

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

**RSA-No.4524 of 2019 (O&M)
DATE OF DECISION : 18.05.2022**

Sangita Balyan

.....Appellant

versus

M/s Pacific Projects Ltd. and Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sandeep Singal, Advocate for the appellant

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ALKA SARIN, J. (Oral):

The present regular second appeal has been filed against the orders dated 15.03.2017 and 30.08.2019 passed by the Courts below dismissing the petition for grant of probate of Will dated 27.03.2009.

The brief facts relevant to the present *lis* are that the appellant herein filed a petition for grant of probate of Will dated 27.03.2009 alleged to have been executed by her husband Satish Balyan in her favour. The husband of the appellant was found murdered in his car on 07.06.2009. The petition for probate of Will dated 27.03.2009 was filed in the year 2011 stating therein that in the month of February 2011, while searching for

some documents required in some other civil case, the appellant came across the Will executed by her husband in her favour and hence the probate petition was filed by her. Respondent No.2, Jagbir Singh, filed a written statement taking a stand therein that Building Nos.9, 301, 307, Service Centre, Sector 5, Rohini, Delhi were sold to him vide sale deed dated 09.03.2009 by Satish Balyan, husband of the appellant. The Probate Court did not go into the question of validity of the sale deed dated 09.03.2009.

The stand of the remaining respondents in the Probate Petition was that the Will dated 27.03.2009 was forged and fabricated. According to them, the Will did not bear the signatures of Satish Balyan. It was further the stand that there was no occasion for Satish Balyan to have excluded his mother, Om Kaur, respondent No.3 herein, and his minor daughter, Lokansha, respondent No.4, herein. It was further the stand that one of the attesting witnesses of the Will namely, Rajesh Kumar, was the real maternal uncle of the appellant and it was not probable that he would hide the factum of execution of the Will from the appellant for a period of two years.

On the basis of the pleadings, the following issues were framed by the Probate Court :

- (1) Whether the petitioner is entitled for grant of probate of Will dated 27.3.2009 on the grounds as alleged in the petition ? OPP
- (2) Whether the present petition is not maintainable in the present form ? OPR

(3) Whether the petition (*sic*) has no cause of action to file the present petition ? OPR

(4) Relief.

The Probate Court, vide the impugned order dated 15.03.2017, dismissed the petition for grant of probate. Aggrieved by the said order, an appeal was preferred by the appellant which also met the same fate vide order dated 30.08.2019. Hence, the present regular second appeal.

Learned counsel for the appellant would contend that the Will stood duly proved by one of the attesting witnesses namely, PW2 Rajesh Kumar. It is further the contention that the signatures on the Will were compared with the signatures on the General Power of Attorney by the Handwriting Expert which was not an admitted document.

Heard.

The case as set up by the appellant is that she came to know of the execution of the Will only in February 2011 when she was searching for some other documents. One of the attesting witnesses of the Will who had appeared in the witness box as PW2 (Rajesh Kumar) is the maternal uncle of the appellant. In the statement of PW2 there is no reason forthcoming as to why he did not inform his niece i.e. the appellant of the execution of the Will by her husband. In fact, being a maternal uncle and having stated in his cross-examination that he discussed everything with his niece, there was no reason for him not to have disclosed the execution of the Will for a period of two years. From the pleadings as well as the evidence on the record led by the appellant, there is no reason forthcoming

for Rajesh Kumar not having informed his niece of the execution of the Will.

The second suspicious circumstance shrouding the Will is that on a plain reading it appears that certain words have been inserted at a later point of time. Though PW2 Rajesh Kumar, who is one of the attesting witnesses of the Will, has stated that the Will was typed by the deceased Satish Balyan, however, there is no explanation for certain words having been inserted into the Will which are obviously in a different font. From a perusal of Ex.P4 i.e. the Will dated 27.03.2009, at three points words have been inserted which do not match the font of the remaining contents of the Will. There is absolutely no explanation forthcoming for the same. It is not the case of the appellant or that of the attesting witness that the Will was prepared on a format and hence the insertions are in a different font.

Yet another suspicious circumstance in the present case shrouding the Will is that a Handwriting Expert was produced by the respondents who had matched the alleged signatures of Satish Balyan on the Will Ex.P4 with Ex.R5, which is a registered power of attorney. Though the execution of the power of attorney by the deceased Satish Balyan is in favour of his mother, the knowledge of this power of attorney, Ex.R5, has been denied by the appellant. However, the same is a registered document and no evidence was led by the appellant by way of Handwriting Expert to prove to the contrary.

Yet another suspicious circumstance shrouding the Will is that there is no reason forthcoming from the Will as to why the minor child and

the mother of the deceased, who were the natural heirs, had been excluded from the Will.

In view of the above, I do not find any illegality or infirmity in the orders impugned in the present regular second appeal. The appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

18.05.2022
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(ALKA SARIN)
JUDGE

<u>NOTE:</u> Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
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