

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

XOBJC-10-C-1993  
**RSA-33-1992 (O&M)**  
**Date of decision: 30.10.2023**

Dharm Pal & Others

....Plaintiff-Appellants

Versus

Kuldip Kumar & Others

...Defendant-Respondents

**CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

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Present : Mr. R.A. Sheoran, Advocate for the appellants

Mr. Vikram Singh and Mr. Abhinav Sood, Advocates for respondents

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**AMAN CHAUDHARY. J.**

1. The present regular second appeal has been preferred against the judgment dated 19.09.1991 passed by learned District Judge, Bhiwani dismissing the appeal filed against the judgment and decree dated 02.05.1990 rendered by learned Sub Judge 1<sup>st</sup> Class, Charkhi Dadri, whereby the suit for declaration filed by the plaintiff/appellants was dismissed.

2. Briefly put, one Lok Ram s/o Kurda was the owner in possession of the suit land. He was unmarried. After his death, the plaintiff-appellants filed a suit for declaration to be held owner in possession of the land in question being the legal heirs, as they were sons' of his deceased brothers, Chuniya and Kanshi Ram and that the Will in favour of the defendants was a forged document. It was contested by the defendant-respondents by filing a written statement, stating therein that they used to serve the deceased-Lok Ram, during his lifetime and he had executed a registered Will in their favour. The plaintiffs were not in

cultivating possession of the suit land.

3. On pleadings of the parties and the evidence led, the trial Court finding the Will to be not forged and the suit being not maintainable dismissed the same, which on challenge in appeal, the Will was held to be executed under suspicious circumstances by the lower Appellate Court while plaintiff-appellants were found to be not having locus standi, on the ground that they did not plead or prove that one of the brothers of deceased Loka had also expired.

4. Aggrieved plaintiff-appellants are before this Court, as also are the defendant-respondents in cross-objections as regards reversal of findings qua Will.

5. Learned counsel submitted that the lower appellate Court has rightly discarded the Will as it was surrounded by suspicious circumstances inasmuch as there were inconsistencies in statements of DWs, one attesting witness was father-in-law of one of the beneficiaries and the testator was an aged illiterate person and not proved in accordance with law and as such, the cross-objections are liable to be dismissed. However, the findings of the courts below of non-suiting the plaintiff-appellants on the ground of they not having locus are erroneous, as being nephews of deceased Loka, they had the right to inherit his property.

6. Learned counsel for the respondent on the other hand submits that as per Order VI Rule 4, the fraud had to be specifically pleaded, which in the present case is conspicuously absent and thus, any evidence led beyond pleadings cannot be looked into. The Will was not proved beyond the shadow of reasonable doubt, to be executed by way of fraud, as is the requirement of law. Presumption is attached to the registered document and the minor contradictions, which by passage of time are bound to occur, are not sufficient to hold that the Will was

executed under suspicious circumstances. The registered Will has been duly proved on record in accordance with Section 68 of the Indian Evidence Act, 1882 read with Section 63 of the Indian Succession Act, 1925. There were sufficient reasons and circumstances available with the testator, to have given the land to the defendant-respondents, as they looked after him as his own, and to his satisfaction and in his lifetime handed over possession of the land to them, which they are continuing to be in, a fact admitted by the plaintiffs themselves. He lived for more than 5 years after execution of the Will, but there is no evidence produced by the plaintiff of any cause raised by him of having been forced to or compelled to execute the Will. The thumb impression of the testator was also never doubted and there was no evidence of him being not of sound disposing mind. As is apparent from the Will Ex.D1 that the Sub Registrar had recorded that both the attesting witnesses as also the testator had signed in presence of each other before him. The lower appellate Court has gone wrong while discarding the Will based on suspicious circumstances, which though were not made out in the facts and circumstances of the case. He relied on **Harpal Singh vs. Jagdish Singh**, 2006(1) RCR (Civil) 114.

7. Having heard the learned counsel for both parties at considerable length, perusing the records of the case and given thoughtful consideration to the arguments advanced, this Court is not persuaded to accept the submissions of learned counsel for plaintiff-appellants, while agreeing with those made on behalf of the defendant-respondents.

8. It would be gainful to make a reference to the judgment in **Seth Beni Chand vs. Kamla Kunwar**, (1976) 4 SCC 554, wherein **H. Venkatachala Iyengar vs. B.N. Thimmajamma**, AIR 1959 SC 443 was relied upon and it was

observed and held by Hon'ble the Supreme Court that, "By "free and capable testator" is generally meant that the testator at the time when he made the will had a sound and disposing state of mind and memory. Ordinarily, the burden of proving the due execution of the will is discharged if the propounder leads evidence to show that the will bears the signature or mark of the testator and that the will is duly attested. For proving attestation, the best evidence would naturally be of an attesting witness and indeed the will cannot be used as evidence unless at least one attesting witness, depending on availability, has been called for proving its execution as required by Section 68 of the Evidence Act..."

9. Taking the issue of Will as first, the trial Court had come to a just decision holding the Will to be not marred by suspicious circumstances, the plaintiffs having failed to establish on record by leading cogent and convincing evidence of it being forged or prepared by way of playing a fraud. However, the lower Appellate Court misread the evidence to construe it otherwise, despite the fact that in the cross-examination, no success could be achieved to dispel that the testator was not of sound disposing mind, not thumb marked the Will in the presence of witnesses or of his own free will or that it was got executed by deceit. Notably, in the present case DW3, Banwari Lal and DW5, Bhup Singh, Lambardar, the two marginal attesting witnesses to the Will and DW1, Siri Narayan, the Scribe, testified the validity of the Will. The inconsistencies referred to in statements of DWs or DW3 even if taken as an interested witness, pale into insignificance when, the Will in question Ex.D1 is perused, wherein the Sub Registrar had recorded that both the attesting witnesses and the testator had signed in presence of each other before him, regarding which, a reference to **Sridevi vs. Jayaraja Shetty**, (2005) 2 SCC 784 would be apt, wherein Hon'ble The Supreme

Court relied upon the fact that at the time of registration of the Will on 11-9-1980, the scribe and the two attesting witnesses had been produced before the Registrar. Their statements were recorded and only after satisfying himself, the Registrar registered the Will and the same was held to be valid. Further still, the lower appellate Court disregarded the vital aspects that the possession was admitted by the plaintiffs to be that of the defendant-respondents, though the suit was for declaration to the effect that they are owners in possession; the registered Will was executed on 24.08.1981; the testator died after five years on 09.06.1986 and there being no evidence to show that any complaint was made by him during the said period that the Will was got executed by way of fraud or coercion. In this regard, a profitable reference can also be made to **Malkani vs. Jamadar**, (1987) 1 SCC 610, wherein Hon'ble The Supreme Court observed that, "After the execution of the will, Mst Pari admittedly came and lived with the plaintiff till her death on January 1, 1973. If the allegation that the defendants had procured the will by fraud were to be believed, it was but expected, according to the ordinary course of human conduct, that Mst Pari would have made a report to the authorities against the defendants or revoked the will. The fact remains that she did not execute another will during her lifetime. This evidently shows that the will, Ex. D-1, was a genuine will and was intended to be acted upon." The factum of the testator being illiterate and 70 years old at the time of execution of Will, does not *ipso facto* lead to an inference either of he not of sound disposing mind or susceptible to influence, there being no evidence led by the plaintiff-appellants in this regard.

10. In **Harpal Singh** (supra), this Court had observed and held that the Will has been proved in accordance with requirement of Section 68 of 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.

11. The findings of the Courts below with regard to the plaintiff-appellants claiming inheritance being nephews of deceased Lok Ram, having no locus standi to file the suit are perfectly valid, as there was neither any pleading nor evidence on record that Bhana Singh, another brother of the testator, had expired.

12. In view of the foregoing discussion, this Court finds no illegality or irregularity in the impugned judgments non-suiting the plaintiff-appellants and the same thus, do not call for any intervention. However, the findings recorded by the lower appellate Court regarding the Will being perverse, are set aside.

13. Sequelly, the appeal being meritless is hereby dismissed and the cross-objections filed by the defendant-respondents are allowed.

(AMAN CHAUDHARY)  
JUDGE

October 30, 2023  
M.Kamra

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