1, a Bank account opening form dated 4.7.1995. It may be noted here that apart from the Bank opening form, no other documentary evidence has been produced by the defendants, who are children of Smt. Shinder Kaur, to prove that she used to sign. Still further, on a careful examination of Ex.D-1, the account opening form, it is apparent that she could barely wrote her name in Gurmukhi (Punjabi). In these circumstances, learned First Appellate Court erred in returning a finding that Smt. Shinder Kaur used to sign. Still further, this aspect can be examined from another angle. In order to prove the account opening form, defendants have examined Bank official. The said Bank official has stated that Smt. Shinder Kaur did not sign in his presence. In these circumstances, it cannot be conclusively said that the bank account was in fact opened by Smt. Shinder Kaur.

Next reason recorded by the learned First Appellate Court is against facts. The learned First Appellate Court has observed that the reasons why the testator (Smt. Shinder Kaur) chose to disinherit her children have not been recited in the testamentary disposition. On careful reading of the testamentary deposition it is clear that she has got written in the Will that she wants to give her share of the property inherited from her father Late Sh. Sham Singh to her brother. Thus, the learned First Appellate Court has overlooked the reason clearly recited in the testament, for disinheriting her children.

Learned First Appellate Court has laid much stress on the

fact that why Smt. Shinder Kaur would travel to Jaitu from Sri Ganganagar to execute the Will particularly when she has not got written the name of her husband in the testament. It may be noted here that she belonged to Jaitu. No doubt, she was married and therefore, settled in Sri Ganganagar, after her marriage, sense of belonging to a place where she was born and brought up would never go. Therefore, it is not unusual that a daughter of a family would normally keep visiting the house of her parents house after marriage. Still further, merely because the executant did not disclose in the Will name of her husband would not itself be sufficient to make the Will doubtful, particularly, when she has disclosed the names of her three male children.

Next reason assigned by the learned First Appellate Court is that scribe did not know the executant or the attesting witness personally. Law does not require that a professional scribe must personally know the executant before scribing a Will (Testament).

Keeping in view the aforesaid facts, the question which has been framed in the beginning is answered in favour of the appellants. The judgment and decree passed by the learned First Appellate Court is set aside and that of the learned Trial Court is restored. Appeal stands allowed.

21.01.2020

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No