

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

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RSA No.2323 of 1992 (O&M)

Reserved on: 10.04.2024

Pronounced on: 18.04.2024

Kashmir Singh and others

.....Appellants

Vs.

Smt. Achhar Kaur  
through her LRs

.....Respondents

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

Present:- Mr. Vishal Munjal, Advocate for the appellants.

Mr. Sumit Saddi, Advocate for LRs of respondent  
– Achhar Kaur.

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**DEEPAK GUPTA, J.**

Suit filed by plaintiff Smt. Achhar Kaur (*now respondent through her LRs*) for joint possession of the suit property against defendants Kashmir Singh & others (*now appellants*), was dismissed by the trial court on 6.11.1989 but the appeal filed by said plaintiff was allowed and suit decreed by the first appellate court on 1.10.1992. This Regular Second Appeal is by the defendants and directed against the reversal of the judgment of the trial Court by the First Appellate Court. To avoid confusion, parties shall be referred as per their status before the learned trial Court.

2. Dispute is regarding 1/6<sup>th</sup> share of Smt. Lal Kaur in the total land measuring 232 kanals 12 marlas situated in Village Khare, Tehsil and District Amritsar, as detailed in the head-note of the plaint. Said Smt. Lal Kaur was earlier married to Jag Singh (also referred as Jagat Singh) son of Deva Singh and from his loins, she gave birth to Harnam Singh. After the death of Jag Singh, she performed second marriage with Bhagat Singh, the brother of Jag Singh and from this second marriage, plaintiff- Smt. Achhar

Kaur was born. Defendants are the sons of Harnam Singh i.e. son of Smt. Lal Kaur from her first husband. Smt. Lal Kaur expired on 14.07.1981.

3. Plaintiff – Smt. Achhar Kaur brought the suit seeking joint possession of the suit property on the ground that after the death of Smt. Lal Kaur, she being her only daughter, had inherited her estate. Defendants were stated to be distantly related to the husband of Lal Kaur and were not entitled to inherit her estate. It was pleaded further that plaintiff was married in UP and therefore, defendants being residents of Village Khare, took advantage of the absence of the plaintiff and in collusion with revenue authorities, got the mutation sanctioned in their favour regarding the suit property, concealing the fact that plaintiff was the daughter of Lal Kaur.

4. Defendants contested the suit and pleaded that being collaterals of the husband of Lal Kaur, i.e. Bhagat Singh, they were entitled to inherit the estate of Smt. Lal Kaur, as the suit property was ancestral. They denied Achhar Kaur to be the daughter of Lal Kaur. Defendants further set up a registered Will dated 29.03.1979 in their favour executed by Smt. Lal Kaur and claimed to have become owner of the suit land on the basis of the said Will.

5. Both the Courts below returned the finding that plaintiff Smt. Achhar Kaur was the daughter of Lal Kaur from her second husband Bhagat Singh. It is the admitted case of the parties that suit property was ancestral. Trial Court held registered Will dated 29.03.1979 (Ex.D1) to have been duly proved, having been validly and legally executed by Smt. Lal Kaur in favour of the defendants and on the basis of this finding, dismissed the suit on 06.11.1989. However, in appeal, the First Appellate Court held the Will to be shrouded with suspicious circumstances and that it was not proved in accordance with law. The material issue related to the Will was decided

against the defendants and as plaintiff was found to be the only daughter of Smt. Lal Kaur, so suit was decreed vide judgment and decree dated 01.10.1992 by reversing the trial Court judgment.

6. The only issue raised before this Court is regarding the execution of the Will dated 29.03.1979 to have been duly proved or not.

7. Will in question is a duly registered document. It is purported to be scribed by Shiv Kumar Sodhi and attested by as many as three witnesses, namely, Mangal Singh, Member Panchayat; Moola Singh and Dewan Singh. In order to prove the Will, defendants have relied upon the testimony of Scribe Shiv Kumar Sodhi (DW1) and one of the attesting witnesses Mangal Singh (DW2).

8. Learned Appellate Court has held the Will to be shrouded with suspicious circumstances for the following reasons:-

- That though names of two of attesting witnesses were typed but name of third attesting witness – Moola Singh, who is relation of one of the beneficiary Kashmir Singh, was added later on with hand;
- That attesting witnesses Moola Singh and Dewan Singh, Lambardar have not been examined;
- That attesting witness Mangal Singh, as examined by the defendants, is not related to Smt. Lal Kaur i.e. testator nor ever visited her; that said Mangal Singh did not know that Lal Kaur had become blind prior to her death; that said Mangal Singh was not present when the Will was scribed;
- That name of Achhar Kaur is not mentioned in the Will nor any reason is given to exclude her;
- That as per statement of Mangal Singh, he had told Kashmir Singh about the Will one year after the death of Lal Kaur but Kashmir Singh in his testimony denies the said fact;
- That due to her old age, Smt. Lal Kaur could not arrange three witnesses to Tehsil Office for execution of the Will;
- That beneficiaries of the Will are not shown to be residing with Lal

Kaur, as no Ration Card or Voter List was produced;

- That Will was registered in the perfunctory manner and so, mere registration of the Will cannot be a ground to hold due execution of the Will.

9.1 It is urged by learned counsel for the appellants that all the reasons given by the First Appellate Court to hold the Will to be surrounded with suspicious circumstances, are either contrary to the record or the result of mis-appreciation of evidence or based on conjectures and surmises. It is urged that merely because name of one of the attesting witness, namely, Moola was handwritten, whereas, rest of the contents are type-written, cannot make the Will suspicious, as said Moola was not even examined as a witness.

9.2 Besides, though as per the legal requirement, there should be two witnesses so as to attest a Will but in this case, there are three witnesses and that as per the legal position, only one of the attesting witnesses is required to be examined to prove the Will and in this case DW2 Mangal Singh has been examined, who proved due execution of the Will in accordance with law. Learned counsel contends that simply because Mangal Singh is not related to Lal Kaur, cannot be a reason to disbelieve him, as he is not only a Member Panchayat of the same Village but also stated in his testimony that one day prior to the execution of the Will, he had gone to the house of Lal Kaur, where she had expressed her desired for execution of the Will.

9.3 It is argued that observations of the Appellate Court to the effect that Lal Kaur had become blind prior to her death is factually incorrect, as it is neither the case of the plaintiff nor any of her witnesses stated so and simply because Lal Kaur was of old age, as has come in the statement of PW4, cannot mean that she had become blind.

9.4 Learned counsel has further drawn attention towards the testimony of DW1 Shiv Kumar Scribe as well as DW2 Mangal Singh, the attesting witness so as to contend that both of them fulfilled the requirement of due attestation of the Will. Learned counsel also pointed out that in the Will, though the name of plaintiff Achhar Kaur is not specifically mentioned but it is clearly stipulated that the testator had two daughters and that she (testator) had already spent sufficient money on their marriage and because of this reason, they were excluded.

9.5 Further contention of Ld. Counsel is that the statement of Mangal Singh that he had told Kashmir Singh after one year of the death of Lal Kaur about the Will but Kashmir Singh in his statement denied this fact, cannot be a reason to discard the case of the defendants, because these statements are not regarding execution of the Will. Still further, it is argued that Will is duly registered and there was no reason to hold that it was registered in perfunctory manner, simply because initially Moola Singh and Scribe had gone to the Clerk of Registrar, thumb marked the same and returned later.

10. On the other hand, learned counsel for the respondent - plaintiff contends that the Will relied on by the defendants has been rightly held to be surrounded with suspicious circumstances and that plaintiff- respondent being the only legal heir of the deceased - Lal Kaur, has rightly been held to have inherited the suit property.

11. I have considered submissions of both the sides and have appraised the record.

12. 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. In

***Anguri Devi vs Khazani Devi 2023(3) RCR (Civil) 758***, this court discussed

the legal position regarding execution of the Will, as under:-

“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.”

13. 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, only one of the attesting witnesses at least is required to be examined, who should prove due execution of the WILL, as per requirement of Section 63 of the Indian Succession Act.

14. In the present case, testimony of DW1 Shiv Kumar Sodhi, the deed writer would reveal that he had scribed the Will dated 29.03.1979 (Ex.D1) and read over the contents thereof and after admitting the same to be correct, Smt. Lal Kaur affixed her thumb impression on the same. He testified that at that time, Dewan Singh and Mangal Singh, attesting witnesses were present. He also deposed that Will was read over to Smt. Lal

Kaur and only after admitting its correctness, she made the Will on her own choice. During cross-examination, he admitted that he did not know Lal Kaur personally nor did he remember her age. He admitted that name of Moola Singh was hand written and added later on.

15. DW2 Mangal Singh, one of the attesting witnesses to the WILL deposed that he remained as Member Panchayat of the Village Khare and knew Smt. Lal Kaur widow of Bhagat Singh, who had executed a Will in favour of her grandsons. He testified that the Will was written on the asking of Lal Kaur by Shiv Kumar Sodhi and the same was read over to her and after admitting the same to be correct, she had put her thumb impression thereon. He deposed that at that time, Smt. Lal Kaur was not under influence of anybody and that the Will was written and read over in his presence. He also disclosed the names of other witnesses as Dewan Singh and Moola Singh, who were present there and that Will was also registered on the same day with the Sub-Registrar before whom Lal Kaur and the three witnesses had appeared. He deposed that his signatures were also taken before the Sub- Registrar and that Will was read over before the Sub Registrar also and after admitting the same as correct, Lal Kaur had appended her thumb impression and witnesses put their signatures.

16. As per the legal position noted earlier, though Will is required to be attested by at least two witnesses but in order to prove the same, only one of them at least should be examined. It is also the requirement of law that the attesting witness proves before the court that he had seen the testator sign or affix his mark on the Will in his presence or that he received from the testator a personal acknowledgement of his signature or mark of the signature and that each of the witnesses signed in the presence of the

Testator. All these legal requirements are duly proved by the testimony of

DW2 Mangal Singh.

17. Simply because Mangal Singh was not usually on visiting terms with Smt. Lal Kaur nor was related to her, cannot be considered to be a suspicious circumstance. He has remained a Member Panchayat of the same village, where Lal Kaur was residing and that in itself is sufficient to infer that he (Mangal Singh) knew the testator very well. Besides, he had clarified during his cross-examination that one day prior to the execution of the Will, he had gone to the house of Lal Kaur, where she had expressed her desire to execute the Will.

18. The fact that all the contents of the Will are typed, whereas name of attesting witness Moola Singh is handwritten again cannot be a reason to discard the Will or to consider it as a suspicious circumstance, particularly when Moola Singh has not even been examined as a witness to prove the Will. As it appears that after the Will had been scribed by the Deed Writer - Shiv Kumar Sodhi, he had already typed the names of the two attesting witnesses and as Moola Singh came later, he scribed the name of said Moola Singh in hand. That will not make the Will suspicious.

19. Further, it is duly mentioned in the Will that Testator had one son Harnam Singh and two daughters; that both the daughters are married and that on their marriage, she (testator) had spent sufficient amount and they were now living in their respective houses happily. It was further stated by her in the WILL that she had five grandsons, who were looking after her very well and so, she bequeathed the property in their favour. Thus, there is a clear reference of the daughters, though the name of the plaintiff - Achhar Kaur is not specifically mentioned. So, exclusion of plaintiff from the benefits of Will, can not be treated as a suspicious circumstance.

20. Further, it is the own case of the plaintiff that she has been

residing in a Village at UP after her marriage for the last more than 15-16 years. The fact that the defendants, who are the grandsons of Smt. Lal Kaur, were residing in the same house as that of Lal Kaur, is admitted by the own witnesses of the plaintiff. PW1- plaintiff Achhar Kaur herself admitted that the defendants live in the same Village Khare and in the adjoining rooms in the house, where Lal Kaur was residing. PW2 Mangal Singh, who is the nephew of plaintiff, admitted during cross-examination that Harnam Singh is son of Lal Kaur; that Lal Kaur, Harnam Singh and his family lives in Village Khare; that all of them live in one Haveli though in different rooms. To the same effect is the statement of PW3 Karam Singh, the husband of plaintiff – Smt. Achhar Kaur. In the face of this evidence having come on record, the observation of the First Appellate Court to the effect that due to the non-production of Ration Card or the Voter Card, living together of Smt. Lal Kaur with the beneficiaries is not proved, is absolutely based on conjectures and the result of mis-appreciation of evidence.

21. The observation of the First Appellate Court to the effect that Smt. Lal Kaur had become blind before her death and that said fact was not known to DW2 Mangal Singh is also found to be factually incorrect, as there is no evidence on record nor it is the pleaded case of the plaintiff that Smt. Lal Kaur had become blind prior to her death. Even if it be assumed that because of her old age, the eye sight of Smt. Lal Kaur had become weak, this in itself cannot be a reason to hold that she had become blind. Similarly, observations of the trial Court to the effect that Lal Kaur could not arrange three witnesses for taking to the Tehsil Office for execution of the Will is also based on conjectures.

22. Further, mere fact that there is contradiction as to when Kashmir Singh, one of the beneficiary of the Will, came to know about the

Will, has nothing to do with the execution of the Will. DW2 Mangal Singh stated in his examination that after one year of the death of Lal Kaur, he had told Kashmir Singh about the execution of the Will, though this fact is denied by Kashmir Singh in his statement. This fact does not pertain to the execution of the Will and so, cannot be a reason to discard the Will or hold it as a suspicious circumstance. Another observation made by the Appellate Court to the effect that the witnesses did not sign before the Testator or that Testator did not sign in their presence is also contrary to the record.

23. Learned counsel for the respondent has referred to ***Smt. Anguri Vs. Smt. Khazani (supra)***, wherein it was observed by this Court that the mere fact that Will is registered, cannot be a reason to uphold its validity, if it is found to be “not proved” in accordance with the provisions of Section 68 of the Evidence Act.

24. There can be no dispute to the legal position as above, but in the present case, due execution of the Will is proved by the testimony of one of the attesting witness Mangal Singh apart from that of the statement of Scribe.

25. Learned counsel for the respondent has also referred to ***S.R. Srinivasa Vs. S. Padmavathamma, 2010(5) SCC 274***, wherein none of the attesting witnesses were examined and only scribe was examined. It was held by Hon'ble Supreme Court that Scribe had not stated that he had signed with the intention to attest and had simply stated that he was the Scribe of the Will and so, Will was not proved.

26. The above stated authority relied by learned counsel for the respondent is not applicable to the facts of this case because in this case, apart from the Scribe, one of the attesting witnesses, namely, Mangal Singh has been examined, who has proved due execution of the Will by Smt. Lal

Kaur in accordance with law.

27. On account of the entire discussion as above, it is held that the impugned judgment dated 01.10.1992 of the First Appellate Court cannot be sustained. It is held that Will dated 29.03.1979 (Ex.D1) is duly proved on record, in accordance with law. Smt. Lal Kaur by way of this Will bequeathed the suit property in favour of defendants- appellants.

28. As such, the impugned judgment is hereby set aside. The present appeal is accepted. The judgment dated 06.11.1989 passed by the learned trial Court is hereby restored. Suit of the plaintiff- respondent is hereby dismissed with costs throughout. Decree sheet be prepared accordingly.

April 18, 2024  
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(DEEPAK GUPTA)  
JUDGE

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|---------------------------|--------|
| Whether Speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |