



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

120

RSA-906-2019 (O&M)**Reserved on : 11.07.2024****Date of Decision : 26.07.2024**

Sukhdev Kaur

....Appellant

Versus

Jasvir Kaur

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rahul Arora, Advocate for the appellant.

ALKA SARIN, J.

1. The present appeal has been preferred by the plaintiff-appellant aggrieved by the judgments and decrees dated 07.12.2015 and 17.09.2018 passed by the Trial Court and the First Appellate Court, respectively, whereby her suit stands dismissed.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellant and the defendant-respondent are mother-in-law and daughter-in-law. The deceased Sukhraj Singh was the son of the plaintiff-appellant and the husband of the defendant-respondent. Sukhraj Singh suffered from liver disease and died on 07.08.2009 leaving behind the land in dispute which was mutated in the name of the defendant-respondent and the plaintiff-appellant. The plaintiff-appellant filed the present suit seeking a declaration to the effect that she was the exclusive owner in possession of the land in dispute belonging to her son, Sukhraj Singh. In the alternative the plaintiff-appellant sought the relief of joint possession and permanent injunction. According to the plaintiff-appellant, Sukhraj Singh had left a Will dated 12.04.2009



bequeathing the land in dispute solely to her whereas the defendant-respondent had got the mutation entered in her own name as well as in the name of the plaintiff-appellant. As per the plaintiff-appellant when the defendant-respondent came to know about the illness of Sukhraj Singh she relinquished all her rights and left the matrimonial home and did not turn up till the death of Sukhraj Singh. Hence, the suit. On notice, the defendant-respondent contested the Will set-up by the plaintiff-appellant and claimed that it was a forged and fabricated document. It was admitted that Sukhraj Singh was suffering from liver disease and was married to the defendant-respondent. It was denied that the defendant-respondent had left the matrimonial home soon after the marriage and rather the defendant-respondent had resided with Sukhraj Singh as his wife till his death. It was stated that Sukhraj Singh had love and affection for the defendant-respondent who served him as a dutiful wife and stayed in the matrimonial home till March 2011.

3. On the basis of the pleadings of the parties the following issues were framed :

- 1) Whether plaintiff is entitled to declaration as prayed for ? OPP
- 2) Whether mutation Nos. 6839, 31854, 1265 and 4317 are altogether illegal, unjust and void ? OPP
- 3) Whether suit of plaintiff is false, frivolous and vexatious and has been filed just to grab the share of defendant ? OPD
- 4) Whether plaintiff is estopped by her own act and



conduct from filing the present suit ? OPD

5) Whether the suit of plaintiff is not maintainable ?

OPD

6) Relief.

4. The Trial Court vide judgment and decree dated 07.12.2015 dismissed the suit of the plaintiff-appellant. Aggrieved by the same, an appeal was preferred by the plaintiff-appellant before the First Appellate Court which appeal was dismissed vide judgment and decree dated 17.09.2018. Hence, the present regular second appeal by the plaintiff-appellant.

5. Learned counsel for the plaintiff-appellant would contend that both the Courts have erred in dismissing the suit of the plaintiff-appellant. It is argued that the Will in favour of the plaintiff-appellant stood duly proved by the scribe as well as the two witnesses and thus the suit ought to have been decreed.

6. I have heard the learned counsel for the plaintiff-appellant and perused the paperbook.

7. In the present case the entire case set up by the plaintiff-appellant hinges on the Will (Ex.P1) allegedly executed by Sukhraj Singh which Will has been held to be shrouded by suspicious circumstances. The Courts have found that the Testator, Sukhraj Singh, was a Graduate. However, the scribe of the Will is a Milkman and merely Class 6 pass. The scribe of the Will admitted that he has not scribed any other document and that he had never studied with the Testator and that the Testator had never talked to him about the execution of the Will. One of the witnesses of the



Will is none other than the brother of the plaintiff-appellant while the other witness is a friend of her other son. None of the two witnesses were acquaintances of the Testator. Another factor which weighed with the Courts is that the Will (Ex.P1) did not see the light of the day for two years after the death of the Testator. The other suspicious circumstances which the Courts found were non-registration of the Will and depriving the defendant-respondent (wife) of any share in the estate despite it having come on record that the Testator and the defendant-respondent had a love marriage.

8. A Will is an instrument of testamentary disposition of property. It is a legally acknowledged mode of bequeathing a testator's property during his lifetime to be acted upon on his/her death and carries with it an element of sanctity. It speaks from the death of the Testator. Since the Testator/Testatrix, at the time of testing the document for its validity, would not be available for deposing as to the circumstances in which the Will came to be executed, stringent requisites for the proof thereof have been statutorily enjoined to rule out the possibility of any manipulation. Recently, in the matter of **Meena Pradhan vs. Kamla Pradhan [(2023) 9 SCC 734]** the Hon'ble Supreme Court inter-alia held as under :

“10. Relying on H. Venkatachala Iyengar v. B.N. Thimmajamma [H. Venkatachala Iyengar v. B.N. Thimmajamma, 1958 SCC OnLine SC 31 : 1959 Supp (1) SCR 426 : AIR 1959 SC 443] (three-Judge Bench), Bhagwan Kaur v. Kartar Kaur [Bhagwan Kaur v. Kartar Kaur, (1994) 5 SCC 135] (three-Judge Bench), Janki Narayan Bhoir v. Narayan Namdeo Kadam



[Janki Narayan Bhoir v. Narayan Namdeo Kadam, (2003) 2 SCC 91] (two-Judge Bench), Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh [Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh, (2009) 4 SCC 780 : (2009) 2 SCC (Civ) 348] (three-Judge Bench) and Shivakumar v. Sharanabasappa [Shivakumar v. Sharanabasappa, (2021) 11 SCC 277] (three-Judge Bench), we can deduce/infer the following principles required for proving the validity and execution of the will:

10.1. The court has to consider two aspects : firstly, that the will is executed by the testator, and secondly, that it was the last will executed by him;

10.2. It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.

10.3. A will is required to fulfil all the formalities required under Section 63 of the Succession Act, that is to say :

(a) The testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and the said signature or affixation shall show that it was intended to give effect to the writing as a will;



(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;

(c) Each of the attesting witnesses must have seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of such signatures;

(d) Each of the attesting witnesses shall sign the will in the presence of the testator, however, the presence of all witnesses at the same time is not required;

10.4. For the purpose of proving the execution of the will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;

10.5. The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;

10.6. If one attesting witness can prove the execution of the will, the examination of other attesting witnesses can be dispensed with;

10.7. Where one attesting witness examined to prove the will fails to prove its due execution, then the other



available attesting witness has to be called to supplement his evidence;

10.8. Whenever there exists any suspicion as to the execution of the will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last will. In such cases, the initial onus on the propounder becomes heavier.

10.9. The test of judicial conscience has been evolved for dealing with those cases where the execution of the will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the will while acting on his own free will;

10.10. One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.

10.11. Suspicious circumstances must be “real, germane and valid” and not merely “the fantasy of the



doubting mind [Shivakumar v. Sharanabasappa, (2021) 11 SCC 277]”. Whether a particular feature would qualify as “suspicious” would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance, for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit, etc.

11. In short, apart from statutory compliance, broadly it has to be proved that : (a) the testator signed the will out of his own free will, (b) at the time of execution he had a sound state of mind, (c) he was aware of the nature and effect thereof and (d) the will was not executed under any suspicious circumstances.”

9. Coming to the facts of the present case, a perusal of the relevant material on record and applying the provisions and the case law, it is evident that the Will (Ex.P1) is shrouded by suspicious circumstances. The suspicious circumstances enumerated in the judgements of both the Courts are sufficient to discard the Will. The plaintiff-appellant in her evidence has offered no explanation of any of these circumstances and has totally failed to discharge the heavy onus which lay on her of explaining the suspicious circumstances shrouding the execution of the Will and of establishing that the document which she propounded was the last Will and testament of her



son, Sukhraj Singh. Counsel for the plaintiff-appellant has been unable to convince this Court to uphold the Will (Ex.P1). In **Jaswant Kaur vs. Amrit Kaur [(1977) 1 SCC 369]** the Apex Court held that :

“9. In cases where the execution of a will is shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What, generally, is an adversary proceeding becomes in such cases a matter of the court’s conscience and then the true question which arises for consideration is whether the evidence led by the propounder of the will is such as to satisfy the conscience of the court that the will was duly executed by the testator. It is impossible to reach such satisfaction unless the party which sets up the will offers a cogent and convincing explanation of the suspicious circumstances surrounding the making of the will.”

This Court finds no reason to differ from the findings returned by both the Courts. No other point was argued.

10. In view of the above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The present appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

26.07.2024
Ankur

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO