

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

**FAO No.1669 of 2013 (O&M)**

Date of decision: 28<sup>th</sup> February, 2022

Satish Gorowara & another

... Appellants

Versus

Rahul Arora & others

... Respondents

**CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH**

Present: Mr. Kshitij Sharma, Advocate for the appellants.

Mr. Amit Jain, Senior Advocate with  
Mr. Varun Prakash, Advocate for respondents No.1 & 2.

Mr. Gaurav Gogna, Advocate for  
Mr. Gaurav Mohunta, Advocate for respondents No.3 & 4.

None for respondent No.5.

Service of respondent No.6 – dispensed with.

Ms. Parminder Kaur, Legal Aid Counsel for respondent No.7.

None for the applicant in CM No.2587-CII of 2019.

**FATEH DEEP SINGH, J.**

Appellants Satish Gorowara and Sushma Sood have come up in this first appeal against order dated 17.12.2012 of the Court of learned Additional District Judge, Chandigarh whereby the Court below on the petition by the then petitioner Rahul Arora under Section 276 of the Indian Succession Act, 1925 (in short, 'the Act') had granted probate of the Will dated 22.07.1987.

Before venturing into the merits of the case of each of the parties, it is necessary to understand the factual background which has brought about this disenchantment between the family. In the light of

arguments addressed before this Court by the counsel for the two sides and is well emancipated from the records, one Hans Raj out of his wedlock with Tara Rani gave birth to two sons namely Baldev Raj and Tilak Raj, and two daughters namely Kamal Malhotra and Parmodh Sarin. Baldev Raj is reported to have died on 16.07.1996 and left behind his widow Satish Gorowara present appellant. Tara Rani is stated to be the owner of the property in question on the strength of sale deed dated 12.02.1962 and is alleged to have, as per the claim of the original petitioner grandson Rahul Arora, executed an unregistered Will dated 22.07.1987. It needs to be mentioned here that earlier, over a gift-deed dated 17.04.1971 the income tax authorities vide order dated 15.12.1978 had set aside the same and which side of the litigation is not essential to be considered here. It is also not essential to bring about that Ramna Kohli grand-daughter had filed cases against her grandparents as well.

Petitioner Rahul Arora claimed that being grandson of Tara Rani out of love and affection she had made this bequeath before passing away on 23.07.1991 and being the sole legatee was entitled to inherit the bequeath and hence the relief in question.

The original respondents No.2 to 5 have vociferously agitated the claim of the petitioner. Though it is claimed that the petitioner was fugitive and there was litigation with his estranged wife in India but nothing comes in the way of the present decision on that score. The petition has been filed by Rahul Arora through his father Tilak Raj claiming to be the holder of General Power of Attorney of his son and

which too is supposed to be supported by respondents No.6 to 8. The contesting respondents have alleged that the Will in question was neither legal, nor valid and operative and therefore, could not be put into operation and even denied right of Tara Rani to execute the Will and went to the extent of denying her ownership over the same and even contested the Will as well.

The lower Court framed the following issues:-

- i) Whether the petition is filed by a duly authorized person on behalf of petitioner? OPP
- ii) If issue no.1 is decided in favour of petitioner, whether petitioner is entitled for grant of probate in respect of property i.e. House No.230, Sector 21-A, Chandigarh? OPP
- iii) Whether the petition is not maintainable in the present form? OPR
- iv) Whether the petitioner has no locus standi to file the present petition? OPR
- v) Whether the Will in question is a forged and fabricated document? OPR
- vi) Whether the present petition is bad for non joinder and mis-joinder of necessary parties? OPR
- vii) Relief.

On behalf of the petitioner, Tilak Raj testified as PW-1 and examined Yatinder Sharma, Advocate Scribe of the Will as PW-2; Sudhir

Uppal attesting witness PW-3 and on the other hand respondent No.3 Ramna Kohli testified as RW-1 and examined Rajinder Malhotra Senior Assistant, Estate Office, UT Chandigarh as RW-2 while Amrit Lal Malhotra RW-3 testified on behalf of respondents No.7 and 8. It is consequent thereupon, the impugned findings were returned.

In view of the recent pronouncement in '**Kirodi (since deceased) through his LR vs. Ram Parkash & others**' Civil appeal No.4988 of 2019; SLP(C) No.11527 of 2019 decided on 10.05.2019, the Hon'ble Supreme Court has clearly held under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and Haryana, that there is no necessity of framing substantial question of law for disposal of an appeal.

Appreciating the submissions of the two sides, the first and the foremost question is over the validity and legality of the General Power of Attorney Ex.P1/A by virtue of which the son has authorized his father to file the petition in question and to testify. To the specific query of this Court, nothing material could be pointed out how the father has adverse interest to that of the petitioner son and simply because he is one of the proforma respondents in the light of one of the sons of Tara Rani does not mean or can be construed to be fatal to his claim being the lawful and authorized attorney of the petitioner.

Respondents No.7 and 8 before the Court below, who also happen to be the daughters of Tara Rani, have duly admitted the claim of the petitioner in their written replies, especially the admission of the Will

in question Ex.P1. It is well enunciated principle of law that it is for the propounder of the Will to remove all the suspicious circumstances surrounding the Will.

Scanning the evidence of the witnesses of the two sides, nothing could be pointed out by the counsel for the appellants Mr. Kshitij Sharma, Advocate to this Court as to any suspicious circumstance brought on the record. Though much stress is sought to be raised by the counsel for the appellants that the Will in dispute Ex.P1 is unregistered and therefore is in itself a suspicious circumstance, does not convince the Court much. It needs to be stressed here that by virtue of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872, the requirement of proof of a Will is the same as any other document and what is necessitated is to fulfill the requirements of Section 63 of the Indian Succession Act. In the present case, the scribe of the Will PW2 Yatinder Sharma, Advocate and attesting witness of the Will Sudhir Uppal PW3 have in no uncertain terms cleared all the cobwebs that might be clinging on to this document. In the light of the law laid down in '**Madhukar D. Shende vs. Tarabai Aba Shedage**' 2002 AIR (SC) 637, the very factum that Tara Rani had executed the Will in question in a sound disposing mind, cannot be put to doubt by any means and by all means is shown to have been duly executed by her. Since in the present case, the petitioner propounder of the Will had led sufficient evidence to adduce prima facie that the testator at the time of execution of the Will was in a sound disposing mind and had done so voluntarily on

her own free will and accord, the onus certainly shifts upon the objector to this Will and there is nothing brought on the records which could be of any beneficial aid to the appellants/objectors. Since as per Section 2(h) of the Indian Succession Act, the very meaning assigned to Will is a legal declaration of the intention of a testator with respect to his/her property which he/she desires to be carried into effect after his/her death; and therefore, underlines four necessary things as to declaration of an intention; declaration in respect of the property; and that it would operate after the death of the testator besides the fact that the testator has the power to revoke such a document any time before his/her death.

The essential requirements that the Will has been scribed by a legal expert, had been signed by two attesting witnesses in the presence of the testator and each of them signed in the presence of each other and therefore, in the absence of any adverse circumstance needs to be given effect to. It needs to be reiterated here that a Probate Court cannot go into the very question of title of a property, subject matter of the Will, and what it has to see is the very legality and validity of a Will. Whether the bequeath was good or bad, is beyond the scope of a Probate Court.

As has been argued before this Court that the Will does not refer to in detail the progenies of Tara Rani and the reasons why she was making the bequeath in favour of grandson to the exclusion of others, is an element of discretion and voluntariness of the executant and who may feel as he likes and cannot be restrained from making the bequeath even to a third party ignoring the heirs. The very cross-examination of Ramna

Kohli RW-1 leaves no scope to doubt that she admits in her evasive replies that all of them were fully aware of the execution of the Will and having kept quite over a period of time by not challenging the Will, are matters which go adverse to the interest of the objectors to this Will. Moreover, the argument that is sought to be raised with much elance by learned counsel for the appellants that the learned Court below did not consider the claim of the appellants/objectors as to the petition being barred by limitation, does not cuts much ice as neither any issue has been framed nor such a point was raised before the Court below during the contest by the appellants/objectors and now at this belated juncture cannot be allowed to claim so. More so, in the light of the fact that there is nothing brought before this Court by the appellants side to show how the petition was barred by limitation and by what context it is barred by virtue of Article 137 of the Limitation Act, 1963.

An application for grant of probate or letters of administration or seeking succession certificate in view of the law laid down in **1991 (1) KLT 62** in the case of '**Francis v. Antony**' cannot be rejected at the threshold by invoking Article 137 of the Limitation Act, 1963. Even in the case of '**S Rajan vs. State of Kerala and another**' **AIR 1992 SC 1918**, the Apex Court had observed that the period of limitation of three years would arise only from the date when the right to apply accrues when the differences arise between the parties and has held it to be a question of fact to be determined in each case and therefore such a plea is of no legal consequence at this juncture.

It is not displaced that the children of Baldev Raj deceased son of Tara Rani had already been contesting various litigations with their grandmother Tara Rani in the light of submissions of the respondents and therefore, is one of the reasons which could have led the executant to make bequeath in favour of his other grandchild.

Learned Court below has given a well reasoned finding appreciating each and every part of evidence and claim of the parties and has returned judiciously balanced and correct findings on the various points and has rightly concluded that the petitioner has successfully proved the execution of the Will as per the provisions of law. The order as such needs to be upheld and there being no merit in the instant appeal the same stands dismissed.

**(FATEH DEEP SINGH)**  
**JUDGE**

**February 28, 2022**

*rps*

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |