

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on : April 16, 2024
Date of Decision : April 24, 2024

RSA-1203-1990 (O&M)

Sarwan Singh and others

...Petitioners

Versus

Kartar Kaur and others

...Respondents

CORAM: **HON'BLE MR. JUSTICE DEEPAK GUPTA**

Argued By : - Mr. Kanwal Goyal, Advocate with
 Ms. Sheena Dahiya, Advocate for the appellants.

 Mr. H. S. Saggu, Advocate for respondent No.3.

DEEPAK GUPTA, J.

Civil Suit N: 105 of 1984 filed by plaintiffs Kartar Kaur & Others (*respondents herein*) seeking decree for joint possession of 5/12 share in the suit properties against defendants Sarwan Singh & Others (*appellants herein*), was dismissed on 18.10.1985 by court of Ld. Sub Judge Ist Class, Dhuri. However, the First Appellate Court of Ld. Addl. District Judge, Sangrur accepted the appeal (*CA N:466 of 1985*) filed by the plaintiffs vide judgment & decree dated 10.5.1990, decreeing the suit in favour of plaintiffs. Thus, present Regular Second Appeal is by the defendants against the reversal.

2. In order to avoid confusion, parties shall be referred as per their status before the Trial Court.

3. Dispute is regarding the estate of Bali Ram @ Balia S/o Waryam Singh, who had expired on 31.07.1983. Plaintiffs stake claim in the suit property on the basis of natural succession; whereas, defendants have set up a registered Will dated 16.04.1973 in their favour.

4. Some of the facts as pleaded in the plaint were initially disputed by the defendants, but the findings thereon by the courts below, have not been disputed before this Court during arguments. Thus, the undisputed facts, as of now, before this Court are as under:-

i) Bali Ram @ Balia and Narain Singh @ Narayana were two brothers. Narain Singh was married to Smt. Kartar Kaur (plaintiff No.1) and from their co-habitation, Mukhtiar Singh (plaintiff No.2) was born. Bali Ram @ Balia, on the other hand, was married to Smt. Sher Kaur (defendant No.8). Sarwan Singh-son (defendant No.1), Gurcharan Kaur-daughter (defendant No.6) and Mohinder Kaur-daughter (defendant No.7) are the children born out of the said wedlock of Bali Ram @ Balia and Smt. Sher Kaur. Defendants N: 2 to 5 are the sons of Sarwan Singh i.e., grandsons of Bali Ram @ Balia.

ii) As Narain Singh started squandering his property, disputes arose between him and his wife Kartar Kaur. Ultimately, they agreed for a mutual divorce. It was further agreed that Kartar Kaur will divorce Narain Singh and perform *karewa marriage* with Bali Ram @ Balia; whereas Narain Singh will transfer his property in the name of his brother Bali Ram @ Balia and that said Bali Ram @ Balia after performing *karewa marriage* with Kartar Kaur, will treat their son Mukhtiar Singh

like his son Sarwan Singh. Accordingly, Kartar Kaur divorced Narain Singh and performed *karewa marriage* with Bali Ram @ Balia vide a registered document (Ex.P1) dated 04.08.1996 B.K. (1939). Narain Singh transferred his land in the name of his brother Bali Ram @ Balia. From the wedlock of Bali Ram and Kartar Kaur, Mukhtiar Kaur (plaintiff No.3) was born.

iii) Initially, Kartar Kaur resided with Bali Ram @ Balia for some time, but as Bali Ram @ Balia started ignoring her, she (Kartar Kaur) left the matrimonial home and shifted to her parental village Kanjhla, where she alongwith her daughter Mukhtiar Kaur and son Mukhtiar Singh of the previous marriage were residing for the last more than 30 years prior to the filing of the suit. Said Kartar Kaur filed a maintenance petition under Section 488 of the Code of Criminal Procedure, 1898, against Bali Ram @ Balia in 2002 BK i.e., 1945. Said petition was allowed and maintenance @ ₹25/- per month for Kartar Kaur and @ ₹10/- per month for daughter Mukhtiar Kaur was granted. Appeal filed by Bali Ram @ Balia was dismissed by the Court of Sessions. Bali Ram @ Balia approached High Court of Judicature at Patiala in revision. During revision proceedings, talks of compromise took place and Bali Ram @ Balia made a statement (Ex.P3), so as to divide his property amongst his two sons - Sarwan Singh and Mukhtiar Singh. Matter was adjourned, but in the intervening period, Bali Ram @ Balia resiled from the terms of the compromise and therefore, High Court decided the revision on merits vide order Ex.P2 dated 30.7.2003 BK i.e., in 1946 and

dismissed the same by holding that he will continue to pay ₹25/- per month as maintenance to Kartar Kaur and ₹10/- per month to daughter Mukhtiar Kaur till he carried out the terms of the compromise. Kartar Kaur from time to time moved applications for execution of the order for grant of maintenance and as the orders Ex.P4 to P9 (passed during 1956 to 1959) reveal, the same were being disposed of on deposit of the maintenance amount by Bali Ram @ Balia.

iv) Mukhtiar Singh had also filed civil suit in 1957 against Bali Ram @ Balia seeking half share in the properties held by said Bali Ram @ Balia, but the same was dismissed on 15.5.1958 vide Ex.D4.

5. Now, after the death of Bali Ram @ Balia on 31.07.1983, plaintiffs Kartar Kaur, Mukhtiar Singh and Mukhtiar Kaur filed the present suit seeking 5/12 share in the suit property, i.e. estate of deceased Bali Ram @ Balia on the basis of natural succession; whereas, defendants Sarwan Singh and his sons (defendant Nos.2 to 5) set up a registered Will dated 16.04.1973 in their favour. Gurcharan Kaur, Mohinder Kaur and Sher Kaur were impleaded as defendant Nos.6 to 8.

6. Following issues were framed for adjudication by the Trial Court:-

- “1. Whether plaintiffs are entitled to 5/12th share in the property in dispute? OPP
 2. Whether Bali Ram executed a valid Will in favour of defendants No.1 to 5 on 16.04.1973? OPD
 3. Whether suit is barred under the principles of res judicata? OPD
 4. Relief.”
7. After taking evidence produced by the parties, the Trial

Court decided issue No.1 against the plaintiffs; and issue Nos.2 and 3 in favour of the defendants and so, the suit was dismissed on 18.10.1985 by holding that the Will set up by the defendants was duly proved. Whereas in the appeal filed by the defendants, the First Appellate Court held the Will to be shrouded with suspicious circumstances and so, discarded the same and held that plaintiff Nos.1 and 3, i.e. Kartar Kaur and Mukhtiar Kaur were entitled to 3/10th share in the estate of deceased Bali Ram @ Balia.

8. Although, some substantial questions of law filed by the appellants were taken on record, but the only issue as argued before this Court, is regarding the legality and validity of the registered Will dated 16.04.1973, apart from misc. applications moved by the appellants seeking amendment of the written statement and permission to produce some additional evidence.

9. I have considered submissions of both the sides and have apprised the entire record, including the Trial Court record thoroughly and carefully.

10. Ex.D1 is a registered Will dated 16.04.1973, which is purported to be scribed by Shree Kishan, Document Writer; and witnessed by Teja Singh and Chuhar Singh. In order to prove the Will, defendants have relied upon the testimony of DW2 Teja Singh, one of the attesting witnesses.

11. The Will was discarded by the First Appellate Court for the following reasons:-

(a) That the attesting witness Teja Singh did not disclose that testator and the attesting witnesses had appeared before the Sub Registrar and that Sub Registrar had read over the contents of the Will to the testator and that in his presence, the testator and the witnesses had affixed their thumb impressions/signatures;

(b) That testator did not give any reasons to disinherit his wife Kartar Kaur and daughter Mukhtiar Kaur; and

(c) That the beneficiary of the Will Sarwan Singh, towards whom testator of the Will was inclined since beginning, might have participated in the execution of the Will.

12. After hearing learned counsel for both the sides and appraising the evidence on record, I find the reasoning given by the First Appellate Court, so as to discard the Will, absolutely untenable for the reasons to follow.

13. In *Anguri Devi vs Khazani Devi 2023(3) RCR (Civil) 758*, this court discussed the legal position regarding execution of the Will, as under:-

“28. Before discussing the evidence regarding the WILL, it would be relevant to notice the legal position as to how a WILL is to be proved.

29. The mode of proving a WILL does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a WILL by [Section 63](#) of the Indian Succession Act, which runs as under:-

"63. Execution of unprivileged wills. - Every testator, not being a soldier employed in an expedition or engaged in actual warfare) or an airman so employed or engaged or a mariner at sea, shall execute his will according to the following rules:

(a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(c) The will shall be attested by two or more witnesses, each of whom has 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 his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator but it shall not be necessary that more than one witness be present at the same time and no particular form of attestation shall be necessary."

30. Apart from above, [Section 68](#) of the Evidence Act is quite relevant regarding proving the execution of a WILL. This reads as under:

"68. Proof of execution of document required by law to be attested. -- If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the [Indian Registration Act, 1908](#) (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied."

31. The conjoint reading of above provisions makes it quite clear that at least one out of the two attesting witnesses must be called to prove due execution of the WILL. Further, it is required for the attesting witness to prove that he had seen the testator sign or affix his mark to the WILL in his presence or that he received from the testator a personal acknowledgment

of his signature or mark of the signature of such other person and each of the witnesses shall sign the WILL in the presence of testator. Reliance can be placed on [Pentakota Satyanarayana Vs. Pentakota Seetharatnam 2006\(1\) C.C.C.563](#), wherein it has been reiterated by Hon'ble Supreme Court that to prove due execution of Will, attesting witness must state that each of the two witnesses has seen the executor sign or affix his mark to the instrument or has seen some other person sign the instrument in his presence and by the direction of the execution. Witness should further state that each of the attesting witness signed the instrument in the presence of the executant. Hon'ble Supreme Court held that these are the ingredients of attestation and they have to be proved by the witnesses.

32. Further, it is the settled proposition of law that it is the propounder of the Will, who has to prove its due execution. Besides, mere proving the signatures of the testator on the Will is not sufficient. Reference in this regard can be made to *Ganpat Vs. Siri Chand 1992(1) LJR 252* and *Janki Narayan Bhoir Vs. Narayan Namdeo Kadam 2003(2) LJR 646*, wherein it has been held that due and valid execution of the Will cannot be proved by simply proving that the signatures on the Will was that of the testator. It must be proved that attestations were also made properly as required by clause (c) of [Section 63](#) of the Succession Act, 1925.

33. Apart from above, the mere fact that the WILL is registered, cannot be a reason to uphold its validity, if it is not found to be proved in accordance with the provisions of [Section 68](#) of the Indian Evidence Act or the other provisions, if applicable.”

14. Thus, as per the legal position, though attestation of a Will by at least two witnesses is required but in order to prove the Will, at least one of the attesting witnesses is required to be examined, who should prove due execution of the WILL as per requirement of Section 63 of the Indian Succession Act.

15. In present case, the testimony of DW2 Teja Singh would reveal that he specifically deposed that Bali Ram @ Balia executed the

Will in favour of his son Sarwan Singh and his grandsons, which was scribed by Deed Writer Shree Krishan and that the contents thereof were read over to Bali Ram @ Balia, who after admitting the same to be correct, affixed his thumb impressions thereon in the presence of him and other attesting witnesses and then they, i.e. attesting witnesses put their signatures on the Will. He also testified that at the time of execution of the Will, health of Bali Ram @ Balia was good, he was firm in his consciousness and executed the Will out of his own free will.

16. It is important to notice that this witness, i.e. DW2 Teja Singh was the Sarpanch of the village and so, disinterested in either of the parties. No question whatsoever in his cross-examination has been asked, so as to doubt the authenticity of the execution of the Will by Bali Ram @ Balia. Even plaintiff – Kartar Kaur in her testimony as PW2 did not deny the execution of the registered Will by Bali Ram @ Balia and simply pleaded ignorance in this regard.

17. It is further important to notice that it is not the legal requirement that Will should be registered. As per legal requirement, at least one of the attesting witnesses is required to prove due execution of the Will in the manner as stated under Section 63 of the Succession Act to be read with Section 68 of the Evidence Act and in this case, DW2 - Teja Singh has duly proved the said fact. It was not at all legally required for the attesting witnesses to state that testator alongwith attesting witnesses had appeared before the Sub Registrar and then Sub Registrar had read over the contents of the Will to the Testator and then, in his presence also,

testator and the witnesses had affixed their thumb impressions/signatures. Therefore, in case, DW 2 did not state anything regarding the proceedings, conducted before the Sub Registrar, the same in itself cannot be the reason to doubt the authenticity of the Will.

18. Moreover, endorsement of the Sub Registrar is there on the Will (Ex.D1), that Bali Singh S/o Waryam Singh produced the Will before him on 16.04.1973 for the purpose of registration; that contents of the Will were read over to him; after admitting the same to be correct, he affixed his thumb impression thereon and witnesses Teja Singh & Chuhan Singh also affixed their signatures. Since the Will is duly registered by the Sub Registrar, who has certified that the contents of the same had been read over to the Executor, who after admitting the contents thereof, affixed his thumb mark thereon, so the said endorsement of the Sub Registrar cannot be doubted. Reliance can be placed upon ***“Rabindra Nath Mukherjee v. Panchanan Banerjee”, 1995 AIR (SC) 1684.***

19. Besides the fact that Will is a registered document, it carries presumption of its due execution. The Sub Registrar being a public servant acts in discharge of his official duties. In case, he had any doubt regarding the voluntariness of the testator in executing the Will or that the testator was under any pressure or coercion, or that testator was not possessing a sound mental ability to execute the Will, Sub Registrar would not have put his endorsement. In the present case, the endorsement of the Registrar on the Will (Ex.D1) goes on to show that none of such factors were present and that the testator himself presented the Will

before the Sub-Registrar and after the testator admitted the contents of the Will to be correct, witnesses put their signatures thereon and then Sub Registrar registered the Will.

20. In “**Prem Singh v. Birbal**”, 2006(3) RCR (Civil) 381, it has been held by Hon'ble Supreme Court that there is presumption that a registered document is validly executed. Such a document would be *prima facie* valid in law and onus of proof would be on the person, who leads evidence to rebut the presumption. Contents of the endorsement of the Sub Registrar are admissible in evidence and shall be taken as true, when the endorsement was made in accordance with law.

21. This Court by relying upon “**Piara v. Pattu**”, AIR 1929 Lahore 711, has held in “**Kartar Kaur v. Bhagwan Kaur**”, 1993 PLJ 63 that certificate of registering authority under Section 60 of the Registration Act, is a relevant piece of evidence for proving execution of the Will, inasmuch as registration of a document is a solemn act of the Registrar and it is his duty to see that proper persons are present and are competent to act and are properly identified to his satisfaction. All things done before him and by him in his official capacity will be presumed to be done duly and in order. It was further held that registered Will is a strong circumstance to prove its genuineness and once it is proved that the Will has been executed with due solemnities by a person of competent understanding, the burden of proving that it was executed under any influence is on the party alleging so, as has been held by Hon'ble Supreme Court in “**Naresh Charan Das Gupta v. Paresh Charan Das**

Gupta”, AIR 1955 Supreme Court 363.

22. It is further important to notice that after execution of the Will (Ex. D1) on 16.04.1973, the testator, i.e. Bali Ram @ Balia lived for more than 10 years, as he expired on 31.07.1983. During this entire period, he never revoked the Will nor took any step so as to cancel the same and this in itself is sufficient to dispel any suspicious circumstance against execution of the Will. Reliance in this regard can be placed upon ***“Satya Pal Gopal Das v. Panchubala Dasi”, 1985 AIR (Supreme Court) 500.*** In another case titled as ***“Rani Purnima Bebi v. Kumar Khagendra Narayan Deb”, 1962 AIR 567,*** it has been held by Hon'ble Supreme Court that when the Will is duly registered and is not revoked for a long time, one of the reasonable inferences is that it is legally and validly executed document.

23. In view of the above circumstances, the fact that attesting witness DW2- Teja Singh had not spoken anything about appearance of the testator and witnesses appeared before the Sub Registrar and proceedings conducted thereat, cannot be a reason to discard the will.

24. Proceeding further, another reason given by the First Appellate Court to discard the Will and to hold that it as a suspicious circumstance is that the testator did not give reasons to disinherit his wife, i.e. plaintiff No.1 Kartar Kaur and daughter, i.e. plaintiff No.3 – Mukhtiar Kaur. At the time of making such observations, First Appellate Court clearly lost sight of the fact that apart from Kartar Kaur, the testator Bali Ram @ Balia was also having another living wife Smt. Sher Kaur and

two daughters at the time, namely Gurcharan Kaur and Mohinder Kaur, who were also disinherited. There is no reference of Sher Kaur or Gurcharan Kaur or Mohinder Kaur in the Will. Thus, Bali Ram @ Balia not only disinherited his second wife Kartar Kaur and daughter Mukhtiar Kaur but also the first wife Sher Kaur and two daughters of the first marriage, i.e. Gurcharan Kaur and Mohinder Kaur.

25. Apart from above, the evidence on record would clearly indicate that plaintiff – Kartar Kaur was not living with Bali Ram @ Balia for the last more than 30 years prior to filing of the suit, inasmuch as she alongwith her children Mukhtiar Singh and Mukhtiar Kaur were residing at her parental village Kanjhla. The observations of the First Appellate Court to the effect that after the compromise effected during the maintenance proceedings, Kartar Kaur had started living at her parental village with the consent of Bali Ram @ Balia, is absolutely based on conjectures and surmises in the absence of any evidence to the effect that she was residing there with the consent of Bali Ram @ Balia. It is very important to notice that statements regarding compromise were made by Bali Ram @ Balia and Kartar Kaur during pendency of the revision proceedings in the maintenance matter before the High Court in 2003 BK i.e., 1946 of present English calendar but as Bali Ram @ Balia did not abide by the terms of the statements made before the High Court, therefore, the revision was dismissed by the High Court on merits, making it clear that he will have to pay the maintenance @ ₹25/- per month to Kartar Kaur and ₹10/- per month to Mukhtiar Kaur, till Bali

Ram @ Balia carried out the terms of the compromise. There is absolutely no evidence by observing that Bali Ram @ Balia ever took any steps to carry out the terms of the compromise before the High Court, which fact will become further evident that after dismissal of the revision petition in the maintenance matter, Smt. Kartar Kaur had to file repeated executions for claiming maintenance granted to her and after deposit of the same, executions were withdrawn by her as evident from Exs.P-4 to P-9 during 1956 to 1959.

26. In the aforesaid facts and circumstances, disinheriting plaintiff Nos.1 and 3 from the Will, could not be considered as a suspicious circumstance. It has been held by this Court in ***“Harbans Kaur v. Sukhdev Kaur”*, 2003(1) RCR (Civil) 305** that if through a registered Will, a line of succession is opted by the testator, the wish of the deceased cannot be disturbed, especially when the Will is a registered one and not surrounded by any suspicious circumstances.

27. The third observation as made by the First Appellate Court to discard the Will is that one of the beneficiaries of the Will - Sarwan Singh, might have participated in the execution thereof, is again based upon assumption without there being any evidence to this effect. DW2 – Teja Singh, the attesting witness of the Will has not spoken about the presence of Sarwan Singh at the time of execution of the Will nor any question has been elicited during his cross-examination on the part of the plaintiffs regarding the presence of Sarwan Singh.

28. In view of the entire discussion above, it is held that First

Appellate Court committed a grave error in discarding the Will (Ex.D1). It is held that the Will (Ex.D1) dated 16.04.1973 is duly proved to be valid and is a genuine document, having been executed by Bali Ram @ Balia and that by virtue of the said Will, the estate of deceased Bali Ram @ Balia has been bequeathed in favour of defendant Nos.1 to 5 in equal shares.

29. As such, the judgment and decree dated 10.05.1990 passed by First Appellate Court are hereby set aside and that of the Trial Court dated 18.10.1985 restored. Consequently, the present appeal is allowed and the suit of the plaintiffs-respondents is hereby dismissed.

30. Before parting, it may be mentioned during proceedings of this appeal that defendants - appellants of the case had moved application (CM N: 3555-C of 2014) under Order VI Rule 17 CPC seeking permission to amend the written statement by submitting that at the time of his death, Bali Ram @ Balia was not the owner of the suit land, inasmuch as he had already suffered judgment and decrees dated 10.12.1971 and 15.11.1975 (Annexures A/1 to A/4) regarding the land measuring 81 bighas 04 biswas; and 32 bighas, 05 biswas, situated in village Harchandpura, Tehsil Dhuri, respectively in favour of the defendants-appellants. It was further pleaded that on the basis of these judgments and decrees, necessary mutations were sanctioned, which were carried forward in subsequent jamabandis. Still further, it was pleaded that during his life time, Bali Ram @ Balia had sold 31 kanals 04 marlas of land situated in village Bathua, Tehsil Dhuri, vide registered sale deed

N: 98 dated 20.06.1977 in favour of vendees Sant Singh, Sucha Singh sons of Lehna Singh to the extent of $\frac{1}{2}$ share; and Ujjagar Singh, Bahadur Singh, Saudagar Singh, Balbir Singh, Mohinder Singh sons of Kheta Singh to extent of remaining $\frac{1}{2}$ share, regarding which mutation No.1526 was sanctioned in favour of the vendees on 24.07.1978. Likewise, Bali Ram @ Balia had sold remaining land measuring 43 kanals 05 marlas, situated in village Bathua vide registered sale deed N: 887 dated 06.06.1978 in favour of Sewa Singh, Nachhatter Singh, Gurjant Singh sons of Santa Singh to the extent of $\frac{1}{2}$ share; and Pal Singh, Karnail Singh Teja Singh, Jeet Singh sons of Chand Singh and Arjun Singh S/o Gurcharan Singh to the extent of $\frac{1}{2}$ share and regarding this sale, mutation No.1525 was sanctioned on 23.11.1978 in favour of the vendees and this way, Bali Ram @ Balia was not owner of the suit land either, which was situated in village Harchandpura or of land in village Bathua. It was pleaded that in the earlier written statement, stand was taken by the defendants contrary to the aforesaid judgments and decrees and the sale deeds, due to the ignorance and that as the aforesaid facts came to the knowledge of the appellants while preparing substantial questions of law, so the application has been moved.

31. Another application (CM-1032-C-2014) was moved under Order 41 Rule 27 CPC by the appellants to produce documentary evidence in the form of judgments and decrees; mutations and other revenue records in support of the contentions, which were sought to be raised in the amended written statements.

32. Both the above applications were opposed by the respondents-plaintiffs.

33. Since with the setting aside of the impugned judgment and decree passed by the First Appellate Court, the suit of the plaintiffs-respondents has been dismissed by this court, therefore, this Court does not find it necessary so as to consider the aforesaid applications. At the same time, it is hereby clarified that in case, Bali Ram @ Balia had sold any part of the suit land in favour of the vendees - third party, before executing the Will (Ex.D1), then the present judgment and decree shall not be binding upon the third party/vendees of those sale deeds. It is further clarified that defendant Nos.1 to 5, i.e. appellants will be entitled to inherit the estate of Bali Ram @ Balia by virtue of the Will (Ex. D1) only to that extent, which was being held by deceased Bali Ram @ Balia at the time of his death.

34. All the other pending misc. application(s), if any stand(s) disposed of.

Decree-sheet be prepared accordingly.

April 24, 2024
Sarita

(DEEPAK GUPTA)
JUDGE

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