

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****103+201****RSA No.134 of 1995 (O&M)****Reserved on : 01.07.2024****Date of Decision : 26.07.2024**

Kartar Kaur (deceased) through LR's and Others

....Appellants

VERSUS

Gurbax Singh (deceased) through LR's and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashwani Kumar Chopra, Senior Advocate with
Mr. Brahmjot Singh Nahar, Advocate for the appellants.

Mr. Gaurav Datta, Advocate for the respondents.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellants challenging the judgement and decree dated 01.02.1989 passed by the Trial Court and the judgement and decree dated 18.10.1994 passed by the First Appellate Court.

2. The facts tersely put are that the original plaintiff - Kartar Kaur - filed a suit for declaration claiming herself to be the sole owner of agricultural land measuring 125 Bighas and 12 Biswas situated in village Baroli fully described in the plaint and that the defendant-respondents have no right, title or interest in the suit property. The case set up by the plaintiff was that she had inherited the suit land to the extent of 3/4th share on the death of her brother – Arjan Singh – on 04.12.1983. The plaintiff-appellant claimed that she was already the owner in possession of the suit land to the extent of 1/4th share. The further challenge in the plaint was to the Will dated 24.11.1983

allegedly executed by Arjan Singh as being false and fabricated. It was further the case that the defendant-respondents had illegally and unlawfully got the mutation of inheritance sanctioned in their favour on 24.04.1984 in connivance with the revenue authorities. In the amended plaint an additional plea was raised that the defendant-respondents had taken possession of part of the suit land measuring 87 Bighas 19 Biswas in September 1987 and got the entries in the Khasra Girdawari made in their favour. The suit was contested by the defendant-respondents who stated that the plaintiff-appellant was only owner to the extent of 1/4th share and that Arjan Singh had executed a valid registered Will dated 24.11.1983 in their favour. It was the case set up that Arjan Singh used to reside with them and he died issueless and they being the agnates and collaterals of Arjan Singh, had become owners on the basis of the registered Will dated 24.11.1983. It was further the case that Arjan Singh was suffering from Cancer and in lieu of the services rendered by the defendant-respondents, Arjan Singh executed a valid registered Will in their favour. It was submitted that the plaintiff-appellant and Arjan Singh had a number of court cases going on against each other and he did not want to give his property to his sister and hence bequeathed the entire property to the defendant-respondents. In replication the pleas raised in the plaint were reiterated and the contents of the written statement were denied. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is owner in possession of the suit land ? OPP

2. Whether the plaintiff succeeded 3/4th of suit land from Arjan Singh and was owner to the extent of 1/4th previously ? OPP

2-A Whether the plaintiff is entitled to possession of 87-B 19-B of land as alleged in para 4-A of the amended plaint ? OPP

3. Whether Arjan Singh deceased made a valid Will dated 24.11.1983 in favour of defendants ? OPD

4. Whether the suit is not legally maintainable in the present form ? OPD

5. Whether the suit is not properly valued for the purpose of court fee and jurisdiction ? OPD

6. Whether the plaintiff has no cause of action to file the suit ? OPD

7. Relief.

3. The Trial Court dismissed the suit vide judgement and decree dated 01.02.1989 upholding the Will dated 24.11.1983 as being a validly executed Will. Aggrieved by the said judgement and decree an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate Court vide judgement and decree dated 18.10.1994. Hence, the present regular second appeal.

4. Learned senior counsel appearing on behalf of the plaintiff-appellant would contend the Will propounded by the defendant-respondents was shrouded by suspicious circumstances and that the Courts have erred in

dismissing the suit of the plaintiff-appellant. It is submitted that the only issue in the present case is as to whether a valid Will was executed by Arjan Singh in favour of the defendant-respondents. Learned senior counsel would contend that the Will dated 24.11.1983 (Ex.D1), alleged to have been executed by Arjan Singh, is shrouded by suspicious circumstances which have not been dealt with by both the Courts. The first suspicious circumstance referred to by the learned senior counsel for the plaintiff-appellant is that admittedly, as admitted by the witness of the defendant-respondents, Arjan Singh was a married man. However, in the opening line of the Will it has been stated that till the execution of the Will he had not got married. Learned senior counsel has referred to the cross-examination of DW4 Sadhu Ram, who was one of the attesting witnesses, wherein he has categorically admitted that Dalipo was the wife of Arjan Singh and she died 8 to 9 months after the death of Arjan Singh. Learned senior counsel would contend that the said admission by DW4 has not been considered by the Courts while upholding the Will (Ex.D1) alleged to have been executed by Arjan Singh. The second suspicious circumstance learned senior counsel has pointed out is that in the Will (Ex.D1) the signatures of Sadhu Ram at two places have been appended vertically whereas the other witnesses have signed horizontally. Learned senior counsel would contend that the said fact has totally been ignored by the Courts. It is further the contention that in the absence of any witness from the Registrar's office, it was imperative for the defendant-respondents to have explained as to why Sadhu Ram had signed vertically whereas all the others had signed horizontally. It is further the contention that the said signatures seem to have

been inserted at a later stage. The third circumstance learned senior counsel has pointed out is that though the Will is stated to have been scribed by a regular deed writer, however, the deed writer was not produced. Learned senior counsel has further pointed out that though the case as set up by the defendant-respondents is that since Kartar Kaur, the plaintiff-appellant, and Arjan Singh had a lot of litigation going on and that was the reason why did not want to give his property to Kartar Kaur, however, it fails to reason as to why the said fact was not mentioned in the Will and it was simply stated that amount equal to her share was spent at the time of her marriage.

5. *Per contra* learned counsel for the defendant-respondents would contend that the issue of Dalipo being the wife of Arjan Singh was not raised by the plaintiff-appellants in their pleadings and in the absence of any pleadings no amount of evidence could be looked into. Learned counsel would further contend that the plea raised in the amended replication that Arjan Singh was married cannot be looked into as permission was sought only to amend the plaint and while filing the amended replication to the amended written statement a new plea was added and hence the same needs to be disregarded. Learned counsel for the defendant-respondents would further contend that the attesting witnesses to the Will (Ex.D1) i.e. DW2 and DW4 duly proved the execution of the Will and hence the suit of the plaintiff-appellant was rightly dismissed. It is further the contention that Kartar Kaur, the plaintiff-appellant herein, was in litigation with her brother and hence he did not wish to leave anything for her and that Arjan Singh was being looked after by the defendant-respondents and in lieu of the services rendered by them to Arjan Singh, he in

a sound disposing mind executed the Will dated 24.11.1983. It is argued that both the Courts have upheld the Will (Ex.D1) warranting no interference by this Court in second appeal.

6. I have heard learned counsel for parties.

7. In the present case both the Courts have upheld the validity of the Will (Ex.D1). No doubt the argument of the learned counsel for the defendant-respondents that the pleading in the replication cannot be taken into account in view of the fact that amendment was sought only to the plaint and the said plea was introduced in the replication while filing an amended replication to the amended written statement, deserves to be accepted, however, the suspicious circumstances, which are glaring, need to be considered by this Court. The testator in the Will dated 24.11.1983 (Ex.D1) stated in the Will that he was unmarried man. No doubt, the pleading that he was married was not raised in the plaint. However, the onus to prove the Will dated 24.11.1983 was upon the defendant-respondents and in order to uphold the validity of the Will all suspicious circumstances shrouding the Will have to be dispelled. One of the attesting witnesses to the Will DW4 Sadhu Ram admitted in his cross-examination that Dalipo was married to Arjan Singh and that she died 8 to 9 months after the death of Arjan Singh. There is absolutely no explanation as to why a person who, as per the own witness of the defendant-respondents, is a married man would write in his Will that he was unmarried. Even if the pleadings raised in the replication are to be ignored, this suspicious circumstance, which is glaring in nature, needs to be dispelled. The onus of proving the Will is on the person who sets up the Will. It was

incumbent on the defendant-respondents to have dispelled this suspicious circumstance. The only argument raised by the learned counsel for the defendant-respondents is that the said plea could not be looked into as it was raised in the replication that was filed to the amended written statement. However, there is no explanation which has come forward as to why the testator would write that he was unmarried when one of the attesting witnesses of the Will himself has admitted that Arjan Singh was married to Dalipo. The second suspicious circumstance is the insertion of the signatures of Sadhu Ram vertically on two pages - one on the second page of the Will and the other on the page which bears the attestation. Basant Singh has stepped into the witness-box as DW2. Ajmer Singh, who is the third witness to the Will has not stepped into the witness-box. No doubt the requirement of law is that the Will has to be signed by two attesting witnesses and the signatures of Basant Singh and Sadhu Ram would suffice for the Will having been validly attested. However, the signatures of Sadhu Ram which have been appended vertically appear to have been inserted at a later stage. There is no reason and no explanation forthcoming as to why on both the pages the signatures of Sadhu Ram have been appended vertically. It is the case of all the witnesses of the defendant-respondents that the witnesses had signed in the presence of the testator and the testator had signed in the presence of the witnesses. That being so, the signatures of Sadhu Ram raise a doubt in the mind of the Court. Further still, DW2 i.e. Basant Singh, the other attesting witness of the Will, who has appeared in the witness-box, has stated that Sadhu Ram had signed in Punjabi. However, as a matter of fact his signatures have been appended in Hindi. Yet

another suspicious circumstance, which remains unexplained, is that admittedly there was litigation between Arjan Singh and his sister. There was no reason for him to have not mentioned about the litigation if he was wanting to debar her from his estate and to state that sufficient amount had been spent on her marriage by his father.

8. 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.D1) is surrounded by suspicious circumstances. The suspicious circumstances enumerated above and in the judgements of both the Courts are sufficient to discard the Will (Ex.D1). The defendant-respondents in their evidence have offered no explanation of any of these circumstances and have totally failed to discharge the heavy onus which lay on them of explaining the suspicious circumstances surrounding the execution of the Will and of establishing that the document which they propounded was the last Will and testament of Arjan Singh. Counsel for the defendant-respondents has been unable to convince this Court to uphold the Will (Ex.D1). 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."

In the absence of any explanation coming for the suspicious circumstances as enumerated above, both the judgements and decrees passed by the Trial Court and the First Appellate Court cannot be sustained.

10. In view of the discussion above, the present appeal is allowed. The findings returned by both the Courts on issue No.3 are accordingly set aside. The suit of the plaintiff-appellant stands decreed. Pending applications, if any, also stand disposed off.

11. As per the law laid down by a Constitution Bench of the Hon'ble Supreme Court in the case of **Pankajakshi (dead) through LR's & Ors. vs. Chandrika & Ors. [2016 (6) SCC 157]** there is no requirement for framing of substantial questions of law.

(ALKA SARIN)
JUDGE

26.07.2024
jk

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