

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

**Regular Second Appeal No.1396 of 2020 (O&M)
Date of Decision: August 18, 2021**

Virender Singh

.....Appellant

VERSUS

Bhoop Singh (deceased) through his LR's and others

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE G. S. SANDHAWALIA

Present: Mr. Ajay Jain, Advocate
for the appellant.

(The proceedings are being conducted through video
conferencing, as per instructions)

G.S. SANDHAWALIA, J.(Oral)

The present appeal filed by defendant No.1 is directed against the concurrent findings of the Courts below at Rewari dated 10.12.2015 and 31.01.2020, whereby the suit for declaration and permanent injunction was allowed and it was held that the plaintiffs, defendant No.1 and proforma respondents are co-sharers in the land described in para No.1 of the plaint in terms of the registered will dated 01.06.1988. Accordingly, they were held entitled to incorporate their names in the revenue record and the subsequent will dated 15.01.1993 executed by Jai Ram deceased and the mutation sanctioned in favour of defendant No.1 exclusively was held to be not binding on the rights of the plaintiffs and proforma respondents. Defendant No.1 was also restrained from obtaining the compensation of the portion of the land acquired by Railway Department for new railway line for freight

corridor forever on the basis of said will.

Counsel for the appellant has vehemently argued that both the wills were registered documents and therefore, the Courts below were not justified in holding that the second will dated 15.01.1993 has not been proved, which is giving exclusive rights by revoking the earlier will dated 01.06.1988. The lower Appellate Court has held that the will propounded by defendant No.1 dated 15.01.1993 (Ex.DW1/1) is a suspicious document having surfaced on 04.07.2009 when the mutation was got entered by the present appellant/defendant No.1 on its basis. This Court is of the opinion that findings recorded do not require any interference for the reasons given below:

It is not disputed that Jai Ram on an earlier point of time by executing will dated 01.06.1988 (Ex.PW3/1) had bequeathed his property to the plaintiffs, defendant No.1 and proforma defendants. Earlier a civil litigation in the form of Civil Suit No.368 was instituted on 20.11.1987 by said Jai Ram against Abhay Singh etc. The said suit was dismissed on 28.05.1992 and an appeal was filed by Jai Ram on 04.05.1993. Thereafter, he died on 18.06.1995. On the basis of first will dated 01.06.1988, appellant herein joined hands to become one of the LRs of Jai Ram along with plaintiffs and other beneficiaries in the first appeal, which had been filed on 16.07.1992, which was also dismissed on 25.02.1997. The regular second appeal was also filed bearing RSA No.1870 of 1997 in May, 1997 before this Court, which is still pending. In the said appeal also, the appellant, as such, became the LR of Jai Ram along with others as an appellant and till then he did not hold out that he was beneficiary of the will

exclusively on the basis of second will dated 15.01.1993 regarding the property of Jai Ram, which he is now projecting as having been executed exclusively in his favour.

On 04.07.2009, he got the mutation of the land sanctioned exclusively in his favour by putting into force the second will, which led to the filing of the present suit on 22.08.2009. The original will dated 15.01.1993 was never produced in Court but the application for secondary evidence was allowed on 05.08.2014. The attesting witnesses of the will namely Bal Mukand and Ram Rikh Lamberdar could not be produced having expired. The appellant had examined Udai Singh son of Bal Mukand but since the will was marked by thumb impression, the deposition of this witness in support of the will that he identified the thumb impressions of his father is of no use.

In *Sadhu Singh v. Jagir Singh and others 2006(2) PLR 293*, it has been held by this Court that comparison of thumb impressions would not permissible as it requires a scientific study and therefore, the Court should not proceed to compare the thumb impressions and to come to any conclusion. Relevant portion of the judgment reads as under:-

“11. The learned trial Court has proceeded to compare the thumb impressions and concluded that the thumb impressions are not comparable. In my view, the comparison of thumb impressions, requires a scientific study and on the basis of comparison from naked eyes without any scientific basis, no finding could be returned that the thumb impressions are not of the same person. It was open to the plaintiff to examine any other expert to enable the Court to frame an opinion that statement of which of the Expert is believable. Dewan K.S. Puri a

known Finger Print Expert, has deposed that though the type and trend of the ridges are similar but definite opinion cannot be given. Therefore, the basis of statement of DW10-Dewan K.S. Puri, one can conclude that the thumb impressions have similarities but the no definite opinion could be given.”

It has also come on record that the appellant's knowledge is stated to be of the will in question from Krishan Kumar son of Net Ram, who is stated to be the relative of Bal Mukand, one of the attesting witness which was apparently after 16 years of the execution of the second registered will. The Courts below have noticed that Krishan Kumar is the real brother-in-law of Mahender, who was brother of defendant No.1/appellant.

It has also come on record that Bal Mukand witness also belonged to same village as to defendant No.1 and it is surprising that for the period from the date of death of Jai Ram in the year 1995, he did not inform the appellant that there was a registered will in favour of the appellant. Apparently on account of the acquisition of land by the Railway Department for the new rail line, the appellant/defendant No.1 got active as such, regarding the compensation of the land in question and to oust the other beneficiaries to have the benefits and set up the will which has been held to be executed in suspicious circumstances. The Appellate Court has rightly held that once there is a long delay in disclosing of existence of registered will of the property in question the onus as such to explain the delay lies upon the propounder which in the facts and circumstances is not explained.

Kaur 1977(1) SCR 925, held that there is heavy onus on the propounder of the will to satisfy the conscience of the Court, once the execution of the will is treated to be suspicious. The relevant portion reads as under:-

“In cases where the execution of a will is shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What, generally, is an adversary proceeding becomes in such cases a matter of the court's conscience and then the true question which arises for consideration is whether the evidence led by the propounder of the will is such as to satisfy the conscience of the court that the will was duly executed by the testator. It is impossible to reach such satisfaction unless the party which sets up the will offers a cogent and convincing explanation of the suspicious circumstances surrounding the making of the will.”

In such circumstances, this Court is of the opinion that the findings recorded by the Courts below are justified and there is no ground as such to interfere with the well reasoned judgments passed by the Courts below.

No substantial question of law thus arises for determination in the present appeal, which is devoid of merits and is dismissed in limine.

August 18, 2021

Sachin M.

**(G. S. SANDHAWALIA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No