

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

XOBS-31-C-1988 and
RSA No.540 of 1988 (O&M)
Date of decision: 30.10.2023

Kewal Singh and others

..Plaintiff-Appellants

Versus

Shri Guru Teg Bahadur Khalsa College for Women, Dasuya and others

..Defendant-Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. N.S. Boparai and Mr. Puneet Verma, Advocates
for the appellants.

Mr. Malkeet Singh, Advocate,
for respondent No.1.

AMAN CHAUDHARY, J.

1. The present appeal has been filed by the plaintiff-appellants against judgment dated 30.09.1987 passed by learned Additional Sessions Judge, Hoshiarpur, whereby the appeal filed by the respondent No.1-defendant had been partly accepted.

2. Plaintiff-appellants filed a suit for declaration with permanent injunction to the effect that they are in joint possession as owner (co-sharers) of land measuring 110 kanals and 11 marlas, out of 112 kanals 6 marlas as per jamabandi for the year 1976-77 in the area of Village Panwan and defendant No.1 Shri Guru Teg Bahadur Khalsa College for Women, Dasuya has got no right title or interest whatsoever in it and defendant should be restrained forever from interfering in the said joint possession of the plaintiffs on the suit land by anyway. The same was contested *inter alia* on the ground that Bishan Kaur, widow of Partap Singh had executed a valid Will in favour of defendant No.1 on 30.07.1980, a day prior to

her murder and as per which even the mutation has been sanctioned and it is owner of suit land as successor.

3. Learned counsel for the appellants submitted that in the suit, defendants No.2 & 3, Nasib Kaur and Lachhman Kaur, who were relatives of Bishan Kaur had filed written statement admitting the claim of the plaintiffs. However, defendant-respondent No.1, contested the same by producing the Will of Bishan Kaur, executed in favour of the Institution, but the trial Court rightly decreed the suit in favour of the plaintiff-appellants by holding the Will Ex.D-1 to be a false and fabricated document. However, the lower appellate Court wrongly upset the findings, without appreciating the facts in the right perspective. Partap Singh, husband of Bishan Kaur having given larger share to both appellants, Tirath Singh and Amrik Singh and being the marginal witness to the Will of his brother Udham Singh by which also the share came to them, shows that he was closely connected to them. Firstly, the Will was not by a regular scribe. Secondly, Harpal Singh DW1 was instrumental in getting the Will prepared in favour of defendant No.1-Institution and DW2 Baljit Singh, who scribed it and Jaswant Singh, who attested the same, both belonging to Village Balagan, as such, the testator cannot be said to have executed the same with her free will. Thirdly, only one of the attesting witnesses was examined and it was also not registered. Prayed for allowing the appeal.

4. Opposing the above submission, learned counsel appearing on behalf of the contesting respondent No.1, stated that the defendant-Institution, does not dispute the Will executed by Udham Singh and Partap Singh giving the share of property to the appellants. The issue raised is only regarding the Will executed by Bishan Kaur in its favour stating the same to be validly executed and proved on record in accordance with Section 68 of the Indian Evidence Act, 1882 and

Section 63 of the Indian Succession Act, 1925, by the consistent testimonies of DW1 Harpal Singh, one of the attesting witnesses as well as of Scribe-DW2 Baljit Singh. The property has been given to an Educational Institution by Bishan Kaur and the Will could not be got registered, as on the very next day, she was murdered, leading to the registration of an FIR on 31.07.1980 against the plaintiff-appellants. The lower appellate Court has rightly held the Will to be genuine, thus, the said finding requires to be not interfered with and the present appeal be dismissed.

5. Heard the learned counsel on either side and perused the record with due care and circumspection.

6 Notably, Partap Singh-husband of Bishan Kaur, being issueless, had executed a Will, in favour of Tirath Singh and Amrik Singh, the sons of his nephew Kewal Singh, who were to receive 2/3rd of his share in the property, whereas the remaining 1/3rd by his wife-Bishan Kaur.

7. The bone of contention is the Will executed by Bishan Kaur bequeathing the property, received from her husband-Partap Singh, in favour of the defendant No.1- respondent-Institution.

8. Before proceeding to adjudicate, it is apposite to refer to the findings of lower appellate Court, which read thus:

“...He further states that he had gone to the house of Bishan Kaur (it being admitted case of the witnesses on both sides that Bishan Kaur and Partap Singh were residing in a separate house from the house in occupation of the plaintiffs / respondents) at about 6 P.M. on 30.7.1980; that he was accompanied with his maternal grand-mother Kartar Kaur; that it was then that Bishan Kaur expressed her desire to execute the will; that accordingly, he went to the nearby village Blagan and collected Baljit Singh scribe and Jaswant Singh, attesting witness of this will with him and brought them to Bishan Kaur's house and that then this will was executed. In such circumstances, the will Ex. P 1 having not been scribed in the presence of regular deed writer, or in the presence of some

resident of village Panwan where Bishan Kaur was residing, amply stands explained.

...yet his wife Bishan Kaur may have been attached to her parental side yet she did not make the will in favour of either Harpal Singh or Baljit Singh but the will has been made in favour of an Institution, which in itself speaks of a pious-act on the part of an aged religious minded lady.

26. Harpal Singh is not a beneficiary under the will. He is bold enough to tell the fact. It is not necessary that will should have been scribed by a regular deed writer. Not being a beneficiary himself Harpal Singh's active participation in the execution of the will does not go against the appellant. With her husband's death being fresh in her mind, and she being all alone in the world surrounded by her husband's collaterals, it was but natural for Bishan Kaur to have thought about making a will in favour of an institution. Even if the name of the institution, may have been suggested by either Jaswant Singh or by Harpal Singh, attesting witnesses of the will or even by Baljit Singh, scribe of the will, it would not mean that Bishan Kaur was unduly influenced. However, there is no evidence that she had chosen the appellant college as the beneficiary of her estate on the asking of the scribe and the attesting witnesses of the will. The will was executed on one evening and the next morning the lady was no more in the world. Thus even if she wanted to get the will registered, she had been left with no opportunity

27. There is no suspicious circumstances, attached to the will. It has been proved from the statements of Baljit Singh and Harpal Singh DWs to be a validly executed document. The findings of the learned trial court to the contrary can not be upheld.”

9. In fact, the legal principles with regard to the proof of a Will are no longer res integra. Hon’ble the Supreme Court in the case of **Daulat Ram vs. Sodha**, (2005) 1 SCC 40 had held that, “...Since it is required to be attested, as provided in Section 68 of the Indian Evidence Act, 1872, it cannot be used as evidence until one of the attesting witnesses at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence. In addition, it has to satisfy the requirements of Section 63 of the Indian Succession Act, 1925...”

10. Pertinently, the conclusions drawn by the lower appellate Court are well founded as is discernible from the record as well that Bishan Kaur had, on her own volition chosen the respondent-Educational Institution, Shri Teg Bahadur

Khalsa College for Women, Dasuya, there being no evidence led by the plaintiffs, to the contrary, to vest with 12 kanals 16 marlas, that came to her share from her husband, which in itself is an expression of the larger good in her mind for which she desired the land to be utilised, in preference to giving it to the grandsons of her brother-in-law (sons of her husband's nephew), who by way of the Will of her husband, had already received a major part of the property besides being in receipt of the share of Udham Singh, another brother of her husband and became owners to the extent of 79 kanals 17 marlas and even their father, Kewal Singh, nephew of Udham Singh and Partap Singh, was in joint possession as owner to the extent of 18 kanals 8 marlas, out of the total of 110 kanals 11 marlas. Here it would be gainful to refer to a judgment in **Harpal Singh vs. Jagdish Singh**, 2005 SCC OnLine P&H 773, wherein this Court had observed and held that the Will has been proved in accordance with requirement of Section 68 of Indian Evidence Act, 1872 read with Section 63(c) of the Indian Succession Act, 1925, by the statement made by one of the attesting witnesses and excluding close relative from the benefits of testamentary presents cannot be regarded as suspicious circumstance in the face of the finding that the testator has bequeathed his estate to the beneficiary out of services rendered by them, with whom, it was proved on record that the testator was living at the time of his death. Once a Will has been proved in accordance with the aforementioned provisions, furnishing proof of any suspicious circumstances is on the shoulders of the plaintiff-appellant who has challenged the validity and genuineness of the Will. Likewise, in the case at hand, the lower appellate Court found that the execution of the Will was duly proved by examining DW1 Harpal Singh and DW2-Baljit Singh, thereby satisfying the requirements of law.

11. As regards the scope of interference in regular second appeal, in **Satyender vs. Saroj**, 2022 SCC OnLine SC 1026, Hon'ble the Supreme Court held that, "Be that as it may, though the requirement of formulation of a substantial question of law was not necessary, yet Section 41 of the Punjab Courts Act, requires that only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the force of law or the court below have failed to determine some material issue of law or custom or usage having the force of law. Therefore, what is important is still a "question of law". In other words, second appeal is not a forum where court has to re-examine or re-appreciate questions of fact settled by the Trial Court and the Appellate Court." The above has been further followed in **Shivali Enterprises vs. Godawari**, 2022 SCC OnLine SC 1211.

12. This Court finds that the lower Appellate Court rightly re-evaluated the fact situation of the case in its true nature as well as examined the evidence in the perspective it ought to have been, only thereafter returned its plausible and just findings by reversing that of the trial Court, being erroneous.

13. As an upshot, the present regular second appeal having no question of law involved as also there being no infirmity or illegality in the judgment passed by lower Appellate Court, is hereby dismissed. Cross-objection are rendered infructuous in view of the statement made by learned counsel for the respondents.

30.10.2023

Ankur

**(AMAN CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No