

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

319

RSA No.2134 of 1992 (O&M)
Date of Decision: 27.07.2023

Pritam Kaur (Since deceased)
though her legal representative ... Appellant

Versus

Rajinder Singh and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Argued by: Mr. Sumeet Jain, Advocate,
for the appellant.

Mr. Ripudaman Singh Sidhu, Advocate,
for the respondents.

MANISHA BATRA, J.

1. The instant appeal has been filed against the judgment and decree dated 11.08.1992 passed in Civil Appeal No.RT-85 of 1990 titled as *Rajinder Singh and others v. Pritam Kaur* by the Court of learned Additional District Judge, Ropar whereby the judgment and decree dated 17.10.1989 passed in Civil Suit No.459 of 1986 titled as *Rajinder Singh and others v. Pritam Kaur* passed by the then learned Sub Judge 1st Class, Kharar, had been set aside, the suit had been decreed and the appeal filed by the respondents-plaintiffs had been allowed.

2. For the sake of convenience, the parties shall be referred to hereinafter as per the original nomenclature as given in the suit.

3. Brief facts of the case shorn of unnecessary details are that the agricultural land mentioned in detail in the head note of the plaint

(hereinafter to be mentioned as the “disputed property”) was originally owned by one Deva Singh son of Jeevan Singh. After his death, the same was inherited by his two sons, namely, Gurdial Singh and Ajmer Singh. Sh. Ajmer Singh had died issueless on 02.12.1985. The plaintiffs who are children of Smt. Gurdial Kaur, real sister of Sh. Gurdial Singh and Ajmer Singh, had inherited the disputed property owned by Ajmer Singh being his nearest legal heirs. It was alleged that the defendant Smt. Pritam Kaur had, however, started claiming title over the same on the basis of an unregistered Will alleged to have been executed by Sh. Ajmer Singh and on the basis thereof had even got the mutation of inheritance of Sh. Ajmer Singh sanctioned in her favour. The plaintiffs alleged that the impugned Will was forged, fictitious and was not a genuine document. Accordingly, they prayed for passing a decree for declaration to the effect that after the death of Sh. Ajmer Singh, they had become co-owners of the disputed property and were entitled to joint possession of the same.

4. The defendant in her written statement did not deny the fact that the plaintiffs were children of sister of Sh. Ajmer Singh. It was pleaded that Sh. Ajmer Singh was married to her real sister Smt. Dyalo, who had died long time back. Sh. Ajmer Singh who was issueless, lived with the defendant and her husband during his life time and he was looked after by them. It was pleaded that being pleased with the services rendered by the defendant and out of natural love and affection for her, Sh. Ajmer Singh had executed a Will dated 27.10.1985 out of his free will and volition and while being in sound disposition of mind, thereby bequeathing his entire movable and immovable properties in her favour. It was asserted that the

plaintiffs were not entitled to claim any right in respect of the disputed

property and while controverting the remaining averments, the dismissal of the suit had been prayed for.

5. The plaintiffs filed replication resisting the pleas taken in the written statement and re-asserting those of the plaint. On the pleadings of the parties, the following issues were culled out by learned trial Court:-

1. Whether the plaintiffs are owners of ½ share of the suit land, as alleged? OPP
2. Whether Ajmer Singh executed a valid will on 27.10.1985 in favour of defendant Pritam Kaur as alleged? OPD
3. Whether the plaintiffs have got no cause of action? OPD
4. Relief.

6. Both the parties adduced evidence in support of their respective assertions. Besides relying upon documentary evidence, the plaintiffs examined three witnesses, namely, PW-2 Harbans Singh, PW-3 Natha Singh and PW-4 Bishan Singh son of Buta Singh whereas plaintiff No.1 Rajinder Singh appeared as PW-1. In rebuttal evidence, one more witness namely, PW-5 Ajit Singh had been examined. The defendant Pritam Kaur, on the other hand, examined four witnesses namely, DW-2 Hakam Singh, DW-3 Gurvinder Singh, DW-4 Karam Singh and DW-5 Surjit Singh and herself appeared as DW-1.

7. The trial Court dismissed the suit filed by the plaintiffs by holding that the testator was proved to have bequeathed his properties in favour of the defendant by virtue of Will Ex.DW5/A and the defendant was in possession of the same. The First Appellate Court, however, accepted the

appeal filed by the plaintiffs and while holding that the execution of Will

was surrounded by suspicious circumstances and hence it was not proved to be executed by the testator, decreed the suit filed by the respondents.

8. Learned counsel for both the parties were heard at length and the record has been perused with their able assistance.

9. Learned counsel representing the appellant strenuously argued that the judgment and decree passed by learned First Appellate Court was liable to be set aside as it had gone beyond the scope of pleadings of the parties while recording findings to the effect that the impugned Will was shrouded by suspicious circumstances though neither any such circumstance was pleaded by the respondents-plaintiffs nor had emanated from the evidence produced on record and even the validity of this Will had not been specifically challenged by the respondents. The Will was proved to be executed by the testator with sound disposition of mind and he had every reason to bequeath his properties in favour of the appellant. With these broad submissions, it was submitted that the impugned judgment was liable to be set aside and that the appeal deserved to be accepted. Learned counsel for the appellant-defendant placed reliance upon authorities reported as **Pentakota Satyanarayana v. Pentakota Seetharatnam**, 2005 (8) SCC 67; **Shashi Kumar Banerjee and others v. Subodh Kumar Banerjee and others**, AIR 1964 Supreme Court 529; **Ved Mitra Verma v. Dharam Deo Verma**, 2014 (15) SCC 578; **Mahesh Kumar (Dead) by L.Rs. v. Vinod Kumar and others**, 2012 (4) SCC 387; **Leela Rajagopal and others v. Kamala Menon Cocharan and others**, (2014) 15 SCC 570 & **Baldev Raj Ahuja v. State, N.C.T. of Delhi and others**, AIR 2023 (Delhi) 56 in support of his arguments.

10. Per contra, learned counsel for the respondents-plaintiffs submitted that the learned First Appellate Court had minutely scrutinized the evidence produced on record and committed no error in arriving at a well reasoned finding of fact that the execution of the Will in question could not be proved by the propounder thereof by producing any sufficient and convincing evidence and it was shrouded with grave suspicion showing that the same was not executed by the testator and could not be acted and relied upon. While stressing that no substantial question of law or facts requiring interference by this Court in the findings given by learned First Appellate Court, has arisen, it was urged that the appeal was liable to be dismissed. Learned counsel for the respondents placed reliance upon authorities cited as **Ramesh Verma (D) through LRs. v. Lajesh Saxena (D) by LRs and another**, (2017) 1 RCR (Civil) 285 and **Jaswant Kaur v. Amrit Kaur**, 1977 (1) SCC 369 in support of his contentions.

11. It is not in dispute between the parties that the respondents-plaintiffs are Class-II heirs of the deceased Ajmer Singh being children of his sister Smt. Gurdial Kaur. It is also not in dispute between the parties that the appellant-defendant who is now dead and represented by her legal representative i.e. her nephew, was wife of Gurdial Singh, real brother of the testator and was also real sister of his wife Smt. Dyalo (who had died long back). As per Section 8 of the Hindu Succession Act, 1956, the property of a Male Hindu dying intestate shall devolve firstly upon his Class-1 legal heirs and if there is no heir of Class-1 then upon the heirs being relatives specified in Class-II of the Schedule which covers children of his sister. The appellant-defendant, in this case, asserted her right over

the properties left by Sh. Ajmer Singh on the basis of Will Ex.DW5/A executed on 27.10.1985. He had admittedly died on 02.12.1985. The learned trial Court had held that the appellant who was the propounder of the Will had satisfactorily explained the due execution of the same whereas, the learned First Appellate Court reversed these findings by observing that the propounder had not been able to explain the suspicious circumstances surrounding the Will and it was not proved to be a genuine Will of the testator. The learned First Appellate Court had taken note of the following circumstances surrounding the execution of the Will in question to arrive at the conclusion that the same was suspicious:-

- (i) Non-production of the original Will and non registration thereof.
- (ii) Non-disclosure of any specific reason for excluding the respondents/plaintiffs from the Will.
- (iii) Prominent part played by the appellant-defendant in execution of Will.
- (iv) Execution of Will at the parental village of the appellant instead of native village of the testator.
- (v) Discrepancies in the statements of witnesses with regard to place of execution of the Will.

12. Before entering into the factual aspects and questions in controversy, it will be apposite to take note of legal provisions and principles concerning execution of Will which are discussed hereinafter.

13. Section 63 of the Indian Succession Act, 1925 (for short "Act, 1925"), and Section 68 of Indian Evidence Act, 1872 (for short "Evidence

Act") are relevant for the purpose. Section 63 of the Act, 1925 deals with execution of unprivileged Wills. As per this section, the following requirements are to be complied with to hold that a Will has been validly executed or not:-

- a) the testator is proved to have signed or affixed his mark to the Will;
- b) that the signature or mark of the testator has to appear at a place from which it could appear that by that mark or signature, the document is intended to have effect as a Will;
- c) that the Will is proved to be attested by two or more witnesses and each of these witnesses are proved to have seen the testator sign or affix his mark to the Will; or are proved to have received from the testator a personal acknowledgement of signature or mark, and each of the witnesses has to sign the Will in the presence of the testator.

14. Further, Section 68 of the Evidence Act speaks of as to how a document required by law to be attested can be proved. This provision mandates examination of at least one attesting witness in proof of Will. On a combined reading of both these provisions, it is clear that a person propounding the Will has to prove that the Will was duly and validly executed. That cannot be done simply by proving that the signatures on the Will were that of the testator but it must also be proved that attestations were also made properly as required by Section 63 of the Act, 1925. Section 68 of Evidence Act gives a concession to those who want to prove an established Will in a Court of law by examining at least one attesting witness. What is a significant and is to be noted is that the one attesting

Neutral Citation No.2023:PHHC:095866

witness so examined should be in a position to prove the execution of Will. Meaning thereby that such witness in his evidence has to satisfy the attestation of a Will by him and the other attesting witness in order to prove due execution of the Will. The mode of proving Will, therefore, does not ordinarily differ from that of proving any other document except as to special requirement of attestation prescribed in the case of Will by Section 63 of the Act, 1925. The test to be applied is test of satisfaction of a prudent mind. What is required to be seen is whether the propounder of the Will has produced satisfactory evidence that the Will was signed by the testator who at the relevant time was in a sound or disposing state of mind, understood the nature and effect of the disposition and had put his signatures/thumb impressions with his own free Will.

15. The unique feature of the Will is that it speaks from the date of death of the testator and obviously therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. A person challenging the Will alleging fabrication, fraud, undue influence or coercion has to prove such pleas but it is also well settled that even in the absence of such pleas, it is a part of initial onus of the propounder to remove all reasonable doubt in the matter. The answer to the question as to whether any particular feature of a Will or set of features, qualify as suspicious, depends upon facts and circumstances of each case (See: **Kavita Kanwar v. Mrs. Pamela Mehta and others**, 2020 (2) R.C.R. (Civil) 613). A circumstance is suspicious when it is not normal or is not normally expected in a normal situation. While applying the test of satisfaction of judicial conscience, with regard to execution of a Will, the

Court has to address itself to the solemn question as to whether the testator had signed the Will while being aware of its contents and after understanding the nature and effect of dispositions of the Will. Having taken note of the principles which are guiding factors in dealing with the questions posed in the matter, as discussed above, this Bench shall now examine the rival contentions.

16. The respondents-plaintiffs had alleged in their plaint that the Will in question was a false and fictitious document without pleading further as to how it was so. Interestingly, even in the relief clause of the plaint, no specific prayer challenging validity of the Will had been made. However, the trial Court had framed an issue on the point and adjudicated the same in favour of the appellant-defendant. The learned First Appellate Court after discussing several circumstances as mentioned above, had arrived at the conclusion that the Will in question was shrouded by suspicious circumstances, one of which was non-production of the original Will in the Court and also non-registration thereof. It is relevant to mention here that during trial, the appellant had moved an application for granting her permission to prove the impugned Will by producing secondary evidence on the ground that the original Will had been given to the revenue authorities at the time of sanctioning of mutation No.1533 (Ex.D-3) and was lost. The learned trial Court had allowed this application vide order dated 05.09.1989 and the said order is not proved to have challenged by the respondents at all. As per Section 65 of the Evidence Act, secondary evidence may be given of the existence, condition and contents of a document, when the original has been lost or when the party offering

evidence of its contents cannot, for any other reason not arising from his/her own default or neglect, produce it in reasonable time. Once the appellant was allowed to prove the Will in question by way of secondary evidence and once she had examined the attesting witness of this Will as a witness, in the opinion of this Court the requirement of law for formal proof of this document had been fulfilled.

17. So far as the question as to authenticity of evidence of attesting witness namely, DW-5 Surjit Singh, Numberdar is concerned, on perusal of his testimony, it emerges that he had given details about the manner in which the Will was scribed and had been thumb marked/signed by himself and another attesting witness namely, Sadhu Singh and had been signed by the testator after the contents of the same were read over and explained to him in the presence of this witness. The testimony of this witness remained unchallenged. Neither he was cross-examined on the question of genuineness of the Will nor about the fact that the testator had executed the same in his presence with his free will nor the attestation of the same by him had been specifically questioned. He was not at all cross-examined regarding details of execution of the Will in question as well as the attestation. It was sufficient for this witness to say that the document was attested by him and it was for the respondents to challenge his statement by cross-examining him on those lines which was not done at all by the respondents and, therefore, in the opinion of this Court, the statement of DW-5 could certainly be accepted and by examining him, the appellant had successfully discharged the burden of proving the Will in question. The respondents relied upon **Ramesh Verma (D) through LRs.'s** case (Supra)

in which it was observed by Hon'ble Supreme Court that it was for the propounder of the Will to show by satisfactory evidence that Will was signed by the testator in a sound and disposing state of mind and after understanding nature and effect of disposition and further as per his own will. In our opinion, the testimony of DW-5 fulfilled all these requirements.

18. That apart, the appellant's own statement on the point that the testator had executed a Will in her favour and a mutation of ownership of properties left by the testator had been sanctioned in her favour on the basis of the said Will had also remained unchallenged. With regard to the authenticity of the Will, the only suggestion given to her by the respondents-plaintiffs was that the Will in question was got scribed by her in collusion with her brothers and nephews and Ajmer Singh had not executed the same in her favour. Only on the basis of this suggestion, it cannot be stated that the Will was not scribed by the testator. Then, the appellant-defendant had also placed on record Ex.D-3 copy of mutation No.1533 sanctioned on 20.12.1985 in her favour qua properties of the testator on the basis of an unregistered Will. An endorsement/report is shown to have been made on Ex.D-3 by the Halqa Patwari Sh. Nachhittar Singh on 17.12.1985 to the effect that an unregistered Will had been produced by the appellant. This document also shows that an order was passed by the concerned revenue officer on 20.12.1985 sanctioning the mutation and mentioning that Smt. Pritam Kaur along with Sadhu Singh and Surjit Singh who were attesting witnesses to the Will in question were present at that time. The respondents did not question the authenticity of this document at all which goes to show that the original unregistered Will

had been produced by the appellant before the revenue authorities at the time of sanctioning of Ex.D-3 in the presence of attesting witnesses and this proves that an unregistered Will was very much existing at that time. As such, the requirement of proof of loss of the Will as well as proving the same by way of secondary evidence stood proved from the evidence led by the appellant on record.

19. So far as non-registration of the Will in question is concerned, no need to mention here that there is no requirement of law that a Will should be compulsorily registered and accordingly irrespective of the fact that the village of the testator was not far from the office of concerned Sub Registrar where the Will could be registered, no suspicious circumstance can be stated to have arisen to doubt about the authenticity of the Will only due to that reason. As such, the observations made by learned First Appellate Court that execution of Will had become suspicious due to non-production of the original one and non-registration thereof, cannot be stated to be sustainable and are liable to be reversed.

20. Proceeding further, another circumstance which was treated to be a suspicious one by learned First Appellate Court was that there was no mention in the Will Ex.DW5/A about excluding the respondents from the same. As discussed above, the respondents being children of sister of the testator were his Class-II legal heirs and he had no Class-I legal heir whereas the appellant was sister of his deceased wife and also widow of his deceased brother and was not having any relationship by blood with him. However, on a close reading of the contents of the Will, its clear language, unambiguous purport and effect is clearly indicated. The testator is shown

to have recited in this Will that he had no child. He was being looked after by Smt. Pritam Kaur who was his sister-in-law and was very happy with the services provided by her. He further recited that he wished to reward her during his life time while being in his complete senses and was, therefore, bequeathing his entire properties in her favour and nobody else would be having any concern with the same. The mind of the testator is clearly discernible from the same and reasons for bequeathing his properties in favour of the appellant only are apparent from the Will itself. It is well settled proposition of law that the circumstance of deprivation of natural heirs does not raise any suspicion because the whole idea behind execution of the Will is to interfere with the normal line of succession and so, natural heirs would certainly be debarred fully in some cases and in some cases partly. Reliance in this regard can be placed upon **Rabindra Nath Mukherjee and another v. Panchanan Banerjee (dead) by LRs. and others**, AIR 1995 Supreme Court 1684 & **Uma Devi Nambiar v. T.C. Sidhan**, 2004 (1) RCR (Civil) 320; wherein the Hon'ble Supreme Court had observed that exclusion of the natural heirs cannot lead to inference that the Will was not genuine. It was held that a Will is executed to alter the ordinary mode of succession and by the very nature of things, it is bound to result in either reducing or depriving the share of natural heirs. If a person intends his property to pass to his natural heirs, there is no necessity at all of executing a Will. The fact that natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be a suspicious circumstance. Similar proposition of law was laid down in **Mahesh Kumar (Dead) by L.Rs.'s case** (Supra); **Ved Mitra**

Verma's case (Supra) and **Shashi Kumar Banerjee's** case (Supra).

21. It is also worth mentioning that the evidence led by the appellant clearly established that the testator had been residing with her husband and herself since long and was looked after by them. Neither DW-1 i.e. the appellant nor DW-2 Hakam Singh who deposed that the testator resided with the appellant, could be controverted on this point. The fact that the testator resided with the appellant, was also proved from Ex.D-1 copy of extract of voter list of Village Rora wherein both of them were shown to be residents of same address during the year 1984. Though respondents tried to make out a case that the testator used to reside with them but on perusal of statement of witnesses examined by the respondents, it clearly appears that they were tutored witnesses. The testator had admittedly died at Village Rora. The respondents No.2 to 5 are married nieces of the testator residing in their respective nuptial homes in different villages and none of them came forward to depose that the testator ever resided with them or with respondent-plaintiff Rajinder Singh. As such, it also stands proved that the testator had been living with the propounder of the Will. In such circumstances, there was nothing unnatural if he executed the Will in respect of the property owned by him in favour of the appellant. His sister i.e. the mother of the present respondents had died earlier. It is not revealed from the evidence produced on record that the respondents-plaintiffs who were children of deceased sister of the testator and were residing in different places were serving him in any manner and were even in touch with him. As such depriving them from any share in the properties of the testator could not be stated to be any unnatural circumstance.

22. Another circumstance which had been taken into consideration by learned First Appellate Court for coming to the conclusion that the Will in question was shrouded with suspicion was that the appellant-defendant was present with the testator at the time of execution of the Will in question. It is important to mention here that there was no pleading in the plaint that the impugned Will was liable to be ignored as it had been executed by the testator in the presence of the appellant or she had actively participated in execution thereof. The well settled proposition of law is that a Will cannot be viewed with suspicion only because the propounder had played an active role in execution thereof. Reliance in this regard can be placed upon **Pentakota Satyanarayana's** case (Supra) wherein it was observed that mere presence of the beneficiary at the time of execution would not prove that the beneficiary had taken prominent part in the execution of the Will and even in a case where active participation of the propounder of the Will at the time of execution thereof was there, that cannot be stated by itself to be sufficient to create doubt either about the testamentary capacity or the genuineness of the Will. Similar observations were made in **Leela Rajagopal and others's** case (Supra), wherein the Hon'ble Supreme Court held that participation of the propounder of the Will in execution and registration of the Will could not be a circumstance warranting adverse inference. To similar extent is ratio of decisions in **Shashi Kumar Banerjee's** case (Supra), **Gurdev Kaur an others v. Kaki and others**, (2007) 1 SCC 546; **Malkani (Smt.) v. Jamadar and others**, (1987) 1 SCC 610; **Gurdial Singh Mann and others v. Kulwant Kaur and others**, 1989 (2) R.R.R. 142 & **Baldev Raj Ahuja's** case (Supra). Apart from the fact

that there was absence of any pleading on the part of the respondents-plaintiff that the appellant-defendant took the active part in the execution of the Will in question by the testator in her favour, there was also no evidence that the appellant in any manner had forced or influenced the testator to execute and sign the Will against his wishes. On the contrary, it is proved from the testimony of DW-5 that the contents of the Will were read over and explained to the testator in his presence and he had willingly and voluntarily signed the same. Though this witness also stated that the propounder of the Will was present at that time and the Will after execution was handed over to her but that does not mean that she had made any active participation in the registration of Will. Therefore, in the considered opinion of this Court, the learned First Appellate Court erred in considering this circumstance as a suspicious one and the registration of Will by the testator in the presence of appellant could not be considered as a vitiating factor.

23. The learned First Appellate Court had further held that the Will in question was surrounded with suspicious circumstances due to the fact that it was executed at Village Teur which was the natal village of the appellant herself instead that of the native village of the testator i.e. Village Rora and further that the statements of witnesses of the appellant with regard to place of execution of Will were discrepant. No doubt, it is revealed from the testimony of DW-5 that the testator had executed the Will at Village Teur which admittedly was the parental village of the appellant and not in his own village but this cannot be stated to be any such circumstance which can be considered to be suspicious. Further, the only discrepancy which had been noticed by learned First Appellate Court in

statements of witnesses was that DW-5 had stated that the Will in question was handed over to the appellant after its execution whereas the appellant had stated that she was not aware of execution of any Will and that it was found by her nephew after the death of testator in the documents lying in the house. This discrepancy cannot be stated to be of such nature on the basis of which even otherwise cogent and convincing statements of the appellant and the attesting witness could be discarded. As such observations made by learned First Appellate Court on this points are also not sustainable. In **Jaswant Kaur's** case (Supra) which has been relied upon by the respondents, it was observed that the onus was on the propounder of the Will to explain suspicious circumstances surrounding the execution of the Will. As per the discussion made above, this Court has no hesitation to hold that the appellant Smt. Pritam Kaur who was the propounder of the Will in question had produced sufficient, cogent and convincing evidence on record of such nature which removed all the circumstances which could be considered to be suspicious. Rather no such suspected features which could be stated to be real, germane or valid and not fantasy of the doubting mind, were made out from the material placed on record. As such, it can certainly be held that the Will in question deserved to be given due effect to, even though it had cut off the respondents-plaintiffs from the benefits thereof. The learned First Appellate Court failed to justify the conclusion that this Will could not be accepted as a valid instrument executed on free will and volition of the testator. Accordingly, the findings as given by learned First Appellate Court being not sustainable are set aside.

24. For the reasons as discussed above, this appeal is allowed, the

Neutral Citation No.2023:PHHC:095866

judgment of the First Appellate Court is set aside and that of the trial Court is restored. There is no order as to costs.

25. Miscellaneous application(s), if any, also stand disposed of.

27.07.2023
manju

(MANISHA BATRA)
JUDGE

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