

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

Darshan Singh (deceased) th.LRs. ...appellants

Harbans Kaur and others ...Respondents

Present : Mr.Brajesh Kumar, Advocate for
Mr.Aditya Jain, Advocate
for the appellants

1. While assailing the correctness of judgment and decree passed by the First Appellate Court, the defendant has filed the present appeal.
2. A family tree is being drawn in order to understand inter se relationship between the parties.

Harbans Kaur (daughter)	Nikki (daughter)	Harbhajan Kaur (daughter)	Darshan Singh (son) Amarjit Kaur (widow) Jaswinder Singh (son) Kaka Singh (son) Amna Singh (son) Harwinder Kaur (daughter)	Kartar Singh (son)	Gurnam Kaur (widow)
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3. Harbans Kaur, Nikki and Harbhajan Kaur, married daughters of Sher Singh filed a suit for grant of a decree of declaration that the plaintiffs along with defendants No.1 to 3 are the only heirs of Sher Singh. They also challenged the unregistered Will allegedly executed by Sher Singh on 12.09.1999. Through the aforesaid Will late Sh.Sher Singh bequeathed his ancestral property in favour of his two sons namely Darshan Singh and Kartar Singh, whereas the self acquired property was bequeathed in favour of Jaswinder Singh. It was also recited in the testament that income of one acre of land shall be utilized by his wife during her life time. The plaintiffs pleaded that the aforesaid Will was never executed by late Sh.Sher Singh.

4. On the other hand, defendant No.1 contested the suit and asserted that a valid Will dated 12.09.1999 was executed by late Sh.Sher Singh. Defendants No.2 and 3 filed separate written statements and submitted that Sh.Sher Singh along with his wife Gurnam Kaur was residing with Kartar Singh and he did not execute any Will in favour of Jaswinder Singh.

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

1. Whether the plaintiffs and defendants No.1,2 and 3 being the legal representatives of deceased Sher Singh are owner in possession of the land as detailed in the head note of plaint?OPP
2. Whether Sher Singh executed a valid Will dated 12.09.1999, if so, its effect?OPD
3. Whether the plaintiffs are entitled for declaration?OPP
4. Whether the plaintiffs are entitled for permanent injunction?OPP
5. Whether the suit is not maintainable?OPD
6. Whether the plaintiffs have no locus standi to file the present suit?OPD
7. Relief.

6. In order to prove their case, the plaintiffs examined the following witnesses:

1. Harbans Kaur, plaintiff No.1, as PW-1
2. Bhola Singh, as PW-2
3. Gurnam Kaur, defendant No.3 as PW-3
4. Nikki, plaintiff No.2, as PW-4
5. Hakam Singh, Secretary, Cooperative Agriculture Service Society as PW-5
6. Harbaksh Singh Mander, Handwriting Expert, as PW-6
7. Malkit Singh, Halqa Patwari, as PW-7.

7. Defendant No.1 in order to defend the suit examined the following witnesses:

1. Sukhdev Singh, attesting witness of Will, as DW-1
2. Jaswinder Singh, legal heir of defendant No.1, as DW-2
3. Basant Singh, scribe of the Will, as DW-3 and
4. Sanjeev Sharma, handwriting expert, as DW-4.

8. The Will is signed by late Sh.Sher Singh, the testator, along with two attesting witnesses namely Sukhdev Singh and Avtar Singh. Sukhdev Singh appeared in support of the Will as DW-1 and despite lengthy and grilling cross examination, learned counsel representing the plaintiffs failed to impeach his credibility. Basant Singh, scribe of the Will was also examined as DW-3.

9. Learned trial Court on appreciation of evidence, dismissed the suit after recording the findings that the execution of the Will has been proved in accordance with 63 of the Indian Succession Act, 1925 and the same has been proved in Court in accordance with Section 68 of the Indian Evidence Act, 1872.

10. The plaintiffs filed an appeal which has been accepted while reversing the judgment and decree passed by the trial Court.

11. In substance, the first Appellate Court has recorded the following reasons to discard the Will:

1. There is no explanation why the Will was not registered for the testator remained alive for a period of five years. The testator was the former sarpanch of the village and conversant with the procedure of registration.
2. There is no explanation as to why the Will was not scribed from a licenced scribe.
3. The signatures of the testator are not at the place where it should be and therefore, there is possibility of the Will having been scribed on a blank paper.
4. Jaswinder Singh beneficiary has participated in the execution of the Will.

12. Heard learned counsel representing the parties at length and with their able assistance perused the paper book and the record which was requisitioned.

13. Learned counsel representing the appellants contends that the first Appellate Court has erred in doubting the correctness of the Will without any intention. While elaborating, he submits that the Will is not required to be compulsorily registered. He further submits that the signatures of the testator are at place where they should be.

14. Per contra, learned counsel representing the respondents (plaintiffs) has contended that Jaswinder Singh has witnessed the sale deed executed by Nikki qua her own share. Hence, he submits that Jaswinder Singh now admits that the Will is fraudulently made. He further contends that the first Appellate Court has correctly recorded findings of fact and this Court should not interfere in the aforesaid findings.

15. At this stage, it is important to carefully look at the Will dated 12.09.1999. It is a hand written Will scribed in Gurumukhi (Punjabi). This is

was a former Sarpanch of the Gram Panchayat. Sh.Sher Singh has also signed the Will in Gurumukhi script. The signatures of Sher Singh exist at the end where recital in the Will comes to an end. His signatures are in the middle whereas on the left hand side Sukhdev Singh, the attesting witness has signed, whereas on the right hand side Avtar Singh, another witness, has signed. The signatures of Basant Singh, the scribe, are on the left hand margin.

16. In these circumstances, the first Appellate Court committed a factual error while recording that the signatures of the testator are not at a place where it should be. Section 63 of the Succession Act, 1925 does not prescribe a particular place for the signatures of the testator. It only provides that the thumb impression or signatures of the testator should be at an appropriate place. In the present case, the signatures of the executant as well as both the attesting witnesses are in one row. No doubt there is a gap of nearly one inch between the place between the narration of the Will comes to an end and the signatures start. However, the gap of one inch is not significant particularly when complete length of the paper has been used for execution of the Will.

17. Sukhdev Singh, attesting witness has appeared in evidence and supported the Will. Learned counsel representing the plaintiffs while cross examining the attesting witness did not solicit his answers with regard to the reasons for non-registration of the Will.

18. The plaintiffs in their plaint did not question the Will on the ground that it is not registered. A Will is not required to be mandatorily registered. It is the option of the testator to get the Will registered or not. This cannot be a ground to doubt the correctness of the Will. Despite the lengthy cross examination, the deposition of Sukhdev Singh supporting the Will could not be impeached. Even the first Appellate Court did not observe that the statement of Sukhdev Singh is not reliable.

19. As per Section 68 of the Indian Evidence Act, 1872, the Will can be proved by examining one of the two attesting witnesses. The same has been complied with. Further, Basant Singh scribe of the Will has appeared as DW-3 and deposed that he on the request of Sher Singh executed the Will. The first Appellate Court has also erred in observing that as to why the Will was not scribed from a licenced scribe. A Will can be scribed by anyone. Even the testator can write the Will by his own hand. The law does not prescribe that the Will should be scribed only by a licenced scribe. The Will was executed in the village. Basant Singh is resident of an adjoining village. The duly signed Will cannot be doubted only on the ground that it was scribed by a person who is not a professional scribe.

20. The next reason given by the first Appellate Court is that Jaswinder Singh, the beneficiary participated in the execution of the Will. In the absence of evidence that Jaswinder Singh influenced the wishes of the testator, a written testimony executed by the testator cannot be ignored on bald assertions.

21. Learned counsel representing the respondents has submitted that the Will is not natural because there is no reference to the daughters and another son namely Kartar Singh did not support the Will. It may be noted here that this suit was filed by the married daughters, who are living with their respective in-laws at far off places. The testator was not residing with the married daughters. Further, the stand taken by Kartar Singh would not defeat the bequest executed by the testator. It is important to note that late Sh.Sher Singh had recited in the Will that Jaswinder Singh is like his child as he has been brought up by him.

22. Learned counsel representing the respondents insist that Nikki in the presence of Jaswinder Singh sold the property, therefore, Jaswinder Singh

cannot continue with the appeal. Any development during the pendency of the regular second appeal does not defeat the rights of the beneficiary of the Will. Furthermore, the plaintiffs are required to prove that Jaswinder Singh had witnessed the sale deed allegedly executed by Smt.Nikki during the pendency of the appeal.

23. In view thereof, the appeal is allowed and the judgment and decree passed by the first appellate court is set aside.

21.04.2022

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No