

**RSA-4731-2019 (O&M)
and other connected cases**

1

2023:PHHC:135763

**129-1 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1.RSA-4731-2019 (O&M)

Kanwaljit Singh

....Appellant

Versus

Surinder Pal Singh

..Respondent

2.RSA-290-2019 (O&M)

Kanwaljit Singh

....Appellant

Versus

Surinder Pal Singh

..Respondent

3.CR-2758-2023 (O&M)

Kanwaljit Singh

....Appellant

Versus

Surinder Pal Singh

..Respondent

Date of decision: 17.10.2023

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Deepak Arora, Advocate for the appellant

Mr.K.C.Bhatia, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

1. By this order, three connected cases, including two

Regular Second Appeals i.e RSA-4731-2019 and RSA-290-2019

and one Civil Revision petition i.e CR-2758-2023 shall stand disposed of.

2. In RSA-4731-2019, the dispute in the present case is with regard to property left behind by Sh.Khan Singh, who died on 09.06.1980. The plaintiff and defendant are his grandsons. He left behind a Will dated 19.03.1980, bequeathing his property measuring 78 marlas, in equal share, in favour of his grand-children namely Sh.Surinder Pal Singh and Sh.Kanwaljit Singh. Sh.Surinder Pal Singh filed a suit for partition of the property left behind by his father with a prayer to direct the respondent to render the account. The Will has been proved by examining Sh.Jatinder Saini son of an attesting witness late Sh.Gurdial Singh Saini. Sh.Lakhbir Singh, the son of the scribe of the Will was also examined as PW4. The other attesting witness had also died. Thus, the Will was proved in accordance with Section 69 of the Indian Evidence Act, 1872 (hereinafter referred to as '1872 Act'). Consequently, both the courts decreed the suit. In this appeal, the correctness of the concurrent findings of fact arrived at by both the courts below, while upholding the Will dated 19.03.1980, have been challenged.

3. Learned counsel representing the appellant submits that various other properties left behind by Sh.Khan Singh have not been included in the suit and other co-sharers have not been impleaded as

a party. He further submits that the Will has not been proved in accordance with Section 69 of the 1872 Act.

4. This Court has considered the statement made by Sh. Khan Singh that he bequeathed 78 marlas land in favour of his two grandchildren namely Sh.Surinder Pal Singh and Sh.Kanwaljit Singh. They became the co-owners to the exclusion of all the other heirs. Hence, the other heirs of Sh.Khan Singh were not required to be impleaded as a party.

5. The next argument of the learned counsel representing the appellant is based on Section 69 of the 1872 Act, which requires the propounder of the Will to prove the Will by proving the signatures of the testator as well as one of the attesting witnesses. In this case, both the requirements have been fulfilled while proving the Will as Sh.Jatinder Saini is son of the attesting witness late Sh.Gurdial Singh. He has proved the attestation of his father. Similarly, Sh.Lakhbir Singh s/o Sardar Kartar Singh, the scribe has also been examined, who has proved the execution of the Will dated 19.03.1980. Thus, there is no substance in RSA-4734-2019 and the same is hereby dismissed.

6. In RSA-290-2019, the dispute is with regard to estate of Smt. Avtar Kaur, widow of Sh.Mohan Singh. She executed a registered Will dated 30.05.2014, in favour of Sh.Surinder Pal Singh. The execution of the aforesaid Will has been proved by

examining Sh.Harjit Singh, one of the attesting witnesses. Whereabouts of the other attesting witness Sh.Manga Singh were not known, however, the scribe Sh.Chander Mohan Malhotra has been examined as PW4. He has proved the entry at Sr.No.1 in his register. The aforesaid Will is also a registered document. It has also come on record that Smt. Avtar Kaur filed a complaint under the Protection of Women from Domestic Violence Act, 2005, against Sh.Kanwaljit Singh and his son Sh.Rupinder Singh. That itself proves that the relationship of Smt. Avtar Kaur and Kanwaljit Singh was not cordial. Learned counsel representing the appellant contends that Smt. Avtar Kaur was residing all alone and therefore, there was no reason for her to execute the Will in favour of Sh.Surinder Pal Singh. In this case, a photograph of Smt. Avtar Kaur is printed on the Will. There is no dispute with regard to her identity. The appellant has not led any evidence to prove that Smt. Avtar Kaur did not thumbmark the Will.

7. In view of the aforesaid facts, no ground to interfere with the concurrent findings of fact is made out. Hence, dismissed.

8. In CR-2758-2023, the challenge is to the order passed by the court in the proceedings for the preparation of the final decree. The trial court has rejected the application filed by the petitioner to cross-examine the Local Commissioner, who had inspected the site. The petitioner claims that there is a flour mill

installed in the property in dispute. The trial court has rejected the application for summoning the Local Commissioner for cross-examination. It is the case of the petitioner that the Local Commissioner has not correctly reported about the status of the property. It is submitted by the learned counsel that the flour mill has been installed, however, the Local Commissioner has overlooked that fact.

9. Once the Local Commissioner has been appointed to suggest the mode of partition of the property by metes and bounds, the court is required to give the opportunity to the parties to prove their case. It is the positive case of the petitioner that there is a flour mill located in the property in dispute. Such fact is required to be proved by the petitioner. In such circumstances, the court shall have allowed the petitioner to summon the Local Commissioner for cross-examination. Reliance in this regard can be placed on the judgment passed by the Division Bench of this Court in **Balbir Dewan Cold Storage and General Mills vs. Naveen Chander** 1989 (1) PLR 677.

10. In view of the aforesaid facts, the revision petition is allowed. The trial court is directed to permit the petitioner to summon the Local Commissioner for cross-examination.

**RSA-4731-2019 (O&M)
and other connected cases**

6

2023:PHHC:135763

11. With the aforesaid observations, both the Regular
Second Appeals are dismissed whereas the revision petition is
allowed.

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

17.10.2023

rekha

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No