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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 21.10.2022

Reserved on: 28.07.2022

1. RSA-3680-2007

Nachhattar Kaur and others	...Appellants
Vs.	
Satwant Singh Bhangoo and others	...Respondents

2. RSA-3681-2007 (O&M)

Nachhattar Kaur and others	...Appellants
Vs.	
Satwant Singh Bhangoo and others	...Respondents

3. RSA-1761-2008

Gurmeet Singh	...Appellant
Vs.	
Satwant Singh and others	...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Kanwaljit Singh, Senior Advocate with
Ms. Neha Anand Mahajan, Advocate
for the appellants (defendant Nos.4 and 5 in RSA-3680-2007),
for the appellants (defendant Nos.1 to 3 in RSA-3681-2007).

Mr. Munish Jolly, Advocate for the appellant
in RSA-1761-2008.

Mr. M.L.Saggar, Sr. Advocate with
Ms. Armaan Saggar, Mr. Rohit Joshi,
Mr. T.S.Sullar, and Mr. Sunny Saggar, Advocates
for respondent No.1.

MANOJ BAJAJ, J.

Appellants (defendants) have filed the above separate appeals to
challenge the judgment and decree dated 23.04.2007 passed by the First
Appellate Court, whereby judgment and decree dated 02.06.2005 passed in civil

suit No.28 dated 08.06.1993 by Civil Judge (Junior Division), Ludhiana dismissing the suit filed by plaintiff (respondent No.1) seeking declaration as well as permanent injunction, was reversed. The appellate Court while accepting the appeal by plaintiff also proceeded to dismiss the cross objection bearing Nos.3 and 4 filed by defendants.

Briefly, the facts of the case are that Satwant Singh Bhangoo (plaintiff) filed a suit for declaration claiming himself to be owner in possession of land measuring 76 kanals 17 marlas comprised in khewat No.381, 382, khatauni No.456, Rect.No.57, killa No.13, 14, 15 Rect.No.58, killa No.11, Rect.No.59 killa No.22/1, Rect. No.60, killa No.4, 5/2, 6, 15, 16/1, 16/2, 16/3, 25/1, situated at Mullanpur, who alternatively prayed for a decree for possession of the suit property, and as a consequential relief prayed for a decree for permanent injunction restraining the defendants from selling, mortgaging, gifting or alienating the suit property, or dis-possessing the plaintiff. As per the pleadings, Gurdev Singh s/o Narnajan Singh was the owner of suit property and after his death approximately 56 years back, it was inherited by his widow, namely, Surjit Kaur and mother, namely, Harnam Kaur in equal shares. Later, upon demise of Harnam Kaur, the suit property devolved upon Surjit Kaur. The plaintiff being cousin of Gurdev Singh (maternal uncle's son) was related to Surjit Kaur, who used to reside with the plaintiff in Calcutta or at his village Ayali Kalan, and he also used to visit Surjit Kaur at Mullanpur, where she was having her own house. As the plaintiff was serving Surjit Kaur, therefore, she had executed a registered Will in his favour on 04.08.1992 with her free and sound mind, which was registered in the office of Sub Registrar, Calcutta. Surjit Kaur was admitted in Dayanand Medical College and Hospital, Ludhiana on

04.02.1993, where she died on 05.02.1993. The defendant Nos.1 to 3, who are Surjit Kaur's brother-Harchand Singh, his wife-Mukhtiar Kaur and their son-Gurmeet Singh, respectively got executed three sale deeds relating to part of the suit property measuring 47 kanals 7 marlas in favour of defendant No.3. Through the first two sale deeds land measuring 16 kanals 0 marla, each was sold by Surjit Kaur against the sale consideration of Rs.1,80,000/- each, whereas land measuring 15 kanals 7 marlas was sold against sale consideration of Rs.1,73,000/-. According to plaintiff, Surjit Kaur was not in position to execute the sale deeds as she was unconscious and hospitalized for treatment, so the said instruments were forged by the defendants in connivance with Zora Singh (Numberdar) and Daljit Singh (attesting witnesses). Similarly, the Will dated 04.02.1993 allegedly executed by Surjit Kaur relating to her remaining land measuring 29 kanals 10 marlas, in favour of defendant Nos.4 and 5, namely, Birbal Singh (now deceased) and Surjit Kaur wd/o Nand Singh is also a forged document. The plaintiff came to learn about execution of these sale deeds and Will, when mutation of inheritance was entered in favour of defendants. The defendants are threatening to sell, mortgage, gift or alienate the land in dispute and despite the requests made by the plaintiff, regarding his claim in the suit property, they have refused to acknowledge the same, therefore, on this cause of action, he filed the suit seeking decree for declaration and injunction.

The defendants contested the suit by filing separate written statements. Defendant Nos.1 to 3 in their joint written statement raised preliminary objections relating to the maintainability of the suit, *locus standi*, lack of cause of action etc. and on merits, it was pleaded that Surjit Kaur never

resided in Calcutta or lived with plaintiff, as earlier she was residing at Mullanpur, but for the last few years, she started living with defendant Nos.1 to 3, who are her real brother, sister-in-law and nephew, respectively. Further, it was pleaded that the plaintiff is not related to Surjit Kaur and the Will dated 04.08.1992 propounded by him does not bear her thumb impression, and execution of the Will was disputed by claiming that she executed Will and three sale deeds in favour of the defendant Nos.1 to 3 on 03.02.1993. While denying the other averments in the plaint, it was prayed that the suit be dismissed.

The defendant Nos.4 and 5 also filed their joint written statement and raised similar preliminary objections regarding maintainability of the suit etc. and on merits, denied the averments contained in the plaint and in the end prayed for dismissal of the suit.

The plaintiff in order to controvert the stand of the defendants filed replication, who reiterated his stand contained in the plaint. Upon considering the pleadings of the parties, the trial Court in all framed nine issues, thereafter, the parties adduced their respective evidence. After considering the pleadings and evidence on record, trial Court dismissed the suit vide its judgment and decree dated 02.06.2005, by discarding both the Wills propounded by the rival parties, as well as sale deeds relied upon by defendants.

Aggrieved against the said judgment and decree dated 02.06.2005, the plaintiff preferred civil appeal bearing No.43 before Additional District Judge, Ludhiana, wherein both the sets of defendants preferred their respective cross objections bearing No.3 dated 16.07.2005, and No.4 dated 09.08.2005 under Order 41 Rule 22 CPC to challenge the findings returned by trial Court on issue Nos.5, 6, 7 and 7-A. The Appellate Court through the common

judgment and decree dated 23.04.2007 accepted the appeal filed by the plaintiff, whereas the cross objections filed by the defendants were dismissed.

Dissatisfied with the judgment and decree dated 23.04.2007 passed by the First Appellate Court, LR's of defendant Nos.4 and defendant No.5 have filed appeals bearing RSA Nos.3680-2007 and 3681-2007, whereas RSA No.1761-2008 has been filed by Gurmeet Singh (defendant No.3).

Mr. Kanwaljeet Singh, learned senior counsel appearing on behalf of appellants (Lr's of defendant No.4 and defendant No.5) has argued that Surjit Kaur lived her life at Mullanpur, District Ludhiana and died at Ludhiana, who had no occasion to go to Calcutta for executing the Will dated 04.08.1992 (Ex.P-1), which is propounded by the plaintiff. He further submits that neither the Will initially attached with the plaint bears the thumb impression of the testator, nor each part of the original Will contains her thumb impression. Learned senior counsel further argued that Surjit Kaur was an illiterate lady and the beneficiary of the Will or his nephew Jagdeep Singh (attesting witness) even did not attend her cremation.

Learned senior counsel has further drawn the attention of the Court to the depositions of attesting witnesses, namely, Mukul Benerjee (PW-3) and Jagdeep Singh (PW-4) to submit that Mukul Benerjee was not even aware of the relations between plaintiff and Surjit Kaur, who deposed that she was widow of plaintiff, and similarly, the other attesting witness Jagdeep Singh, who is nephew of plaintiff has admitted in his cross-examination that he does not know the contents of the Will. Learned senior counsel has argued that the original Will is at variance with the certified copy, and the photocopy attached with the plaint, therefore, it is surrounded with suspicious circumstances.

According to learned senior counsel, the valid proof as required under Section 63 Indian Succession Act, 1925 and Section 68 Indian Evidence Act, 1872 is missing, therefore, the trial Court had rightly discarded this Will, but the appellate Court has erroneously reversed the said finding by misreading the evidence.

According to learned senior counsel, the Will dated 04.02.1993 (Ex.D-4) propounded by defendant Nos.4 and 5 was validly proved in accordance with law by examining both the attesting witnesses-Daljit Singh (DW-1) and Zora Singh (DW-2), but the said Will has been discarded by both the Courts on untenable grounds by relying upon the evidence of PW-5 and PW-6. He further argued that the attesting witnesses of Will (Ex.P-1) have nowhere deposed that they signed the instrument at the instance or on the direction of the testator, which is mandatory requirement under Section 63 (c) Indian Succession Act, 1925. In support of his argument, learned senior counsel has relied upon decisions in "Sadhu Singh Vs. Gurdeep Singh and others passed in RSA No.5041-2011, Kanwaljeet Kaur Vs. Joginder Singh Badwal and others passe din RSA-5252-2012 and Janki Narayan Bhoir Vs. Narayan Namdeo Kadam, 2003 (1) R.C.R. (Civil) 409. He prays that the impugned judgment and decree passed by the First Appellate Court is not sustainable, therefore, the same be set aside, and the cross objections filed by appellants be accepted.

Mr. Munish Jolly, learned counsel appearing on behalf of appellant (defendant No.3) while adopting the arguments raised by senior counsel further argued that according to the Will (Ex.P-1), it was scribed by Sunil Kumar Danda, Advocate, but this witness was not examined. He has further pointed

that on the last page of this Will, where thumb impression of testator is seen, the expression "*by the pen of Jagdeep Singh*" would show that the attesting witness has signed in punjabi. He again refers to the deposition of PW-4, Jagdeep Singh to contend that this witness neither understands English nor can read it, therefore, the execution of Will becomes seriously doubtful. Mr. Jolly, learned counsel further argued that as per this witness, he knew the testator for the last three years, whereas his deposition is recorded in May, 1995, therefore, it would mean that he knew the lady since 1992, but, it is not believable that she would be going to Calcutta for executing the Will. Learned counsel has further pointed out that the thumb impression contained at the back of the first page of the Will is different than the thumb impression contained on the last page, therefore, the trial Court had given valid reasons to dis-believe the Will propounded by the plaintiff, but the Appellate Court erroneously reversed the said findings. Learned counsel further submitted that the plaintiff has not challenged the sale deeds, which were executed in favour of defendant No.3 by Surjit Kaur, but the said relief has also been granted to the plaintiff, who had not even affixed the requisite ad valorem court fee. He prays that the regular second appeal be allowed and the impugned judgment and decree dated 23.04.2007 be set aside and cross objections by appellant be allowed.

On the other hand, Mr.M.L.Sagger, learned senior counsel for the respondent has argued that the Will relied upon by the plaintiff is registered Will, which has been validly proved by examining both the attesting witnesses, who specifically deposed that they knew Surjit Kaur and she put her thumb impression in their presence. According to him, the argument raised on behalf of learned counsel for the appellants that the writing below the thumb

impression of the testator with the remark “*by pen of Jagdeep Singh*” is just an explanation in terms of procedure applicable in Calcutta, and it does not mean that it was written by Jagdeep Singh in his own hand writing. Learned counsel has submitted that the statutory provisions relating to the mode of proof of the Will have been complied with, therefore, the appellate Court has given valid reasons to reverse the findings of trial Court on the relevant issues. Mr. Saggar, learned senior counsel has drawn the attention of the Court to the depositions of PW-5 and PW-6 and submitted that Surjit Kaur was admitted in hospital on 04.02.1993 at 07.50 a.m. and died on the next day, therefore, there was no possibility for her to either execute the sale deeds or the Will. Mr. Saggar, learned senior counsel argued that the case set up by the defendants itself shows that they have fabricated these documents to deprive the plaintiff of his legitimate rights in the suit property. He prays that the appeals be dismissed.

After hearing learned counsel for the parties and considering the pleadings and evidence on record, this Court finds that the dispute between the rival parties pertains to the inheritance of suit property, which was previously owned by Surjit Kaur, wife of Gurdev Singh, and in order to prove their respective claims, the parties have relied upon the documentary evidence. The plaintiff has propounded the Will dated 04.08.1992 (Ex.P-1), whereas defendants have relied upon Will dated 03.02.1993 (Ex.D-4) as well as three sale deeds of the same date (Ex. D.7/1, Ex.D.7/2, Ex.D.7/3), which were registered on 04.02.1993. The trial Court after considering the material on record rejected the entire documentary evidence relied upon by both the parties and dismissed the suit of the plaintiff, but the appellate Court overturned the findings relating to the Will dated 04.08.1992 (Ex.P-1), and further held that the

instrument was validly executed in favour of the plaintiff. The findings delivered against the appellants by trial Court upon documents relied upon by them i.e. sale deeds and Will (Ex.D-4) were affirmed by the appellate Court.

Now before adverting to the merits of these appeals, this Court deems it appropriate to examine the provisions of law, which govern the execution of Wills and proof thereof. Section 63 Indian Succession Act, 1925 deals with the execution of Wills and the same reads as under:-

Section 63 in The Indian Succession Act, 1925

63 Execution of unprivileged Wills. —Every testator, not being a soldier employed in an expedition or engaged in actual warfare, [or an airman so employed or engaged,] or a mariner at sea, shall execute his Will according to the following rules:—

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction. (b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

A bare perusal of the above provision makes it absolutely clear that every testator is required to sign or affix his/her mark to the Will or it shall be signed by some other person in the presence and on the direction of the testator. This requirement is aimed to ascertain the intention of the testator to

give effect to such a testamentary document. Further, clause (c) of the above section contemplates that the Will shall be attested by two or more witnesses in the manner prescribed.

The issues relating to the proof of the Wills frequently keep on erupting before the Courts and the relevant provision as contained in Section 68 Indian Evidence Act, 1872 laying down the mandatory requirement for proving the Will, is extracted below:-

“Section 68 in The Indian Evidence Act, 1872

68. Proof of execution of document required by law to be attested.—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence: 1[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]

A reading of the above shows that where the propounder has relied upon a Will, it is mandatory for such a propounder to discharge the onus at least by examining one of the witnesses to prove execution of the instrument and in the absence of this requirement such a document shall not be used as evidence. Thus, the argument on behalf of the learned counsel for the appellants that as the attesting witnesses of Will (Ex.P-1) did not depose before the Court that they had signed the instrument at the direction of the testator, therefore, the instrument is not proved in accordance with the law, is without any merit. The Clause (a) of Section 63 Indian Succession Act, 1925 contains two parts and as per the first part, it contemplates that the testator shall sign or affix the mark on

the Will, whereas second part is an alternative to the first part, where some other person signs the instrument in the presence and direction of the testator.

In *Janki Narayan Bhoir's case* (supra), the Hon'ble Supreme Court examined Section 63 of Succession Act, 1925 and made the following observations:-

“8.To say will has been duly executed the requirements mentioned in clauses (a), (b) and (c) of [Section 63](#) of the Succession Act are to be complied with i.e., (a) the testator has to sign or affix his mark to the will, or it has got to be signed by some other person in his presence and by his direction; (b) that the signature or mark of the testator, or the signature of the person signing at his direction, has to appear at a place from which it could appear that by that mark or signature the document is intended to have effect as a will; (c) the most important point with which we are presently concerned in this appeal, is that the will has to be attested by two or more witnesses and each of these witnesses must have seen the testator sign or affix his mark to the Will, or must have seen some other person sign the Will in the presence and by the direction of the testator, or must have received from the testator a personal acknowledgement of signature or mark, or of the signature of such other person, and each of the witnesses has to sign the Will in the presence of the testator.

9. It is thus clear that one of the requirements of due execution of will is its attestation by two or more witnesses which is mandatory.”

In the above decision by the Hon'ble Supreme Court no such condition of affixing signature by the attesting witness on the direction of the testator, much less as a mandatory requirement has been held to be necessary to make the Will admissible in evidence. Therefore, this Court is of the considered opinion that the decisions relied upon by Mr. Kanwaljit Singh, learned senior counsel [in *Sadhu Singh's & Kanwaljeet Kaur's cases* (supra)] do not lend any strength to the case of the appellants.

At this stage, it would be relevant to briefly refer to the reasons adopted by the trial Court, whereby it discarded the Will (Ex.P-1) only on the ground that it is surrounded by suspicious circumstances and this instrument

was not rejected for lack of valid execution. The trial Court in the impugned judgment and decree has observed that the original Will (Ex.P-1) is different from the certified copy of the said Will (Ex.A-2), as well as the photocopy of certified copy (Mark A-1), because the thumb impressions of the testator are not reflected in the certified copy of Will and the photocopy. Apart from it, the trial Court observed that there was no reason for the testator to go to strangers for executing the Will in favour of the plaintiff, much less on 04.02.1993, because she had died on 05.02.1993.

Firstly, while examining the evidence on record, this Court finds that Ex.A-2, which is certified copy of original Will (Ex.P-1) is not copy of the original, but it is a certificate issued by registration office, therefore, it could not have contained thumb impression of either the testator or the attesting witnesses, as it carries expression “sd/-” at proper places to indicate signatures/thumb impressions of attesting witnesses and testator. A close analysis of the certificate (Ex.A/2) shows that it specifically mentions the fact that the witness (PW-4) had signed the Will in *gurmukhi* (Punjabi), so, expression “*by the pen of Jagdeep Singh*” cannot be attached any significance, much less construing it as handwriting of PW-4. The other argument by Mr. Jolly, learned counsel that since the plaintiff has not affixed ad valorem court fee upon the sale deeds relied upon by the defendants, therefore, the impugned decree is not sustainable is also devoid of any merit, because this argument is being raised and pressed only at the stage of second appeal, and apart from it, these sale deeds were never executed by plaintiff. Once the propounder of the Will has successfully discharged the onus by examining both the attesting witnesses in terms of Section 68 Evidence Act, 1872, then it was for the

defendants to rebut the said evidence. Here, it is also relevant to note that the Will (Ex.P-1) is a registered instrument, which carries presumption of correctness that the document is validly executed, therefore, if the defendants have questioned the Will on the ground of fraud, it is for them to adduce convincing evidence to rebut the said presumption, whereas in the present case, the defendants have failed to adduce any such evidence in this regard.

Further, the evidence adduced by defendants also shows that the relations between the plaintiff and the testator were admitted by Harchand Singh (DW-7), who also deposed that the plaintiff belongs to Village Ayali Kalan and is residing in Calcutta. Besides, Daljit Singh (DW-1) admitted during his cross examination that Surjit Kaur resided at Ayali Kalan and she also used to visit Calcutta. The other attesting witness-Mukul Benerjee is neighbour of the beneficiary (plaintiff) whereas, witness-Jagdeep Singh is nephew of the plaintiff, therefore, inference drawn by the trial Court that the attesting witnesses of Will (Ex.P-1) are strangers to the testator, is misplaced. The reasons given by the trial Court while holding that Will dated 04.08.1992 (Ex.P-1) is surrounded by suspicious circumstances is far fetched, as these inferences do not erupt from the evidence on record. Thus, Will (Ex.P-1), which is registered document has been proved by the propounder to establish its valid execution, therefore, the trial Court committed an error of law in holding that it is surrounded by suspicion.

In view of this discussion, this Court has no hesitation in holding that the appellate Court rightly exercised its jurisdiction in interfering with the findings returned by trial Court upon Ex.P-1 against the plaintiff, and the conclusion drawn by the appellate Court holding the Will dated 04.08.1992 as

valid, is based upon proper appreciation of evidence. Consequently, these findings do not warrant any interference by exercising jurisdiction under Section 100 CPC.

Now while examining the concurrent findings of both the Courts, whereby the documentary evidence relied upon by the defendants/appellants has been rejected, this Court finds that the trial Court as well as appellate Court have given justifiable reasons while rejecting the claim of the defendants. Admittedly, Surjit Kaur (testator) was hospitalized on 04.02.1993 at 07.50 a.m. and she died on 05.02.1993 and in this regard, the Courts have relied upon the evidence of PW-5 Jagdish Lal, Record Keeper at DMC, Ludhiana and Dr. Rajoo Singh (PW-6), who produced the admission report of Surjit Kaur (Ex.PW -6/2) and as per this evidence Surjit Kaur was examined by PW-6 on 03.02.1993 as outdoor patient, who advised her admission. As per the defendants, the Will and the sale deeds allegedly executed by Surjit Kaur were registered on 04.02.1993, but as per the medical record, testator Surjit Kaur was admitted in the hospital on 04.02.1993, where she expired on 05.02.1993. Thus, this evidence establishes that the claim made by the defendants relating to the valid execution of Will and sale deeds is not proved.

Resultantly, in view of the above discussion, this Court does not find any merit in these appeals, much less involvement of any substantial question of law, therefore, the appeals are dismissed. No costs.

(MANOJ BAJAJ)
JUDGE

21.10.2022

vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No