

**RSA-5672-2019 (O&M)
and connected case**

1

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

1.RSA-5672-2019 (O&M)

Surjit Kaur

....Appellant

Versus

Rashmi Puri and others

..Respondents

2.RSA-5715-2019 (O&M)

Mohinder Kaur

....Appellant

Versus

Rashmi Puri and others

..Respondents

Date of decision: 25.03.2022

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Gurcharan Dass, Advocate for the
appellant in RSA-5672-2019 and
for respondent no.5 in RSA-5715-2019

Mr.B.D.Sharma, Advocate for the appellant
in RSA-5715-2019 and
for respondent no.4 in RSA-5672-2019

Mr. Aashish Chopra, Sr. Advocate with
Mr. Nikhil Sabharwal, Advocate and
Ms. Mehar Nagpal, Advocate
for respondent no.1 to 3 in both the cases

Mr. Amarjeet Markan, Advocate for
respondent no.5 in RSA-5672-2019 and
for respondent no.4 in RSA-5715-2019

ANIL KSHETARPAL, J (Oral)

By this order, two Regular Second Appeals i.e RSA-5672-

2019 and RSA-5715-2019 shall stand disposed of.

RSA-5672-2019 has been filed by Surjit Kaur whereas RSA-5715-2019 is filed by Mohinder Kaur.

It's an unfortunate litigation which has come to this Court. Late Sh. Sohan Singh Padda was the exclusive owner of the property. He executed a registered Will in favour of his son and daughter while excluding the second daughter, who is settled in England. As per the registered Will, he bequeathed portion A and C in favour of Mohinder Kaur (his daughter) whereas portion B was bequeathed in favour of Sh.Mohinder Singh (his son). Smt. Mohinder Kaur, after having admitted the execution of the Will, in the written statement, has come up in appeal. The second sister Surjit Kaur neither entered appearance before the trial court nor filed an appeal before the First Appellate Court. She has directly filed a second appeal in the High Court. The registered Will has been proved by examination of the attesting witnesses Amarjit Singh. Smt.Surjit Kaur has not filed any written statement. She did not even apply for setting aside the ex parte decree.

Heard learned counsel representing the parties at length and with their assistance perused the judgments passed by both the courts below alongwith the original record which was requisitioned on the insistence of the learned counsel representing the appellant.

Learned counsel representing Surjit Kaur contends that late Sh. Sohan Singh Padda, the testator has been frequently changing his Wills. He submits that late Sh. Sohan Singh Padda has executed Wills on 30.03.1987 as well as on 26.10.1998. He submits that the third Will is surrounded by suspicious circumstances. He further contends that the

beneficiary and her husband had participated in the execution of the Will and therefore, it should not have been relied upon. He further contends that the original Will has not been produced and in the absence of application for permission to lead secondary evidence, the Will cannot be said to have been proved. Learned counsel representing Smt.Mohinder Kaur has stated that she is in exclusive possession of the entire property and therefore, the suit for possession could not be decreed. In the alternative, he submits that as per Section 22 of the Indian Succession Act, 1925, she is entitled to defend her possession.

Per contra, learned counsel representing the respondents contends that the execution of the Will was admitted by Smt.Mohinder Kaur. The execution of the Will was proved in accordance with Section 68 of the Indian Evidence Act, 1872, on examination of one of the attesting witnesses. He further contends that Jagtar Singh, an official from the office of the Sub Registrar, brought the record from his office and produced the Will for the perusal of the Court. Learned counsel representing Smt.Mohinder Kaur in the trial court did not object to the admissibility of the aforesaid Will. They further contend that testator while bequeathing the property divided the same into three separate parts namely A, B and C. Portion A and C was bequeathed in favour of Smt.Mohinder Kaur. She does not dispute this fact. Portion B was bequeathed in favour of Sh.Mohinder Singh. Sh.Mohinder Singh has sold his portion of the property in favour of the respondents (plaintiffs)

After having heard the learned counsel representing the parties, this Court is of the considered view that the present litigation is

an abuse of the process of the Court. As noted above, Smt.Mohinder Kaur, while filing the written statement before the trial court, did not dispute the correctness of the Will. While appearing in evidence, she admitted that portion B exclusively belongs to Sh.Mohinder Singh, her brother. After having taken the stand before the trial court and suffering a decree, she has come up in appeal. Let us now examine the argument with regard to the effect of non-production of the original Will. As per Section 62 of the Indian Evidence Act,1872, every document is required to be proved by producing the primary evidence. Explanation 2 provides that if a number of documents are prepared by a uniform process then each document is a primary evidence of the contents of the rest. A certified copy, from the office of Sub Registrar, has been produced. The original note book, where a copy was pasted, was brought by Sh.Jagtar Singh. Hence, the Will has been proved by producing primary evidence.

The next argument of the learned counsel representing the appellant is with regard to the frequent changes in the different Wills executed by the testator. It is well settled that the last Will of the testator is to prevail. This Court has seen the certified copy of the Will. It bears a photograph of the testator. The correctness of the aforesaid photograph is not disputed. The defendants have also not led any evidence to prove that late Sh. Sohan Singh Padda did not sign the Will. In such circumstances, the mere fact that late Sh. Sohan Singh Padda changed his previous Will executed on 26.10.1998 does not create a doubt about the correctness of the registered Will.

The last argument of the learned counsel representing Smt. Surjit Kaur is with regard to participation of the beneficiary and her husband in the execution and registration of the Will. In the absence of any evidence to prove that Smt. Mohinder Kaur or her husband influenced the execution of the Will, it would not be appropriate to doubt the correctness of a registered Will, which not only bears the signatures of testator but also his photograph.

Consequently, both the appeals are dismissed, with costs of Rs.1,00,000/- which shall be payable equally, by both the appellants and shall be paid to the plaintiffs. As regards the argument of the learned counsel with regard to Section 22 of the Indian Succession Act, 1925, it is observed here that Smt. Mohinder Kaur never defended the suit on this ground. In the facts of the present case, this Court does not find it appropriate to permit Smt. Mohinder Kaur to take up this point, for the first time, in the appeal.

All the pending miscellaneous applications, if any, are also disposed of.

25.03.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

**(ANIL KSHETARPAL)
JUDGE**