

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

RSA-2517-2015 (O&M)

Reserved on: 12.05.2022

Date of decision: 25.05.2022

KAAM SINGH AND OTHERS

..Appellants

Versus

NEHRU SINGH AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. M.L. Saggar, Sr. Advocate  
with Ms. Armaan Saggar, Advocate  
for the appellants.

Ms. Sonia G. Singh, Advocate  
for the respondent No.1.

**ANIL KSHETARPAL, J.**

1. While assailing the correctness of judgments and decrees passed by both the Courts below, defendants No.1, 2 and 4 have come up in appeal. After having heard the learned counsel representing the parties at length, the following questions arise for consideration:-

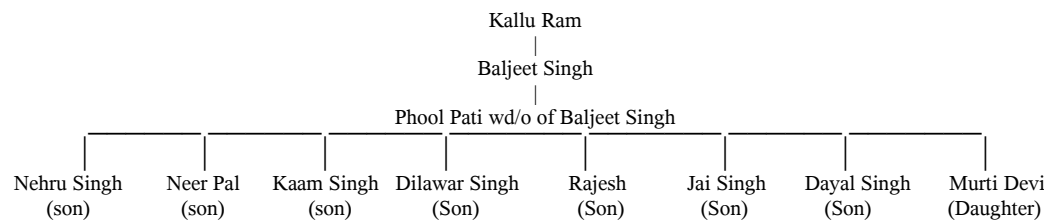
1. If a registered Will (testament) is executed by the testator in favour of some of his children and proved in accordance with the law, whether it is appropriate for the Court to disregard the wishes of the testator and open intestate succession in the absence of materially suspicious circumstances which create a doubt about the genuineness of the will ?

2. Whether the execution of the Will and its registration are two independent steps/events?

3. Whether an insignificant note incorporated as suggested by

registering authority on the Will which does not affect the wishes of the testator, results in interpolation of the Will?

2. In order to understand the *inter se* relationship of the parties, it is convenient to present a family tree:-



3. The plaintiff (Sh. Nehru Singh) filed a suit claiming that he was owner of the land left behind in village Mundi Garhi besides located in villages Gagsina and Balhara as per intestate succession and the Will set up by the defendants No.1 to 4 was never intended to be executed by Sh. Baljeet Singh which deprived his wife and other children from inheriting the property. It has been claimed that the executant was old and infirm and was suffering from various diseases. It has also been claimed that the Will does not bear the thumb impression of the testator and if it does, the same must have been obtained on blank papers. The testator has also failed to assign any reason to deprive his other heirs of the property. The defendant No.1 to 4 contested the case while asserting that it was a self acquired property of late Sh. Baljeet Singh and they also contributed towards its consideration. It was further stated that late Sh. Baljeet Singh was owner of the agricultural land and other immovable property in villages Mundi Garhi, Gagsina and Balhera. Late Sh. Baljeet Singh permitted the properties located in village Gagsina and Balhera to go by intestate succession, whereas, he executed a Will with respect to the property situated in village Mundi Garhi in favour of the defendants No.1 to 4, with whom he was residing. The defendant No.5 admitted the claim of the plaintiff, whereas, defendant No.7 filed a

written statement supporting the case of the defendants. The defendant No.8

also supported the case of the defendants. Defendant No.7 is the widow and defendant No.8 is the daughter of Sh. Baljeet Singh (testator).

4. On appreciation of pleadings, the trial Court culled out the following issues:-

*“1. Whether the suit land is to be succeeded by the heirs of deceased Baljeet Singh in accordance with natural succession? OPP*

*2. Whether the impugned Will dated 11.12.2003 has been duly executed and attested? OPD*

*3. Whether the plaintiff is entitled to a decree for permanent injunction restraining the contesting defendants from alienating or otherwise encumbering the suit land in any manner? OPP*

*4. Whether the suit is not maintainable? OPD*

*5. Whether the plaintiff has no locus-standi to file and maintain the present suit? OPD*

*6. Relief.”*

5. In order to prove his case, the plaintiff (Sh. Nehru Singh) examined himself as PW-1 and produced documents. It may be noted here that affidavit of Sh. Rohtash (son of Sh. Dharam Singh) and Sh. Virender Singh (son of Sh. Zile Singh), both the attesting witnesses, were filed in lieu of the statement in examination-in-chief, however, they did not appear for cross-examination. He also produced a copy of affidavit of Sh. Virender Singh (son of Sh. Zile Singh) as Ex.PX.

6. On the other hand, defendants examined DW-1 Sh. Karambir Singh, registration clerk, DW-2 Sh. Raj Kumar, Scribe, DW-3 Sh. O.P. Rana, Sub-Registrar, DW-4 Sh. Kaam Singh, defendant No.1, DW-5 Sh. Vijay Kumar, attesting witness of the registration of the Will, DW-6 Sh. Virender Singh, attesting witness of the execution of the Will.

7. Both the Courts, on appreciation of evidence, have recorded the following reasons for doubting the genuineness of the Will:-

1. The attesting witnesses at the time of the execution of Will

and at the time of its registration, were different.

2. It is proved that a note was inserted on the recommendation of the Sub-Registrar.

3. Sh. Baljeet Singh resided in village Gagsina, whereas, Sh. Kaam Singh is resident of village Balhera which is 25 kms away from Gagsina and there is no evidence of extra ordinary service rendered by defendants No.1 to 4 to Sh. Baljeet Singh, the executant and his wife.

4. The original Will has not been produced. The defendants have failed to prove the execution of the Will.

8. The First Appellate Court apart from the aforesaid reasons has further recorded that Sh. Rohtash and Sh. Virender have appeared for the plaintiff and subsequently Sh. Virender Singh appeared for the defendant. The Court held that these witnesses cannot be relied upon. Sh. Virender Singh has admitted his signatures on affidavit Ex.PW3/A and Ex.PX, however, failed to explain the same. The registration of the Will is surrounded by suspicious circumstances, particularly when the scribe admits that the note to the Will was appended on the directions of the Sub-Registrar and it was not in the presence of Sh. Rohtash. The defendants have failed to disclose the amount of sale consideration through which the property in dispute was purchased in the year 1968 to 1970 and Sh. Kaam Singh was merely 15 to 17 years old, at that time. The Will was scribed after lunch, when Sh. Rohtash was not available. The original Will has not been produced and the defendants have failed to prove as to when and from which place the original Will was lost particularly when no Police report was made in this regard.

parties and with their able assistance perused the judgments passed by the Courts below as well as the record which was requisitioned.

10. The learned counsel representing the respondent No.1 has also filed written arguments which shall be examined in the later part of the judgment.

11. First of all, it is evident that the Will is part of the record of the trial Court which was requisitioned. It runs into two pages. In other words, it is scribed on two papers. On the first page, Late Sh. Baljeet Singh has thumb marked on the left hand margin as well as at the end of first page. On the second page late, Sh. Baljeet Singh has thumb marked on two different places where the narration of the Will comes to an end. Two attesting witnesses namely Sh. Virender Singh, Nambardar as well as Sh. Rohtash son of Sh. Dharam Singh have signed and thumb marked the Will, respectively. At the time of registration of the Will, on 11.12.2013, the Will is again thumb marked by Late Sh. Baljeet Singh on the endorsement note of the Sub-Registrar. On the reverse of second page, the photograph of the executant along with his thumb impression and the photographs of the attesting witnesses, namely Sh. Virender Singh and Sh. Vijay, exist. No evidence has been led to prove that late Sh. Baljeet Singh did not thumb marked the Will. Late Sh. Baljeet Singh remained alive for approximately 1 year and 9 months after the execution of the Will.

12. On a careful reading of the Will, it is evident that the testator, while stating that he has seven sons, wife and daughter, has disclosed that he along with his wife resides with his four sons i.e. defendants No.1 to 4, who take care of them. He has made a bequest that defendants No.1 to 4 would inherit the property situated in village Mundi Garhi in exclusion to

Mundi Garhi, will be inherited by his four sons i.e. defendants No.1 to 4, who will become owners thereof and by none else. It is further stated that after his death, these four sons (defendants No.1 to 4) shall remain bound to take care of their mother.

13. It may be noted here that at the time of registration, attesting witness No.2 namely Sh. Rohtash was not present and in his place, Sh. Vijay has signed the Will as an attesting witness. In other words, now, there are three attesting witnesses of the Will. Sh. Virender Singh and Sh. Rohtash, have attested the Will at the time of its execution, whereas, at the time of registration, Sh. Virender Singh and Sh. Vijay have attested the Will.

14. It appears that the plaintiff is trying to create a doubt about the genuineness of the Will by presenting an affidavit of late Sh. Virender Singh Ex.PX dated 23.01.2006. In the aforesaid affidavit, late Sh. Virender Singh has stated that on the request of Sh. Kaam Singh, he identified his father late Sh. Baljeet Singh and signed a document. He also stated that when he signed the Will, except late Sh. Baljeet Singh no one else was present and he only identified late Sh. Baljeet Singh, being the executor of the document. Thereafter, the plaintiff has also produced another affidavit of late Sh. Virender Singh Ex.PW-3/A dated 15.06.2010. In this affidavit, Sh. Virender has stated that on the request of Sh. Kaam Singh, he identified late Sh. Baljeet Singh, however, late Sh. Baljeet Singh never executed or signed any Will in his presence. He appeared in examination-in-chief while tendering his affidavit but did not appear for the cross-examination. Subsequently, Sh. Virender Singh appeared as DW-6 and proved the execution and registration of the Will. Similarly, Sh. Rohtash tendered an affidavit in lieu of examination-in-chief while stating that late Sh. Baljeet

Singh requested him to thumb mark an application to be submitted for loan and on the request of late Sh. Baljeet Singh, he thumb marked the Will but in his presence, no Will was executed by late Sh. Baljeet Singh. He, after tendering an affidavit in examination-in-chief, has, also failed to appear for cross-examination.

15. On the other hand, as already noticed, the defendants have examined registration clerk who brought the second original of the Will from the office of the Sub-Registrar and proved the Will. Apart therefrom, the scribe appeared as DW-2 and proved that he scribed the Will while making entry in his register/Diary at Serial No.269 on 11.12.2003 which was also thumb marked by late Sh. Baljeet Singh. Sh. O.P. Rana, Sub-Registrar (Registration Authority) appeared as DW-3. Sh. Vijay Kumar appeared as DW-5, whereas, Sh. Virender Singh appeared as DW-6.

16. DW-5 Sh. Vijay has stated that the Will was executed in his presence and the same was registered with the Sub-Registrar. While stating that he has signed the Will at the time of registration he proved the registration. While appearing as PW-6, Sh. Virender has proved that the Will was executed in accordance with Section 63 of the Indian Succession Act, 1925. He proved the Will in the Court as required under Section 68 of the Indian Evidence Act, 1872. In cross-examination Sh. Virender Singh has stated that he has seen the second original of the Will on which he recognizes his signatures and photograph as an attesting witness. He also admits his signatures on affidavit Ex.PW3/A and Ex.PX. He submits that he does not know Sh. Vijay but he knew late Sh. Baljeet (the executant). He has stated that the Will was scribed before lunch and at that time, Sh. Rohtash was with them. The note on the second page was scribed on the

that the Will was not scribed in his presence.

17. It may be noted here that the Will is not required to be mandatorily registered. It is registrable at the option of the testator. In the considered opinion of the Court, the execution of the Will and its registration are two independent steps. The Will is valid even in the absence of registration. In that context, the Bench proceeds to examine the effect of change of one witness at the time of registration. It has come in evidence that Sh. Rohtash was to go somewhere in the post-lunch session, so he, after signing the Will as an attesting witness in the presence of the testator and other attesting witness, left. It has come in evidence that at the time of registration, Sh. Virender Singh and Sh. Vijay signed the Will as witnesses. In the opinion of the Court, the substitution of a witness neither affects the validity of the Will nor is sufficient to assume suspicious circumstances. If the Will is to be scribed by a professional scribe, then, the Will will be executed and signed by the executant and the attesting witnesses in the office of the scribe. Subsequently, the testator will present the Will in the office of the Sub-Registrar for its registration. Thus, both the Courts have erred in considering the change of witness to be a very strong suspicious circumstance.

18. Now, the Bench proceeds to examine the note which was appended to the Will by the scribe on the directions of the Sub-Registrar. As already noticed, in the Will, the testator has given description of his class-I heirs and has stated the reasons for bequeathing the property situated in village Mundi Garhi in favour of defendants No.1 to 4 (his own male children). The testator recited that with respect to the property situated in village Mundi Garhi, his wife, his three other sons and the daughter will

under:-

*“Note: The aforesaid land in village Mundi Garhi is my self purchased along with the help and contribution of is aforesaid four sons.”*

19. In the opinion of the Court, such note neither amounts to interpolation nor it is against the wishes of the testator, particularly when the testator has recited in the Will that except his four sons, the remaining heirs shall not be entitled to any right, title or interest of the property located in village Mundi Garhi.

20. This Bench, now, proceeds to examine the effect of two affidavits of Sh. Virender Singh and the affidavit of Sh. Rohtash produced by the plaintiff. Section 63 of the Indian Succession Act, 1925, specifically provides that no specified form of attestation of the Will is necessary. From the facts available, it is evident that the plaintiff had tried to influence the witnesses. He produced the affidavits of both the attesting witnesses in examination-in-chief but they never came forward to face the cross-examination. As already noticed, Sh. Virender Singh, Nambardar, subsequently appeared as DW-6. He does not dispute that he has signed the affidavit Ex.PX as well as Ex.PW3/A. However, the learned counsel representing the plaintiff did not question the witness about the contradiction in his previous affidavit and subsequent deposition. The question is whether the registered Will should be ignored merely because a attesting witness has filed an affidavit in support of the case of the plaintiff while subsequently, he while appearing as defendant's witness has proved the Will in accordance with law. The deposition of the attesting witness, on behalf of the plaintiff, cannot be taken into consideration because he did not appear for cross-examination. Hence, the aforesaid statement is incomplete and inadmissible in evidence.

21. Further, in the peculiar facts of the case particularly when the learned counsel representing the plaintiff did not solicit any answers from the attesting witness Sh. Virender Singh about the circumstances in which the affidavit Ex.PW3/A and Ex.PX were executed, it is not considered appropriate to doubt the correctness of the attestation. It was the responsibility of the learned counsel representing the plaintiff to solicit proper explanation from Sh. Virender Singh, Nambardar.

22. Although, the plaintiff has asserted that late Sh. Baljeet Singh never thumb marked the Will but no evidence in support of the aforesaid plea is produced. The plaintiff, while appearing in evidence, has admitted that late Sh. Baljeet Singh (the testator) was residing with the families of defendants No.1 to 4, who were providing food boarding and lodging to late Sh. Baljeet Singh and his wife.

23. The Bench now proceeds to examine the arguments of the learned counsel representing the plaintiff (respondent No.1 herein). The first argument of the learned counsel is to the effect that the original Will has not been produced. As per the deposition of the scribe, two copies of the Will, in original, were prepared. One document (the Will) was returned to the testator after its registration, whereas, the other original of the Will was pasted in the notebook/register/diary of the Sub-Registrar. When Sh. Karambir Singh, official from the office of the Sub-Registrar appeared in evidence, he stated that he has brought the original note-book and the certified copy is the true copy of the Will. Once, the second original copy is signed by the testator and thumb marked/signed by the attesting witnesses, then, such Will shall fall within the meaning of primary evidence as defined in Section 62 of the Indian Evidence Act, 1872. On a complete reading of

process, then each is a primary evidence of the contents of the rest. Hence, there is no substance in the first argument of the learned counsel.

24. The second argument of the learned counsel representing respondent No.1 is with respect to the participation of the beneficiary of the Will in its execution. It may be noted here that there is no evidence that Sh. Kaam Singh ever influenced the wishes of his father (the testator). This Bench has carefully read the cross-examination of Sh. Virender Singh, wherein he has stated that Sh. Kaam Singh arrived at the place only after the Will had been scribed. In any case, the registered Will was not executed bequeathing the property exclusively in favour of Sh. Kaam Singh. The Will is in favour of Sh. Kaam Singh and his three brothers who are not alleged to have been present at the time of execution.

25. The next argument of the learned counsel is with regard to the two affidavits of Sh. Virender Singh which have already been explained.

26. The next argument of the learned counsel representing plaintiff (respondent No.1 herein) is that the executant has not given the reasons for disowning his three sons. It may be noted here that the executor was conscious of the fact that he is the owner of property in three different villages, whereas, he executed the Will only with respect to the property situated in village Mundi Garhi. While scribing the Will, late Sh. Baljeet Singh has given the reasons why he is preferring his four sons. The testator is not required to give detailed reasons for executing the Will. Further, the reasons given are not amenable to judicial review. In these circumstances, clear reasons have been given by the testator for preferring his four sons to the others and the Court, in the absence of any patent error or illegality, does not find it appropriate to interfere.

plaintiff (respondent No.1 herein) is with regard to the note, which has already been discussed in detail. In fact, the note neither amends the substance of the Will nor its existence adversely affects the spirit of the Will which continues to be same throughout the document. On the suggestion of the Sub-Registrar, the reasons to execute the Will have been further explained. The plaintiff (respondent No.1 herein) has not produced any evidence to prove that late Sh. Baljeet Singh was not entitled to execute the Will. In fact, on a careful reading of the cross-examination of the plaintiff, it is evidence that he admits that late Sh. Baljeet Singh purchased the property located in village Mundi Garhi in the years 1970 to 1973.

28. The next argument of the learned counsel is with regard to the Sh. Vijay, witness to the registration of the Will. Even if he was not present at the time of the execution and came only at the time of registration, still the execution of the Will is complete once the testator in the presence of both the attesting witnesses has thumb marked the Will and the attesting witnesses have also signed in the presence of the testator.

29. The learned counsel representing the plaintiff (respondent No.1 herein) has tried to project that Sh. Kaam Singh was barely 15 to 17 years of age at the time of purchase of the property, therefore, the aforesaid fact, as stated in the note, is incorrect. A son of a farmer who is 15 to 17 years of age, do help his father in cultivating the land. Hence, the aforesaid fact is neither strange nor unusual.

30. In the column of legal submissions, the learned counsel has submitted that the witnesses are eyes and ears of justice and therefore, their testimony has been rightly relied upon by the trial Court. It may be noted here that the attesting witnesses are required for the purpose of identifying

the executant and for certifying that the executant has signed or thumb

marked the Will in sound disposing mind uninfluenced by any external pressure. However, these witnesses cannot be permitted to hijack the wishes of the testator unless they fail to prove the due execution Will in accordance with law. It has been noticed that oral evidence is given undue importance which is not correct. The documentary evidence is superior than the oral evidence, although both are important. The Presiding Judge is expected to critical analyse the evidence while deciding the case. With the passage of time and advent the use of technology, the Will etc., the office of Registrar is required to click the photographs of the testator and the witnesses and get the same printed in the Will itself whenever, it is present for registration in the office of Registrar. Hence, chances of impersonation are ruled out, which adds authenticity to the document. On the other hand, due to increase in the materialism, the character of human being has gone down. Hence, the Presiding Judges while deciding cases should keep these developments in mind. From the facts of the case case, it is evident that the plaintiff started hunting for the attesting witnesses in order to succeed in the suit. He even secured the affidavit of the attesting witnesses and produced them in his evidence. However, subsequently, the attesting witnesses refused to come forward for cross-examination.

31. The second argument of the learned counsel is to the effect that the Will is required to be proved like any other document. There cannot be any doubt on the aforesaid proposition of law. However, as explained in Section 68 of the Indian Evidence Act, 1872, it is necessary that atleast one attesting witness should be examined who is capable of giving evidence and proves that the Will to has been executed in accordance with Section 63 of the Indian Succession Act, 1925. The learned counsel relies upon the

225, to contend that mere registration of the Will, will not dispense with the requirement of the proof of due execution. In the present case, the aforesaid judgment is not applicable because the execution of the Will has been duly proved. She further relies upon the judgment passed in **Rani Purnima Debi and another Vs. Kumar Khagendra Narayan Deb, AIR 1962 (SC) 567**. In the aforesaid case, the Supreme held that if the registration is not proper, then the registered document comes under suspicion. It may be noted here that the aforesaid judgment is given in the peculiar facts of the case and does not as a *ratio decidendi* lay that whenever one of the attesting witness is changed, the Will must be discarded.

32. Now, the stage is set to examine the reasons given by the Courts below for discrediting the Will.

33. The first reason has already been discussed in detail, therefore, it requires no further elaboration. Even the second reason has already been explained. The third reason is with regard to the note which has also been explained. The fourth reason is that Sh. Kaam Singh was residing in a different village 25 kms. away from the place of residence of late Sh. Baljeet Singh. It may be noted here that once there is a registered Will and the plaintiff himself admits that late Sh. Baljeet Singh and his wife used to reside with the families of defendants No.1 to 4, a small distance of 25 kms, would not be sufficient to discard the Will. The next reason is with regard to the absence of production of the original Will which has already been explained. In fact, in the present case, the Will produced is the primary evidence.

34. The Court has further erred in observing that the execution of the Will has not been proved. The Appellate Court has also held that the

view of the Court, the Appellate Court is referring to the directions of the Sub-Registrar to incorporate a note in the Will and substitution of one attesting witness. In the facts and circumstances of the present case, the aforesaid facts are not sufficient to doubt the correctness of the registered Will.

35. Furthermore, the First Appellate Court has erred in doubting the correctness of the Will on the ground that Sh. Kaam Singh has failed to disclose the amount of sale consideration paid at the time when the property in question was purchased which is as long as about 33 years before the execution of the Will. It is the case of the defendants that they have been helping the testator in cultivation and had contributed towards the amount of consideration. However, mere failure to disclose the sale consideration would not have any adverse effect on the case of the defendants in the peculiar facts and circumstances of the present case.

36. The First Appellate Court has factually erred in concluding that the Will was scribed after lunch when Sh. Rohtash was not available. It is the positive case of the scribe that the Will was scribed before lunch but it was presented for registration in the post-lunch session. Thus, the First Appellate Court has erred in recording such a finding.

37. The last reason is the non-production of the original Will, which has already been explained.

38. In view of the aforesaid discussion, the judgments and decree, passed by both the Courts below, are not sustainable in the eyes of law.

39. Consequently, the judgments and decrees, passed by the Courts below, are set aside. The suit filed by the plaintiff shall stand dismissed and the present appeal is allowed.

disposed of.

25<sup>th</sup> May, 2022

(ANIL KSHETARPAL)  
JUDGE

Ay

*Whether speaking/reasoned*  
*Whether reportable*

: *Yes/No*  
: *Yes/No*