

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

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**RSA No. 2986 of 2018 (O & M)
Date of decision : 24.2.2020**

Gian Chand

.....Appellant

Vs.

Ashwani Kumar and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. PKS Phoolka, Advocate, for the appellant

Rajbir Sehrawat, J. (Oral)

This is the second appeal filed by the defendant in the original suit, challenging the concurrent judgments and decrees passed by the Courts below, whereby, the suit filed by the plaintiffs for declaring the plaintiffs as joint owners in possession of the suit property, to the extent mentioned in the head note of the plaint, as well as for declaring the Will dated 4.11.2019 as illegal, null and void; being a forged and fabricated document, has been decreed.

For the convenience, the parties hereinafter are referred to as the plaintiffs and the defendant, as they were described in the original suit.

The facts in brief, as mentioned in the judgment of the lower Appellate Court are that, the plaintiffs Ashwani Kumar and Mamta are the son and daughter of Kaushalya Rani. They had filed a civil suit stating therein that their mother was owner in possession of 1/36th share of the land measuring 377 kanals 11 marlas, 3 kanals 11 marlas and 9 marlas. Their mother expired on

17.12.2009. Therefore, as per the natural succession, the plaintiffs became the owners in possession of the suit property. However, the mutation qua inheritance of their mother Kaushalya Rani was not entered in their names in the Revenue records. Still further, it was asserted that during the hearing of a partition case, which was pending before the Assistant Collector Ist Grade, Talwandi Sabo, the plaintiffs came to know that after death of Kaushalya Rani, a mutation No. 6460 has been sanctioned in the name of defendant-Gian Chand; on the basis of a Will dated 4.11.2009, stated to have been executed by the mother of the plaintiffs-Kaushalya Rani. It was further asserted by the plaintiffs that their mother never executed any Will. She was an illiterate lady. She never signed any document and always used to put her thumb impression. However, the defendant forged the Will, which is shown to have been signed by Kaushalya Rani. This Will has been created to defeat the rights of the plaintiffs in the suit property. Hence, the declaration, as mentioned above, was sought.

To contest the suit, the defendant claimed the validity of the Will. It was asserted by the defendant that testatrix Kaushalya Rani had executed the Will in his favour out of love and affection. He had become owner in possession of the suit property on the basis of the Will. Therefore, the mutation was rightly entered by the Revenue Authorities. The plaintiffs have no right qua the property mentioned in the Will.

To prove their respective assertions, the parties led their evidence. After considering the evidence on file, the trial Court decreed the suit. The Will claimed by defendant Gian Chand was held to be suspicious and as not proved. Feeling aggrieved against the judgment and decree passed by the trial

Court, the defendant had preferred appeal before the lower Appellate Court. However, the lower Appellate Court has also dismissed the appeal filed by the defendant. Hence, the present appeal has been preferred before this Court.

Arguing the case, learned counsel for the appellant has submitted that the Will has been duly proved. The scribe Harmandeep Singh, Advocate has been examined as DW2. The other scribe Vijay Kumar has been examined as DW4. Attesting witness Purshotam Kumar has been examined as DW3. Therefore, the Will has duly been proved. Moreover, the Will is registered one, therefore, it carries the presumption of truth, unless proved otherwise. Still further, it is submitted that the Courts below have wrongly written that no explanation has been given in the Will as to why the plaintiffs were being excluded from the inheritance qua the property mentioned in the Will. Rather, the Will specifically mentions the reasons for excluding the plaintiffs from the suit property. It has been specifically mentioned in the Will that the plaintiffs had been given their due in other properties, therefore, the Will was being executed in favour of the defendant qua the properties mentioned in the Will. The Courts below have given unnecessary importance to the aspect that the testatrix has put signatures on the Will, whereas, on all the other documents she has put the thumb impressions. There is no bar that a person would not put signatures on one document and thumb impression on the other. Still further, it has been submitted that no other document has been produced by the plaintiffs to show that the testatrix was illiterate. Hence, the Will has wrongly been held to be suspicious on this count.

Having heard learned counsel for the appellant and having perused the file, this Court does not find any substance in the argument of learned counsel for the appellant. No doubt the appellant/defendant has examined the

attesting witness as well as the scribe of the Will, however, the fact remains that the attesting witness DW3 has admitted in cross examination that when he reached for putting signature, the Will had already been typed. The other witness, who is stated to be the scribe, though he has not the typist, DW4 Vijay Kumar, happens to be the son of the defendant/appellant only. Defendant himself had also appeared as DW5. He has also categorically admitted his participation in the preparation of the Will. Therefore, it is established from the record that the beneficiary of the Will participated in creation of the Will. His son also participated in creation of the Will. The only independent witness DW3 Purshotam Kumar, has admitted that the Will was already typed when he had gone to put his signatures. Therefore, the lower Appellate Court has not committed any irregularity in coming to the conclusion that the Will in question is surrounded by the suspicious circumstances.

The other factor which has come on record is that Will Ex.D1 contains the signatures of the deceased testatrix in Punjabi. Although the plaintiffs had claimed that their mother Kaushalya Rani was illiterate and she used to put thumb impression and not signatures, however, the defendant has not led any evidence to show that the testatrix Kaushalya Rani ever signed any other papers/documents. Even the pleadings of the plaintiffs that their mother was illiterate, has gone totally un-rebutted. On the other hand, the plaintiffs have placed on record the bank account record in the form of Ex.PW1/A to PW1/C, which shows that the testatrix used to put thumb impression everywhere. Even the record has been produced by the bank officials and they have also deposed that the testatrix used to append only the thumb impression and not the signatures. Therefore, the trial Court has rightly come to the

conclusion that there was no occasion or possibility for deceased Kaushalya Rani to put her signatures on the alleged Will Ex.D1.

Even the reading of the testimonies of the witnesses produced by the defendants give out the total inconsistency in their stand qua the place of execution of the Will, as well as qua the fact as to who, actually, had scribed and written the said Will. Still further, the plaintiffs happened to be only the son and daughter of the testatrix. Therefore, in natural course of things, there would be no reason for the testatrix to exclude them from her natural succession. Although learned counsel for the appellant has pointed out that a note has been given on the Will so as to explain as to why the plaintiffs were being excluded from the suit property, however, the said explanation also says only this much, that the son and daughter have been given their due in other properties. Needless to say, that the defendant is only the distant nephew of the testatrix, having no common interest in the suit property with her or with the plaintiffs. Therefore, there is no question of the son and daughter being given due share in other properties. The entire property of their mother is supposed to come to sons and daughters only; in the natural course of things. Hence, this reason, as mentioned in the Will, also appears to be fabricated one. Otherwise also, it has come on record that the Will in question is 4.11.2009. The testatrix expired on 17.12.2009, which is in close vicinity of the date of execution of the alleged Will. Thereafter, the Will is shown to have been registered on 4.10.2012, about 3 years after the alleged execution of the Will and after the death of testatrix. This also renders the entire sequence of facts as doubtful. Hence, on this count as well, the Will is surrounded by suspicious circumstances.

No other point was argued.

In view of the above, finding no merit in the present appeal, the same is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

24.2.2020
Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No