

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

FAO 5306 of 2015 (O&M)

Date of Decision: January 13, 2022

Kuldeep Kaur

...Petitioner

Versus

Rajeshwari and others

... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Chetan Mittal, Sr. Advocate with
Mr. Kunal Mulwani, Advocate
for the appellant.

Mr. Rahul Sharma, Advocate
for respondent No. 1.

Service qua respondents No. 2 and 3 dispensed with
vide order dated 29.09.2021.

FATEH DEEP SINGH, J. (Oral)

The matter has been taken up through Video
conferencing on account of outbreak of pandemic COVID-19.

This first appeal is against an order dated
31.03.2015 of the Court of learned Additional District Judge
SAS Nagar Mohali passed in petition under Section 278 of the

Indian Succession Act (in short, '**the Act**') for the grant of probate of Will dated 14.11.2004 (also at places depicted to be 24.11.2004). It has come about by Kuldeep Kaur as executor of the Will whereby her petition before the Court of learned Additional District Judge stood dismissed.

Heard Mr. Chetan Mittal, Sr. Advocate assisted by Mr. Kunal Mulwani, Advocate for the appellant and Mr. Rahul Sharma, Advocate for respondent No. 1 and perused the records.

Before venturing in the very merits of the case of the parties it is first necessary to retrace the history of this *lis* and how it has come about. One Surjan Singh Sandhu (now deceased) was married to Kuldeep Kaur present appellant then petitioner out of which the couple have been bestowed with two sons namely Mandeep Sandhu, Pawandeep Sandhu (also referred to as Pawandeep Singh Sandhu) and a daughter Ritu. The present imbroglio is over the estate of Pawandeep Sandhu who was as is disputed by the mother was a bachelor but

claimed by respondent Rajeshwari (also referred to as Rajeshwari Devi) to be married with her. However, he was not having any child. Admittedly, Pawandeep Sandhu died on 18.01.2005 in a hospital at Delhi and his cremation took place on 19.01.2005 at Chandigarh. It is subsequent thereto a dispute has erupted between the family of the deceased and Rajeshwari. It is own stand of Rajeshwari that she was earlier married to one N.V. Shah (also referred to as N.V.Singh) out of which she was having a son and a daughter. Rajeshwari claims that she and N.V. Shah got dissolved their marriage through a mutual decree of divorce on 17.10.1994 in a Court at Chandigarh. The claim of respondent Rajeshwari is that, thereafter, she remarried Pawandeep Singh (now deceased) on 26.04.1996 and, thus, at the time of death of Pawandeep Singh they were husband and wife. On the other hand, the family of the deceased Pawandeep Singh alleges that though Pawandeep Singh was involved with Rajeshwari Devi who was 10 years senior to him in age but there was no relationship of

husband and wife nor there was a legal, valid and subsisting marriage between them nor any child was born from this arrangement and has simply termed it to be an amorous relationship.

It is when the mother Kuldeep Kaur appellant filed a petition under Section 278 of the Act seeking grant of probate of a Will dated 14.11.2004 it dawned upon Rajeshwari that this Will was an outcome of forgery, fabrication and, thereafter, she filed a complaint dated 06.02.2006 before the police and as an outcome FIR No. 36 dated 09.03.2006 under Sections 467, 468, 471 and 120-B IPC was got registered with Police Station Sector 3 Chandigarh. The said case was got registered against appellant Kuldeep Kaur Sandhu (mother) Jasdeep Sandhu and Banta Singh and others.

In her petition Kuldeep Kaur claims that being the mother, she was the sole legal heir to the estate of the deceased son and in this Will the brother of deceased i.e. respondent No. 2 Mandeep Sandhu was nominated as executor

and thereby claimed that the entire bequeath by the deceased has been made in favour of beneficiary by virtue of this Will which was last valid Will of the deceased and had been duly executed and attested by the witnesses and, therefore, claimed the bequeath of estate in terms of this Will for which probate in question has been sought.

The main opposition to this petition has come about from then respondent No.4 Rajeshwari now respondent No. 1. The primary ground is that the family of the deceased was fully aware of the fact that a legal and valid marriage has come about between Pawandeep Singh Sandhu and Rajeshwari and they were living as husband and wife and on account of cohabitation between them claimed that she was also a heir to the estate of the deceased and strongly denied that deceased ever executed a Will during his lifetime. What this respondent has alleged is that the signatures of the deceased on the alleged Will and other documents have been forged and fabricated by his family who are abettors and conspirators in fabricating this document

in active connivance of Lt. Colonel Jasdeep Sandhu and Banta Singh alleged witnesses of this forged Will. It is further claimed that probate petition is not in accordance with law and the provisions of the Act as well as High Court rules and orders and denied the jurisdiction of the Court to entertain, try and decide the matter.

She has claimed one half share in the entire estate left behind by the deceased and, therefore, on the strength of the same claiming that she has got registered an FIR for this forged Will and sought dismissal of the petition.

Replication was of usual reiteration.

The Lower Court framed the following issues:-

1. Whether Sh. Pawandeep Sandhu son of Sh. S.S. Sandhu executed a Will dated 14.11.2004 in favour of petitioner? OPP.
2. Whether this Court has no jurisdiction to entertain the present petition? OPR.
3. Whether petition is not maintainable? OPR.

4. Relief.

On behalf of the petitioner, she examined AW1 Satish Kumar Soni, AW2 R.B. Singh, AW3 Sukhwinder Singh, Ahlmad, AW4 Pawan Kumar Shanke, Clerk-cum-Cashier, Allahabad Bank, AW5 Satpal Singh, Officer Canara Bank, AW6 Kuldeep Kuar, petitioner herself, AW7 Lt. Colonel Jasdeep Sandhu and AW8 N.K. Jain, Handwriting and Finger Print Expert and thereafter closed the evidence.

On behalf of the respondent, Rajehwari herself stepped into the witness box as RW1 and examined Gurinder Dhillon as RW2, Tarsem Singh as RW3, Jatinder Singh as RW4, Debashish Adhikari as RW4 (*sick*), Vishvnath as RW5, Bhagwant Singh as RW6, Parveen Kumar Verma as RW7, Devendra Prasad as RW8, Om Parkash as RW9, Vikram Bhagwan also as RW9 (*sick*) and Ajay Sikka as RW10 and, thereafter, closed the evidence.

It is through the impugned findings petition of the present appellant stood dismissed and that is how parties are

before this Court.

Appreciating the arguments of the two sides in light of the evidence on record, oral as well as documentary. Under the law the disputed Will Ex. PW7/1 is an unprivileged Will which is an unregistered document. Section 63 of the Indian Succession Act deals with the execution of a Will and as per the requirements enumerated therein, the Will need not be in writing. Testator should sign or affix his mark to the Will or it should be signed by some other person in his presence and by his direction. The signature or mark should be fixed to appear that it was intended thereby to give effect to the writing as a Will and further for purposes of attestation of the Will it should be attested by two or more witnesses each of whom has seen the testator or other person sign or affix the mark as the case may be or has received any personal acknowledgement from the testator himself. Thus, from this it is amply clear that it is settled law that a Will need not be registered and, therefore, mere non-registration of a Will as is sought to be agitated by the counsel

for the respondent is well unwarranted. Moreover, the trial Court in its own findings accept and concede the fact that both the attesting witnesses have duly proved the factum of execution of Will especially in para No. 14 of judgment states that bonafide of testimony of PW7 has not been shattered. The attesting witness of the Will AW7 Lt. Colonel Jasdeep Sandhu has fully corroborated and detailed the manner of its execution; the testimony of AW8 N.K. Jain, Hand Writing and Finger Print Expert further lends credence to this and proves that the Will was signed/thumb marked by the testator.

The learned Lower Court in the impugned findings before this Court has gone astray and has rather tried to express its findings and opinion upon the very legality and validity of marriage of Rajeshwari Devi with the deceased which was unnecessitated. The affect of probate of a Will is that when granted it establishes the Will from the death of testator and runs valid of nominated acts of the executor as such and therefore can only be granted to an executor appointed by the

Will which in the present case is none but the appellant Kuldeep Kaur. More so, under the Act which is a self contained code the probate proceedings needs to be conducted as per the manner provided in the Act and no other way for which Part IX of the Act deals with it. It is well settled law that a probate Court cannot go into the question of title and its function to see if in the probate proceedings that the Will has been duly executed and whether the testator at the relevant time was in a sound and disposing state of mind. If so, whether the testator had understood the nature of such disposition and put his signatures on his own free will and volition. It needs to be addressed here that question to a particular declaration whether is good or bad is not within the purview of the probate Court and, therefore, the very contents of the Will cannot be gone into under such proceedings. Though with much fanfare it has been sought to be set up in the pleadings and arguments by the counsel for respondent that there is non-fulfilment of the requirement of Section 276 of the Act does not impresses the Court much as

the only requirements that are of utmost necessity is the production of the original Will or under exceptional cases as laid down in Sections 237 to 239 of the Act can be lead by way of copy of Will annexing a statement dealing the time of the testator's death and the factum of his last Will and testament and it was duly executed with the wishes of the executant and that the applicant is executor named in the Will.

To the specific query of this Court, it could not be pointed out by any objectors to this how there has been a remiss in these requirements in the present case. Though much time has been devoted by the Court below on adjudicating the very validity of the marriage between the two but sad to observe that it is own case of Rajeshwari Devi that she was earlier married to one N.V. Shah from whom she claims to have obtained a decree of divorce by mutual consent on 17.10.1994. However to prove legal and valid marriage necessary ingredients of valid marriage needs to be proved. Section 5 of Hindu Marriage Act 1955 is reproduced as below:-

5. Conditions for a Hindu marriage.--- A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:-

(i) neither party has a spouse living at the time of the marriage:

(ii) at the time of marriage, neither party----

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insanity

(iii) the bridegroom has completed the age of [twenty one years] and the bride, the age of [eighteen years] at the time of the marriage:

(iv) the parties are not within the degrees of

prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

Further Sections 7 and 8 of this Act enunciates the ceremonies for a Hindu marriage. No doubt deceased was a 'Jat Sikh' and Rajeswari a 'Hindu' but both are covered under Hindu Marriage Act which ensures that for a valid marriage legalization has to be proved as per the customary rights and ceremonies applicable to either of the parties. Though in terms of Section 8 registration of Hindu marriage is desirable for facilitating the proof of marriage and for which Rules have been made and Hindu Marriage register has been provided but no such proof is forthcoming from the evidence on record. The claim to have remarried with Pawandeep Singh on 26.04.1996 and the mere semblance of evidence is nothing but photographs Ex. R-3 to

Ex. R-9 and even the certificate of marriage purported to have been issued by a Gurudwara Sahib shows that as per the testimony of its President RW3 Tarsam Singh Granthi and accepts that the certificate Ex. RW3/A has been issued by the President of the Gurudwara and the entry Ex. RW3/A (R-2) but the same is not duly reflected in the records of the Gurudwara certainly creates doubt. However, this Court is not much concerned over this aspect of the matter. The very requirement of a probate is the very proof of due and valid execution of the Will in question.

Reverting back to the instant case, the testimony of AW6 Kuldeep Kaur especially her cross-examination states that deceased did not held any property in his personal name and both the mother and the son were joint holders of a property at Ludhiana details of none of these properties except of their value to be of Rs.4802332.93/- have been enumerated in the evidence of the parties. No doubt Kuldeep Kaur falls under class-I heir of the schedule under the Hindu Succession Act

1956 well elaborated in her testimony as PW6/A and who has proved the death certificate of Pawandeep Singh Sandhu as PW6/1 and claims that she is the sole heir of the estate of the deceased. The Will is stated to have been attested by two witnesses Lt. Colonel Jasdeep Sandhu and Banta Singh. The attesting witness Lt. Colonel Jasdeep Sandhu as AW7 has reiterated through his statement AW7/A that Will was read by Pawandeep Singh Sandhu in the presence of these witnesses and other marginal witnesses Banta Singh and it is thereafter Pawandeep Singh Sandhu signed and thumb marked the Will in the presence of two marginal witnesses including this witness and it is thereafter he had signed the Will as a attesting witness and so Banta Singh in very presence of Pawandeep Singh Sandhu has detailed that Banta Singh and other attesting witnesses has thumb marked the Will and all these acts were done by the executor and the testator in the presence of each other and that the executor at that time was in a sound disposing mind and there was no pressure, coercion of any sort

upon him and Will was executed upon his free will and accord and has proved the Will Ex. AW7/1. This witness has further explained that an explanatory note was too appended with the Will and which too was attested by the witnesses in the same manner and signed by the executor after understanding the contents and has proved the same as AW7/2 and has detailed that Pawandeep Singh Sandhu had died of liver failure.

The very cross-examination of this witness does not illustrate anything favorable for the case of the respondents and the learned counsel could not bring-forth anything which could be of any help. Furthermore, the evidence of Rajeshwari Devi in her cross-examination shows that in her affidavit by way of examination-in-chief RW1/A she does not depicts herself to be the widow or wife of deceased Pawandeep Singh Sandhu and further accepts that she is unaware who got admitted Pawandeep Singh Sandhu in the hospital and later on she came to know from Mandeep brother of Pawandeep Singh Sandhu through telephone and subsequently at a later stage about the

factum of death and got it verified from her friend and the most important admission in her cross-examination is that when she accepts that in her examination in chief RW1/A she had mentioned that some blank papers with thumb marks were used to prepare and forge the Will and invariably accepts that some thumb impressions/signatures of the deceased were obtained on the blank papers and, therefore, in terms of Sections 102 to 106 of the Evidence Act, onus shifts upon her to establish it that Will Ex. PW7/1 was not a voluntary act of the deceased and were obtained during his life time and subsequently prepared into a document and regarding which no evidence is forthcoming as is sought to be argued by the counsel for the appellant. Furthermore, she accepts in her cross-examination that she does not remembers the dates and months that when Pawandeep Singh Sandhu remained admitted in hospital and was unaware of the fact that when immortal (*sick*) of Pawandeep Singh were collected from the cremation ground and for details she was kept in dark regarding cremation by his

family and therefore is illustrative to cast a doubt over her veracity of the relationship being purely of husband and wife and has failed to enumerate the details of the property of the deceased and furthermore accepts that she was not aware of the financial and property matters of the deceased and has stated that she heard that "Bhog Ceremony" was performed in Gurudwara Sahib in Sector 34 Chandigarh rather is a distressing evidence to the case of Rajeshwari Devi. What one can decipher is that the explanatory note to the Will Ex.PW7/2 has detailed the reasons why Rajeshwari is being denied the bequeath and who already had two children and though it is claimed they stayed together for some time and their relationship did not last long and was full of painful moments and thereafter he came to know about this relationship feeling that he has been used by Rajeshwari Devi and which scar has not healed and during his ill health Rajeshwari Devi did not bother to enquire or check upon him and has given reason why he has bequeathed his estate in favour of beneficiary of the Will

and, therefore, is a sound reason to exclude Rajeshwari Devi from the benefits of the Will.

As has been argued by counsel for the respondents by citing **Jaswant Kaur Vs. Amrit Kaur, 1977 PLJ 54** that heavy onus lies on the propounder of the Will to explain especially circumstances surrounding the Will but at the same time the onus to prove that this Will was an outcome of forgery and fabrication lays upon Rajeshwari Devi who has taken up this plea in terms of Sections 102 to 106 of the Evidence Act. The ratios **Surjit Singh Vs. Nanak Singh 2009(5) R.C.R. (Civil) 191** and **Madan Lal Vs. Om Parkash 2011(1) Law Herald 652** cited are not applicable to the case in hand.

And since in the light of the submission of the appellant side Rajeshwari Devi is unable to establish by any cogent evidence being the opponent to this Will that prima facie material was available to create a suspicion on the valid execution of the Will then only the onus shifts upon the propounder, however, the counsel for the respondents could not

highlight any such evidence. More so, as has come during the course of arguments that certain properties are joint family properties of the entire family and, therefore, this Court refrains from expressing any opinion on this and it is only within the ambit of the Civil Court which could comprehensively adjudicate on the matter. There is nothing reflective from the evidence that deceased was not in a perfect mental state at the time of execution of the Will or there are suspicious circumstances surrounding the Will. There is no evidence on the record as to contrary evidence as to the testamentary capacity of the testator and how the trial Court reached at this conclusion is anybody's guess. The propounder has discharged the onus and, therefore, in terms of **Madhukar D. Shende Vs. Tarabai Aba Shedage**, 2002(6) BCR 522, **P.S. Sairam and another Vs. P.S. Rama Rao Pisey and others** 2004(1) R.C.R. (Civil) 825, **Madhwi Sharma Ahluwalia Vs. State** 2010(120) DRJ 651, **Sridevi Vs. Jayaraja Shetty** 2005(1) R.C.R. (Civil) 795, **Savithri and others Vs. Karthyayani Amma and others**

2007(4) R.C.R. (Civil) 749 and Kanwarjit Singh Dhillon Vs.

Hardyal Singh Dhillon and others 2007(4) R.C.R. (Civil) 733,

it is well established on the records as to the Will produced by the appellant to be the last valid Will duly executed by the deceased prior to his death while in a sound disposing state of mind. The lower Court has miserably failed in its finding in striking down the Will. There is total own assumptions of the lower Court in arriving at a decision. The impugned judgment is legally infirm and is set aside by allowing the present appeal. However there is no order as to costs.

January 13, 2022

amit rana

(FATEH DEEP SINGH)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No