

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:15.1.2020

RSA No.630 of 2017 (O&M)

Surinder Kaur

---Appellant

vs.

Bihara Singh and another

---Respondents

FAO No.1300 of 2010 (O&M)

Surinder Kaur

---Appellant

vs.

General Public and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Sunil Agnihotri, Advocate
for the appellant

Mr. Lalit K.Sharma, Advocate for
Mr. Sunil Kumar Sharma, Advocate
for the respondents

Rekha Mittal, J.

CM No. 1365-C of 2017 in RSA- 630 of 2017

Prayer in this application is for condoning delay of 140 days in
refiling the appeal.

In view of averments made in the application supported by
affidavit of Mr. Sunil Agnihotri, Advocate, counsel for the applicant-
appellant and arguments advanced, application is allowed and delay of 140
days in re-filing the appeal stands condoned.

Disposed of accordingly.

Main case(s)

This order will dispose of FAO No. 1300 of 2010 and RSA No. 630 of 2017 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from RSA No. 630 of 2017.

The present lis pertains to estate left behind by Smt. Parsin Kaur wife of defendant-respondent No. 1 Bihara Singh. The appellant-plaintiff is the daughter of sister of Smt. Parsin Kaur. She has staked her claim to property of Smt. Parsin Kaur on the basis of registered Will dated 4.10.2004 purported to be executed by Parsin Kaur in her sound disposing mind who later died on 8.12.2004 and her last rites were performed at Mukerian.

The trial court framed issues, read thus:-

1. Whether deceased Parsin Kaur executed registered Will dated 4.10.2004 in favour of the plaintiff, if so its effect? OPP
2. Whether plaintiff is joint owner to the extent of share in the amount lying deposited in the joint saving bank account no. 14719 of Punjab and Sind Bank, branch Mukerian ? OPP
3. Whether the plaintiff is entitled to the declaration and injunction as prayed for? OPP
4. Whether the plaintiff has no locus standi to file the present suit? OPD
5. Relief.

The courts have negated plea of the appellant-plaintiff that she

is entitle to inherit to Smt. Parsin Kaur on the basis of testamentary succession. A relevant extract from judgment of appellate court reads as follows:-

25.The bone of contention inter se parties is the will alleged to have been executed by late Parsin Kaur in favour of appellant Surinder Kaur. It is on the basis of this will that she stakes the claim to the estate left by the deceased Parsin Kaur. The respondent have contested the succession application as well as suit filed for declaration that the will has not been executed voluntary it is case of misrepresentation and there were no reasons to have executed the will. So in these circumstances evidence brought on the file by the parties needs close scrutiny to find out as to whether the will has been proved in accordance with law or not.

26. The onus to prove this was on the appellant Surinder Kaur who is propounder of the will. She herself appeared in the witness box and deposed regarding execution of will in her favour. The scribe of the will namely Shiv Kumar Sharma was examined and Bal Kishan attesting witness of the will was examined.

27. I have carefully gone through the statements of these witnesses. The case of the appellant is that on the date alleged will was executed she and her husband did not come to tehsil complex and remained at home. This what she disclosed in her cross examination but perusal of the cross examination of the attesting witness of the will show the fact that Mohinder Pal Singh husband of the appellant is one of the witness to the will executed by Bihara Singh on the same day. So that takes away the case of the appellant that her husband did not come to the tehsil complex on that day. Even the witness Bal Kishan have deposed that he knew Mohinder

Pal Singh husband of the plaintiff and it was the plaintiff who told him regarding relationship between the plaintiff and Parsin Kaur. So that goes to show that propounder of the will has played very active role in the execution of the will. The most important evidence which is damaging the case of the plaintiff is that attesting witness have deposed in cross examination that he never met Parsin Kaur earlier and met her on the day of execution of the will. Hence, entire process was kept as guarded secret and for that reason neither Municipal Councillor nor Lambedar of the locality where Parsin Kaur was residing at that time was brought to identify her and the witness is not known to Parsin Kaur prior to that day. Credibility of the witness has also to be looked into and credibility goes with his admission that he was being paid for attestation of the will by the deed writer. So this goes to show that he is a person who previously attested the wills at the instance of the deed writer whether he knows the testator or not. So this court is of the considered opinion that the learned trial court has correctly disbelieved the deposition of this witness who goes to the extent of admitting the fact that he is being paid for attesting the will and he never knew Parsin Kaur prior to that day.

28. Although it is case of the plaintiff that as progeny of Bihara Singh from his first marriage were not looking after them, hence Parsin Kaur and Bihara Singh took shelter with them and they were being looked after by her and her husband, again there is no evidence to that respect on the file. The plaintiff has admitted in her cross examination that there is no ration card, voter card or any other document to show that Parsin Kaur and Bihara Singh resided with her and the reasons given by her is that there is no such document as she was residing at Bombay permanently. The onus was on the plaintiff to prove as to since when the testator started

residing with her and what sort of services she provided to them. The veracity of the statement of plaintiff also stands shaken when she deposes in her cross examination that another will dated 4.1.2005 executed in her favour was not known to her and the factum of this will has been brought to her notice by her husband on the day when she was deposing in the court on 3.1.2012. Now the copy of this will has been placed on the file as Ex.PY and it goes to show that alongwith another witness namely Gurcharan Singh and Darshan Singh the plaintiff Surinder Kaur herself is signatory to this document and her photograph also appeared on the same but she deposes that she was not aware of this and have been told by her husband Mohinder Pal on the day of deposition. There is no doubt that will is duly registered but as the law is well settled that mere registration of the will is not a conclusive proof of its due execution. It has been held in number of case by the superior court that even if will is registered one and suspicion is being raised it would be bounden duty of the propounder to dispel the suspicion. I take guidance from the case of Gurdial Kaur Vs. Kartar Kaur (Supra). Closeness of relationship interse plaintiff and deceased Parsin Kaur can also be looked into by going through the cross examination of Surinder Kaur in which she is not in a position to say as to whether Parsin Kaur was married earlier or not. In the cross examination she has deposed that she does not know whether Parsin Kaur was married earlier. She also does not know if Parsin Kaur had come from her matrimonial house after getting divorce or otherwise. She admitted that since the time of marriage of Parsin Kuar with the respondent Bihara Singh she always remained with him at Bombay. If that is the case then there was no opportunity available to the plaintiff to have served the testator. Either the plaintiff is concealing the facts by

feigning ignorance of the earlier marriage of Parsin Kaur or they were never having close relations or dealing with each other to know the personal affairs of each other. A person would bequeath his property only to someone who is although not his or her progeny but have extended services for sufficiently long time to the satisfaction of the testator and this factor could not be proved on record by Surinder Kaur.

29. This court is of the considered opinion that learned trial court has rightly appreciated these above said factors which are sufficient to create suspicions regarding due execution of the will voluntary and after understanding the contents of the will. The will is very solemn document and any doubt arising of any mala fide act in the execution of the same would cast doubt which would be sufficient to discard such document. It has also not come on the file that late Parsin Kaur was having any independent source of income. She was only a house wife. Any property or any amount deposited in the name of Parsin Kaur was by her husband Bihara Singh who is person who is contesting this will. So this court is of the considered opinion that when there was no dispute interse Bihara Singh and Parsin Kaur who had provided all the necessities to her and have purchased property in her name, so there arose no occasion at all to bequeath all the properties in the name of plaintiff. Hence, in these circumstances the will has been rightly disbelieved by the learned trial court. So this court does not find any reasons to interfere in the findings as recorded by the learned trial court. Even if the question of res judicata is kept aside, although this will has earlier also not been accepted by the learned District Judge when probate proceeding were started, after examining the evidence independently which has come on this file this court is of the considered opinion that

learned trial court has rightly rendered its opinion that such will cannot be believed. The reasons are cogent, such as plaintiff not coming with true facts and concealing her presence and the presence of her husband on the day of execution of the will which is being contradicted by the attesting witness Bal Kishan who deposed that it was the plaintiff who introduced Parsin Kuar to him and it has also come on the file that husband of the plaintiff was quite close and well known to the attesting witness and this factor is also being denied by Surinder Kaur. So these circumstances have been well appreciated by the learned trial court, hence finding no ground to interfere in the well reasoned judgment of the learned trial court, the same is upheld and affirmed and finding the appeal without any merit, the same is ordered to be dismissed. Decree sheet be prepared. Learned trial court record be returned along with copy of this judgment and appeal file be consigned.”

Counsel for the appellant has not made any submissions to dispute correctness of factual findings recorded by the appellate court extracted hereinbefore, either with regard to veracity of Sh. Bal Kishan, examined to prove the Will being one of the attesting witnesses or the circumstances shrouding genuineness of the Will in dispute.

I have gone through statement of Bal Kishan PW4 but find myself unable to differ with findings of the appellate court that testimony of Bal Kishan is not worthy of credence and reliance and can not be given weightage for proving the Will which is a sacrosanct document and needs to be proved by following a special procedure prescribed in law and cogent enough to satisfy conscience of the court that the same represents real wish of the testator as to how his/her property would be dealt with after his/her

departure from the world. In this view of the matter, I find myself unable to differ with consistent factual findings recorded by the courts nor the appellant has been able to make out a case that findings of the courts suffer from an error much less perversity or raise a question of law for determination in second appeal.

In view of what has been discussed hereinbefore, finding no merit, the appeals fail and are accordingly dismissed with costs.

(Rekha Mittal)
Judge

15.1.2020
paramjit

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