

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2821 of 1993 (O&M)
Date of decision: 20.12.2022

Ram Piari (deceased) through LR ..Appellant

Versus

Faqir Singh and others ..Respondents

RSA-2822 of 1993 (O&M)

Ram Piari (deceased) through LR ..Appellant

Versus

Smt. Shanila Kumari and others ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Rupinder Kaur Thind, Advocate
for the appellant.

Mr. Keshav Pratap Singh, Advocate
for respondent no.1(i) and (ii) (in RSA-2822 of 1993)
for respondent no.4(i) and (ii) (in RSA-2821 of 1993)

Mr. Amarjit Singh Virk, Advocate
for respondent no.1 to 3 (in RSA-2821 of 1993)

ANIL KSHETARPAL, J(Oral)

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh, is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in **Pankajakshi (Dead) through LRs vs. Chandrika and others, (2016) 6 SCC 157.**

2. The correctness of the findings of fact arrived at by the First Appellate Court are being questioned by the plaintiff.

3. The dispute is with regard to inheritance of the property left behind by late Sh. Piare Lal Bhagat, a Punjab Civil Services Officer (PCS). Initially, he married late Smt. Ram Piari (plaintiff). However, due to their differences, Smt. Ram Piari started living separately and late Sh. Piare Lal Bhagat filed a divorce petition. Late Smt. Ram Piari also filed a petition for grant of maintenance. Thereafter, late Sh. Piare Lal Bhagat married Smt. Shanila Kumari. The couple was blessed with two daughters, namely, Smt. Monica and Smt. Sonika. Late Sh. Piare Lal Bhagat executed a Will dated 26.06.1986 bequeathing his entire property in favour of Smt. Shanila Kumar (his second wife).

4. On the one hand, the plaintiff claims that she being the widow is entitled to exclusively inherit the entire property. She further claims that late Sh. Piare Lal Bhagat never married Smt. Shanila Kumari.

5. In order to prove the execution of the Will, the defendant examined herself as DW1, attesting witness Sh. Dalip Singh as DW6 and scribe Sh. Ajaib Singh Hundal, Advocate, as DW5. The report of the Handwriting and Fingerprint Expert was also produced which was proved by examining the expert in evidence while giving an opportunity to the plaintiff to cross examine him.

6. The trial court disbelieved the Will on the following grounds:-

- (1) The Will is unregistered.
- (2) Sh. Dalip Singh is resident of village Thathian which is 25 miles away from the place of residence of late Sh. Piare Lal Bhagat.
- (3) The second attesting witness Sh. Ashwani Kumar, the brother of Smt. Shanila Kumari has not been examined.

(4) Sh. Sohan Singh, Advocate, who introduced late Sh. Piare Lal Bhagat to Sh. Ajaib Singh Hundal, Advocate, was not examined.

7. The First Appellate Court has reversed the findings of fact arrived at by the trial Court while dismissing the plaintiff's suit. That is how these two appeals have been preferred.

8. At the outset, it must be noticed that late Smt. Ram Piari died during the pendency of the suit. Sh. Waryam Singh and Sh. Kabul Singh etc. claim to be the legal representatives of late Smt. Ram Piari on the strength of the decree for specific performance of the agreement to sell of the disputed property obtained on 21.10.2008. Sh. Waryam Singh and Sh. Kabul Singh etc. are not related to late Smt. Ram Piari. Late Smt. Ram Piari had no right to the property particularly when in 1993, the First Appellate Court upheld the validity of the Will and declared that Smt. Shanila Kumari shall be the exclusive owner of the property. It is, thus obvious that Sh. Waryam Singh and Sh. Kabul Singh etc. are not entitled to represent the estate of late Smt. Ram Piari.

9. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book as well as the requisitioned record.

10. The learned counsel representing the appellant contends that the trial Court had given cogent reasons while disbelieving the Will. She submits that the First Appellate Court has erred in reversing the aforesaid reasoned findings. She further contends that the Will appears to be suspicious because there is irregular spacing in-between the lines of the Will. While referring to the opinion of the Handwriting and Fingerprint

Expert, she contends that the signatures of late Sh. Piare Lal Bhagat on the Will do not match with the standard signatures of late Sh. Piare Lal Bhagat on the sale deed and the previous divorce petition.

11. On the other hand, the learned counsel representing the respondents contend that the Will has been proved by examining the scribe DW5-Sh. Ajaib Singh Hundal and the attesting witness DW6-Sh. Dalip Singh. While drawing the attention of the Court to overwhelming evidence, the learned counsel contends that late Smt. Ram Piari was residing separately since 40 years before the Will was executed. The contents of the Will have been read over in the open Court. Late Sh. Piare Lal Bhagat has disclosed that he was previously married to late Smt. Ram Piari. However, due to differences, they have been residing separately for the last 40 years. It has also been disclosed that late Sh. Piare Lal Bhagat is giving regular maintenance @ Rs.200/- per month to late Smt. Ram Piari. Late Sh. Piare Lal Bhagat has also disclosed that he subsequently married to Smt. Shanila Kumari and from his lions, two daughters were born.

12. Late Sh. Piare Lal Bhagat was a gazetted officer. He had retired as Sub Divisional Magistrate. He knew the implications of the execution of the Will. His signatures on the Will are put with free flowing pen. Moreover, the execution of the Will has been proved by examining DW6-Sh. Dalip Singh. Though, opportunity was given to the learned counsel representing the plaintiff to cross-examine the said witness, however, he failed to impeach the credibility of the attesting witness. The statement of Sh. Ajaib Singh Hundal, Advocate, has also been read over in the open Court. He has also proved the Will. Despite searching questions being put to him by the learned counsel representing the plaintiff, he has proved the

Will and affirmed his stand.

13. Though, Sh. Dalip Singh was residing 25 miles away, however, he has explained that he and late Sh. Piare Lal Bhagat belonged to/ followed the same religious sect. In such circumstances, Sh. Dalip Singh is a natural witness. He is neither related to Smt. Shanila Kumari nor to late Smt. Ram Piari. Though, the trial court has drawn an adverse inference against the defendant as Sh. Ashwani Kumar, the other attesting witness was not examined, however, Section 68 of the Indian Evidence Act, 1872, requires examination of one witness only, provided he fulfills the requirement of Section 63(c) of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872.

14. It is well settled that the Will is not required to be mandatorily registered. The testator may get it registered, however, an unregistered Will has equal value and has to be proved in accordance with Section 68 of the Indian Evidence Act, 1872.

15. The trial Court has also erred in drawing an adverse inference on account of non-examination of Sh. Sohan Siongh, Advocate. He had merely introduced late Sh. Piare Lal Bhagat with the scribe Sh. Ajaib Singh Hundal, Advocate. Sh. Sohan Singh was not the attesting witness of the Will. Hence, he was not required to be examined.

16. The last argument of the learned counsel is with regard to the alleged irregular spacing. It may be noticed here that the Will is typed on a manual typewriter. The attention of the scribe or the attesting witness was never drawn to the aforesaid alleged irregular spacing. If the plaintiff wants to the Court to believe that there is irregular spacing, the plaintiff should have sought explanation from the scribe as well as the attesting witness. In

the absence thereof, it would not be appropriate to disbelieve the Will merely on account of alleged irregular spacing in-between the lines.

17. Keeping in view the aforesaid facts, there is no ground to interfere with the findings of fact arrived at by the First Appellate Court.

18. Hence, dismissed.

19. All the pending miscellaneous applications, if any, are also disposed of.

December 20, 2022
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(ANIL KSHETARPAL)
JUDGE

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>