

RSA-1242-2020 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

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Date of decision: 15.04.2024.

Ashok Kumar

...Appellant.

Versus

Ripudaman and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. N.R. Dahia, Advocate
for the appellant.

Sukhvinder Kaur, J.

The instant Regular Second Appeal has been filed by appellant/
plaintiff against the concurrent findings recorded by both the Courts below,
vide which the suit of the plaintiff was dismissed.

2. Brief facts of the case as per plaint are that the plaintiff filed a
suit for declaration claiming himself to be the owner in possession of the
property of his deceased father Triloki Nath on basis of Will dated
16.09.2009. It has been averred that Triloki Nath father of the plaintiff was
residing with him and he was taking care of all his needs, due to which he
executed a Will dated 16.09.2009 in his favour. After death of his father on
03.10.2009 plaintiff visited the office of Sub Registrar Bawal for
registration of the aforesaid Will. He was asked by Tehsildar to publish a

notice in this regard in the newspaper. After publishing the said notice in the newspaper, defendants No.2 to 6 raised objections and the said Will was not registered. The plaintiff asked the revenue officers to sanction the mutation on the basis of the Will but they kept on prolonging the matter on one pretext or the other and finally refused to do so on 05.07.2010, which led to filing of present suit by the plaintiff.

3. The suit of the plaintiff was dismissed by the trial Court, vide judgment and decree dated 29.01.2016. The appeal preferred by the appellant/ plaintiff before the First Appellate Court was also dismissed, vide judgment and decree dated 04.10.2019. Hence, the present Regular Second Appeal has been filed by the appellant/ plaintiff.

4. Learned counsel for the appellant/ plaintiff has contended that the appellant/ plaintiff gave dedicated service to both the parents and the testator remained in his care till his demise and the other sons and daughter did not look after him, so for rendering the aforesaid services, the Will in question was executed by the deceased in favour of the appellant/ plaintiff. The aforesaid fact has also been stated in the Will for explaining the exclusion of other legal heirs. He has argued that the Courts below have not appreciated the facts of the present case, controversy between the parties, pleadings and evidence on record and have based their conclusion on conjectures and surmises while dismissing the suit of the appellant/ plaintiff. He has submitted that it is abundantly proved on record that the appellant is in possession of the suit land and Courts below have wrongly held that the appellant has not been proved to be in possession. Besides that, the law does

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not lay down the requirement of possession of bequeathed property, so such objection is not sustainable in the eyes of law. He has urged that the Courts below committed a legal error in not relying upon the Will duly executed by testator and duly proved by the witnesses as required by the statutory provisions on the subject. The respondents have never challenged the signatures of the testator on the Will and it stands duly proved on record and is not enveloped by any suspicious circumstance.

5. I have heard learned counsel for the appellant and gone through the record thoroughly.

6. The Apex Court has held in **Guro Vs. Atma Singh and others, 1992(2) RRR (26) (SC)**, that “with regard to proof of a Will the law is settled that the mode of proving a Will does not ordinarily differ from that of proving any other document except as to the special requirement described in the case of a Will by Section 63 of the Indian Succession Act. The onus of proving the Will is on the propounder and in absence of suspicious circumstances surrounding the execution of the Will, proof of testamentary capacity and signature of the testator as required by law is sufficient to discharge the onus. Where, however there were suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the Court before the Will could be accepted as genuine. Such suspicious circumstances may be a shaky signature, a feeble mind and unfair and unjust disposal of property or the propounder himself taking a leading part in the making of Will under which he received a substantial benefit. The presence of suspicious circumstances makes the initial onus

heavier and the propounder must remove all legitimate suspicion before the document can be accepted as the last Will of the testator.”

7. As per Section 63 of the Indian Succession Act, the Will shall be attested by two witnesses and each of the attesting witness must have seen the testator sign or affix his mark to the Will or has received from testator a personal acknowledgement of his signature or mark on the Will. There is also additional requirement that each of the attesting witness shall also sign the Will in the presence of the testator. It flows from Section 68 of the Indian Evidence Act, that in order to prove the due execution of the Will, one of the attesting witnesses is to be examined.

8. Now adverting to the case in hand, it is specific plea of respondents No.1, 3 and 4 in the written statement that the Will in question had been fabricated on blank papers by the appellants by playing fraud, with the help of witnesses, on the pretext of filing of civil suit and appeal titled as 'Triloki Nath Vs. Satpal'. The appellant during his cross-examination has admitted regarding pendency of the above said litigation. The Courts below have rightly taken note of the fact that the Will Ex.PA/1 propounded by the plaintiff is a typed document on a non-judicial paper. The entire document/ Will is typed but the names of the testator and attesting witnesses are not typed and only signatures of testator and attesting witnesses are there on the Will, from which it transpires that the signatures of testator and attesting witnesses were obtained on the Will later on and not at the time when the document was typed. The date is also not typed and it is handwritten. Though, Triloki Nath was himself a deed writer, but the Will Ex.PA/1 was

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neither in his hand nor the name of the scribe had been mentioned therein, who had prepared the Will in question. It has also been pointed out by both the Courts below that only second page of the Will is bearing signatures of the Triloki Nath and his signatures are not there on the first page of the Will. The signatures of Triloki Nath and the attesting witnesses on the Will are having different ink of pens, which also leads to the inference that they have put their signatures at different point of time and not in the presence of each other. It has not been explained that why the plaintiff did not get registered the disputed Will on the same day and why it was presented before the Sub Registrar office on 05.07.2010, when it had been executed on 19.09.2009. So, this delay of about nine months in disclosure of the Will has not been explained by the plaintiff.

9. Besides that, there are discrepancies in the testimonies of the witnesses of the plaintiff. PW1-Rameshwar Namberdar, attesting witnesses of the disputed Will has stated that the Will had been written on the stamp paper, whereas the Will Ex.PA/1 is a typed document on simple paper and is not on the stamp paper. PW2, the other attesting witness of the disputed Will has categorically stated in his deposition that the Will in dispute was not written in his presence. Both the attesting witnesses are silent that the contents of the Will were read over and after admitting it to be correct all the parties have put their signatures on the same.

10. There is no such evidence on record that deceased Triloki Nath was not having cordial relations with other legal heirs. So far as, the reports of handwriting and fingerprint experts Ex.PW7/B and Ex.DW3/B are

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concerned, these are immaterial, as signatures of Triloki Nath over the alleged Will in question are not disputed and plea of the defendants is that the appellant had taken the signatures of Triloki Nath fraudulently on blank papers which were used to prepare the Will in question.

11. The onus lies on the propounder to explain the suspicious circumstances to the satisfaction of the Court. But the aforesaid suspicious circumstances have not been dispelled by the appellant/ plaintiff to prove the genuineness of the Will in question.

12. For the reasons recorded above, the present Regular Second Appeal fails as it does not raise any question of law much less substantial question of law.

13. Appeal stands dismissed.

14. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

15.04.2024.
komal

Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No