

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

115

RSA-1976 of 2019(O&M)
Date of Decision: 05.10.2023

Jaswant Singh(since deceased) through his LRAppellant

Versus

Kashmir Singh and othersRespondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Naresh Kumar Manchanda, Advocate
for the appellant.

SANJAY VASHISTH, J.(Oral)

CM-5364-C-2019

(i) Present application has been filed under Section 151 CPC
for seeking condonation of delay of 15 days in re-filing the appeal.

(ii) For the reasons enumerated in the application, the same
is allowed and the delay of 15 days in re-filing the present appeal is
hereby condoned.

(iii) Application stands disposed of.

RSA-14990-2018(O&M)

1. Present regular second appeal has been filed by the
appellant/plaintiff against the concurrent findings of dismissal of civil
suit.

2. Plaintiff-Jaswant Singh (deceased) filed a civil suit for
seeking possession of the first floor of house No.42 situated at Bazar

No.6, Ferozepur Cantt. against the defendant -Kashmir Singh, who is his real brother. The plaintiff has pleaded that his father-Narain Singh, used to live with him and during his lifetime he used to take care of his well-being. Due to said reason, Narain Singh had executed a Will dated 02.12.1986 (Ex.P1), which was registered on 18.12.2014 in favour of the plaintiff and on the basis of the said Will, the plaintiff is claiming his title over the property and possession by way of the present civil suit.

3. In the written statement filed by the defendant, apart from the preliminary objections, it has been stated that plaintiff-Jaswant Singh had previously filed a suit for permanent injunction, and in the proceedings of that suit, nothing was mentioned about the said Will, therefore, Jaswant Singh has lost his right to file the present suit on the basis of the said Will, which was in existence at the time of the filing of the suit for permanent injunction. Further pleaded that Narain Singh himself, who was related as father of the plaintiff and defendant had given possession of the first floor to the defendant and since then he has been residing there. Also pleaded that the Will is a suspicious document because same was kept in the dark before its registration i.e. after 28 years and there is no explanation for not disclosing anywhere the factum of execution of the said Will by the father of the parties.

4. Learned Trial Court considered all the aspects and found that the Will relied upon by the plaintiff has failed to remove the

suspicious circumstances regarding the authenticity of the Will in question. For the sake of convenience, relevant findings recorded by learned trial Court in paragraph No.12 under issue No.1 is reproduced here under:

'1. Even in the present case the perusal of the Will in question reveals that the A signatures are shaky. There is no mention of any of the legal heirs in the same. No plausible explanation of such ouster of legal heirs has been mentioned in the Will. The Will has not seen the light of the day for as long as 28 years. It has come on record that the parties to the suit were having a previous litigation in which there was no mention of the Will. It has also come on record that the parties to suit were also involved in proceedings under section 107/151 Cr.P.C and even in same there was no mention of the Will. It has also come on record in testimony of DW2 that there were various compromise meetings held between the parties but in none of them had Jaswant Singh mentioned anything about the Will. All these facts coupled with the fact the scribe and the witnesses were unknown to each other and barely knew testator cast a suspicion on the genuineness of the Will. This is further guided by the law laid down in the case of Balathandayutham and another vs. Ezhilarasan 2010(2) RCR (Civil) 821 in which the hon'ble Apex Court has held that it would;d be a suspicious circumstance where attestors of the Will were strangers to the family. Moreover, the scribe was a minor at the time of scribing the Will. The scribe was not a regular deed writer and had never earlier scribed any Will. Even the fact that at the time of registration the statements were not recorded and proper notice was also not given to the defendant. Even the fact that PW2 and PW3 did not know the third person present at the time of scribing the Will All these facts also bring the genuineness of the Will into suspicion. It is also pertinent to note here that PW3 in his cross examination has stated that one person namely Namberdar Tarlok Singh who is a male accompanied them for registration of the Will whereas PW4 has stated that one person namely Namberdar Paramjit Kaur Sodhi got her statement recorded at the time of registration. This fact is very fatal to the story of the plaintiff as one can forget the name of a person but it cannot be believed that one forgot the gender of the person accompanying them.

From the perusal of the entire testimony as well as documents on record following facts have come forward which are noteworthy. Firstly, that both the parties were living jointly at the time of the death of testator. Secondly, the testator never tried to throw out or dispossess defendant from the property. Thirdly, the persons present at the time of scribing the Will were strangers to testator and each other. Fourthly, the registration process is also doubtful as no proper notice was ever given to defendant. This fact is proved as plaintiff himself has admitted that he never mentioned the fact of having a brother at the time of registration. Fifthly, the Will was a secret to the entire world for a period of 28 years. The plaintiff has not explained as to why he kept silent for 28 years and as to how on one fine day he came to know about the Will. He has not produced any iota of evidence as to from where he got to know about the fact that there was a Will. Sixthly, the witnesses have contradictory statements as to who actually was present at the time of registration of the Will. Seventhly, there has been no explanation as to why a father would not even give a small mention in his Will about the fact as to why he was not giving anything to his own flesh and blood, whom he kept in front of his eyes as he never threw him out of his property during his lifetime. Plaintiff has failed to bring on record any cogent evidence in order to explain all these facts and the doubts surrounding these facts. From the perusal of these points, this Court comes to a single possible conclusion that whatever has been recited in the Will cannot be the last wish of Narayan Singh, father of both the parties. Based on the above made discussion, this Court is of the confirmed and considered opinion that the Will in question is shrouded with suspicious circumstances. As the plaintiff has failed to remove all the suspicious circumstances this issue is decided against the Plaintiff and in favor of the Defendant.'

5. Learned First Appellate Court has also examined the evidence and given its findings in paragraph No. 15, which is reproduced herebelow:

'15. In this case also, the perusal of the Will Ex.P1 reveals that the signatures were shaky and there was no mention of any of the legal heirs, in it. Even, no plausible explanation of such legal heirs was given in the Will. Further

more, the said Will Ex.P1 had not seen the light of the day, for a long period of 28 years. Moreover, it had come on record that the plaintiffs and the defendant had a previous litigation, wherein also there was no mention of the said Will Ex.P1. Apart from it, it had also come on record that the parties to suit were also involved in proceedings under section 107/151 Cr.P.C and the fact of execution of the Will Ex.P1 was also not mentioned therein. Even otherwise, it has also come on record during statement of DW2 Prakash Monga that there were various compromise meetings held between the parties but at that time also the fact of execution of the Will Ex.P1 was not mentioned. Hence, all these facts coupled with the fact the scribe and the witnesses were not known to each other and barely knew testator, had casted a suspicion on the genuineness of the Will Ex.P1. I am also attracted by the authority of the Hon'ble Apex Court as contained in Balathandayutham and another vs. Ezhilarasan 2010(2) RCR (Civil) 821 wherein it was held that it would be a suspicious circumstance, where testators of the Will were strangers to the family. Moreover, the scribe was a minor at the time of scribing of the Will and he was not a regular deed writer and had never scribed any Will, earlier. Even, statements were not recorded at the time of registration of the Will and no proper notice was given to the defendant. Further more, PW2 Subash and PW3 Balam did not know the third person, present at the time of scribing of the Will. Hence, all these facts makes the genuineness of the Will suspicious.'

6. PW3-Balam, scribe of the Will stated in his cross-examination that one person, namely, Namberdar Tarlok Singh a male, had accompanied them for registration for the Will Ex.P1. When Babu Lal-PW4 appeared, he stated that one Namberdar, namely, Paramjit Kaur Sodhi, accompanied them, who got her statement recorded at the time of registration, therefore, Lower Appellate Court reached the conclusion that the factum of not remembering the gender of the person in itself is very fatal to the story propounded by the plaintiff.

7. Moreover, sitting silent continuously for 28 years, without disclosing the factum of execution of Will in any of the proceedings of the previous litigations also creates a big doubt as to what reasons the plaintiff wanted to hide such an important document, which gives him complete rights in the property.

For the sake of convenience, finding recorded by the learned First Appellate Court in paragraphs No.16 and 17 are reproduced hereunder:

'16. Apart from it, it is pertinent to mention here that PW3 Balam, scribe of the Will, in his cross examination had stated that one person namely; Namberdar Tarlok Singh a male, had accompanied them for registration of the Will Ex.P1, whereas PW4 Babu Lal, had stated that one person namely; Namberdar Paramjit Kaur Sodhi, got her statement recorded, at the time of registration. This fact was very fatal to the story of the plaintiff as one can forget the name of a person

but it cannot be believed that one could forget the gender of the person, accompanying them.

17. Further more, from the perusal of the entire evidence as well as documents on record, following facts had come forward, which are noteworthy. Firstly, that both the parties were living jointly, at the time of the death of the testator; secondly, the testator had never tried to throw out or dispossess the defendant from the property; thirdly, the persons present at the time of scribing the Will, were strangers to testator and each other; fourthly, registration process was also doubtful as no proper notice was ever given to the defendant. This fact was proved as the plaintiff himself had admitted that he never mentioned the fact of having a brother, at the time of registration. Fifthly, the Will was a secret to the entire world for a period of 28 years and the plaintiff had failed to explain as to why he remained silent for a period of 28 years and as to how, on one fine day, he came to know about the Will. He has not brought on record any iota of evidence as to from where he came to know about the Will. Sixthly, the witnesses had contradictory made statements as to who actually was present at the time of registration of

the Will. Seventhly, there was no explanation as to why a father would not mention even a single word in his Will about the fact as to why he was not giving anything to his own flesh and blood, whom he had kept in front of his eyes as he never threw him out of his property, during his lifetime. Moreover, the plaintiff had failed to bring on record any cogent evidence in order to explain all these facts and the doubts surrounding these facts. In view of the above said points, the trial court has held that whatever was recited in the Will, could not be the last wish of Narain Singh, father of both the parties.'

8. I have heard the counsel for the plaintiff and gone through the findings recorded by learned Courts below, there is nothing substantive pointed out to reach to the conclusion that the findings recorded by the Courts below are incorrect or not sustainable in any manner. No question of law much less substantial question of law arises in the instant appeal for the consideration of this Court. Consequently, the impugned judgments and decree passed by both the Courts below are hereby maintained and the present appeal stands dismissed.

9. Since the appeal has been dismissed on merits, no separate orders are required to be passed in the application i.e. CM-5365-C-2019 for condonation of delay of 36 days in filing the appeal and the same is disposed of as such.

October 05, 2023
rashmi

[SANJAY VASHISTH]
JUDGE

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no