

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4784-2001 (O/M)
Reserved on : 26.04.2024
Date of decision : 14.05.2024

Ranjit Singh and others

..... Appellants

Versus

Puran Lal and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Kul Bhushan Sharma, Advocate and
Mr. Abhishek Sharma, Advocate
for the appellants.

Mr. Varinder Singh Rana, Advocate
for respondents.

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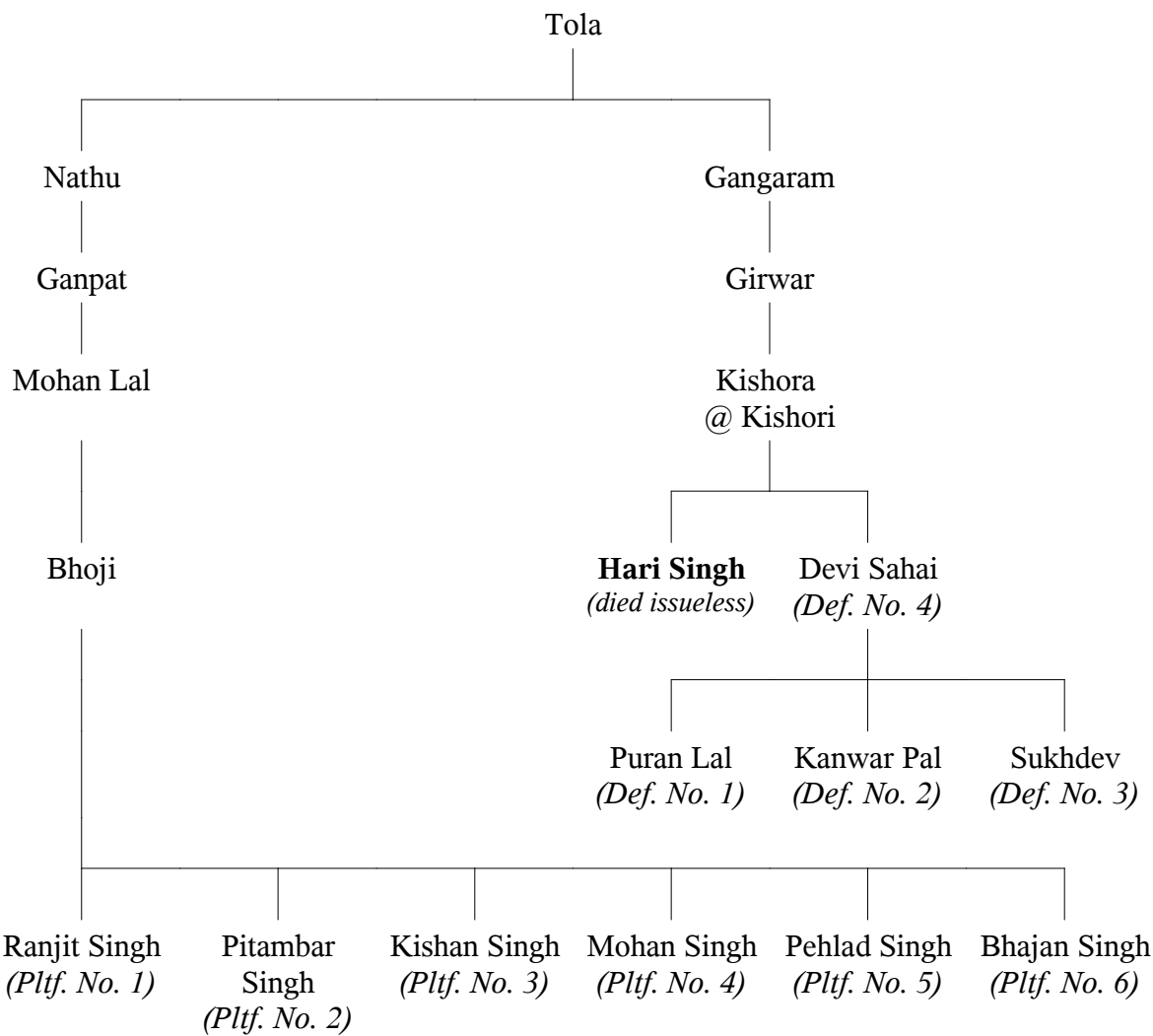
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HARSH BUNGER, J.

1. The present regular second appeal has been filed by the appellants-plaintiffs against the judgment and decree dated 07.11.2001, passed by the court of Additional District Judge, Faridabad; whereby the appeal filed by the appellants-plaintiffs against the judgment and decree dated 30.10.1999 passed by the trial Court, dismissing the suit of the appellants-plaintiffs for declaration that they alongwith defendants No. 1 to 3 in the suit, are entitled to inherit 1/4th share of Hari Singh, on the basis of Will dated 07.05.1986 executed by Hari Singh and for further declaration that the decree dated 01.02.1990 passed in Civil Suit No. 305 of 1986 by the learned Sub Judge, 1st Class, Palwal, is illegal, void and not binding on the rights of the appellants-plaintiffs qua the

share of late Shri Hari Singh; had been dismissed.

2. Succinctly, in the suit filed by the appellants-plaintiffs, it is their pleaded case that they alongwith defendant No. 4 in the suit and late Hari Singh were co-sharers in possession of the agricultural land as detailed in the suit. In the plaint, the family tree depicting the relationship between the parties, is shown as under :-



3. Appellants-plaintiffs claimed that late Hari Singh son of Kishori alias Kishora executed a Will on 07.05.1986 whereby he willed away all his moveable and immovable properties in favour of the appellants-plaintiffs and defendants No. 1 to 3 in the suit; in equal shares. It has come on record that Hari Singh expired on 14.05.1986.

In the suit, the appellants-plaintiffs also stated that during the

lifetime of Hari Singh; defendants No. 1 to 3 filed a Civil Suit No. 305 of 1986 against the aforesaid Hari Singh and their own father Devi Sahai (defendant No. 4 in the suit) claiming themselves to be the owner in possession of the share of Hari Singh on the basis of family settlement. Appellants-plaintiffs claimed that in the said Civil Suit No. 305 of 1986, Devi Sahai (defendant No. 4 in present suit) filed written statement dated 30.04.1986 on behalf of late Hari Singh as his general power of attorney; admitting the entire claim of plaintiffs (defendants No. 1 to 3 herein) in Civil Suit No. 305 of 1986. Appellants-plaintiffs averred that the written statement dated 30.04.1986 was not thumb marked by late Hari Singh, however, his statement was recorded on the same day, which was got thumb marked by playing fraud by Devi Sahai (defendant No. 4 in present suit).

The aforesaid Civil Suit No. 305 of 1986 filed by defendants No. 1 to 3 herein, was decreed by the learned Sub Judge, 1st Class, Palwal, on 01.02.1990.

The aforesaid judgment and decree dated 01.02.1990 was challenged by the appellants-plaintiffs on the plea that the Civil Suit No. 305 of 1986, filed by defendants No. 1 to 3 herein could not have been decreed as late Shri Hari Singh had already executed a Will on 07.05.1986, whereby he had willed away his properties in favour of appellants-plaintiffs and defendants No. 1 to 3 herein. It was further pleaded that even otherwise the aforesaid decree in Civil Suit No. 305 of 1986 is liable to be set aside as the value of the suit land exceeded Rs. 100/- and defendants No. 1 to 3 have no pre existing right in suit land therefore the said decree was compulsorily registrable and the same was not registered. The appellants-plaintiffs further maintained that the

defendants in the suit were bent upon to alienate the suit land on the basis of decree dated 01.02.1990, which would result in irreparable injury and substantial loss to them.

On the basis of the aforesaid pleas, the suit was filed.

4. Upon notice, defendants appeared and filed their joint written statement wherein certain preliminary objections were taken as regards concealment of material facts, maintainability of the suit, res judicata and the Will dated 07.05.1986 being false, bogus, forged and highly suspicious. It is the stand of the defendants that deceased Hari Singh was the real brother of defendant No. 4 (Devi Sahai) and said Hari Singh had no child or wife and he was living with Devi Sahai (defendant No. 4). It was stated that in the year 1982, the defendants and late Hari Singh entered into a family settlement in respect of the suit land whereby late Hari Singh and Devi Sahai (defendant No. 4) relinquished and surrendered all their rights, title and interest in the suit land in favour of defendants No. 1 to 3. It was further stated that the aforesaid family settlement was confirmed in the Civil Suit No. 305 of 1986 wherein late Hari Singh and Devi Sahai (defendant No. 4) appeared in the Court and made a statement admitting the claim of defendants No. 1 to 3 on 30.04.1986. It was specifically averred by the defendants that the plaintiffs are not the family members of late Hari Singh and defendant No. 4 and, therefore, they had no locus to file the suit. The execution of any Will dated 07.05.1986 by Hari Singh was denied and it was stated that late Hari Singh being brother of Devi Sahai (defendant No. 4) used to live with him. It was further denied that any fraud was played upon Hari Singh in Civil Suit No. 305 of 1986 or that the decree dated 01.02.1990 passed in the said suit was illegal, void or that it

required registration. It was also denied that the defendants No. 1 to 3, who are owners of the suit land, are not competent to alienate it, if they so desire.

With the aforesaid submissions, prayer for dismissal of the suit was made.

5. The appellants-plaintiffs filed replication and from the pleadings of the parties, the trial Court framed the following issues on 06.05.1993 :-

- “1. Whether late Hari Singh executed a Will dated 7.5.86 in favour of the plaintiffs and defendants No. 1 to 3 ? OPP*
- 2. Whether the judgment and decree dated 1.9.90 passed in Civil suit No. 305 is void, illegal, and liable to be set aside on the grounds mentioned in the plaint ? OPP*
- 3. Whether the suit is not maintainable ? OPD*
- 4. Whether the suit is barred by the principle of res-judicata ? OPD*
- 5. Whether the suit is barred by the principle of estoppel ? OPD*
- 6. Whether the plaintiffs have no locus-standi to file the suit ? OPD*
- 7. Relief.”*

Subsequently, on 12.11.1997 and 27.08.1999, the following additional issues were framed :-

- “2-A Whether the judgment and decree dated 1.2.90 is compulsorily registered or not ? OPP*
- 6-A Whether this court has got no jurisdiction to try the present suit ? OPD*
- 6-B Whether the suit is time barred ? OPD”*

6. In order to prove their case, plaintiffs examined Sh. Chatter Pal, Registry Clerk as PW1, who was recalled as PW2 also, Shri Om Pal Singh as PW3, Shri Mahesh Chand as PW4, Shri Hari Singh, deed writer as PW5, Shri Om Parkash as PW6, Shri Som Nath Aggarwal, Handwriting and Finger Prints

Expert as PW7, Shri Chatter Pal, Registration Clerk, Sub Registrar, Palwal as PW8, Shri Shiv Singh Rawat, Advocate, Palwal as PW9, Shri Pitamber Singh as PW10 and then closed their evidence after tendering documents Ex.P1 and Ex.P2.

On the other hand, defendants examined Shri Gyasi Ram as DW1, Shri Harchandi as DW2, Shri M.C. Sharma, Advocate as DW3, Shri P.S. Gehlaut, Advocate as DW4, Shri Om Parkash as DW5, Shri Puran Lal as DW6 and then closed their evidence after tendering documents Ex.D1 to Ex.D11. No rebuttal evidence was led by the plaintiffs.

7. It appears that during the pendency of the suit, the plaintiffs filed an application under Order XXXIX Rule 2A CPC on the plea that the defendants No. 1 to 3 had alienated an area of 14 Kanal – 10 Marla out of the suit land and, therefore, they violated the order dated 28.02.1999, passed by the trial Court, whereby they were restrained from alienating the suit land.

The aforesaid application was contested by the defendants No. 1 to 3 in the suit. From the pleadings of the parties in the aforesaid application filed under Order XXXIX Rule 2A CPC, the following issues were framed on 24.08.1998 :-

- “1). Whether the respondents-defendant have disobeyed the order of the Court, as alleged ? OPA*
- 1) Whether the plaintiffs-applicants have got no locus-standi to file the present application ? OPR*
- 2) Whether the application is not maintainable ? OPD*
- 3) Relief.”*

8. The trial Court, on appreciation of oral as well as documentary evidence led by the parties, decided issue No. 1 of the main suit against the appellants-plaintiffs by holding that the Will dated 07.05.1986 appears to be

suspicious and, therefore, cannot be relied upon. As regards issue No. 2 and 2-A, the learned trial Court observed that there was nothing on record to show that the decree dated 01.02.1990 was obtained by the defendants on the basis of playing fraud, misrepresentation and coercion or any such ground. Rather, it was observed that in the Will claimed by the plaintiffs to be executed by deceased Hari Singh; it was mentioned that previous statement made in the Court be treated as cancelled but it is not mentioned that the said statement was obtained by playing fraud upon deceased Hari Singh. Accordingly, the trial Court observed that it cannot be concluded that the decree is void or illegal. The Trial Court by placing reliance upon the judgment rendered by the Hon'ble Supreme Court in case of ***Kale and others Versus Deputy Director of Consolidation and others***, AIR 1976 (SC) 807, held that the said decree dated 01.02.1990 was not required to be registered. Issues No. 3, 4, 6A and 6B were deemed to have been given up whereas issues No. 5 and 6 were decided in favour of defendants.

As regards issue No. 1 in the contempt application, the trial Court held that there was nothing on record to show that the defendants had sold any portion of suit land in violation of order dated 28.02.1990. It was observed that although the defendants had admitted the selling of 14 Kanal – 10 Marla of land, but it is not proved that the land sold by them was part of the suit land and neither the sale deed was proved on record.

Consequently, the trial Court, vide judgment and decree dated 30.10.1999, dismissed the suit as well as the contempt application filed by the appellant-plaintiffs.

9. Feeling aggrieved, the appellants-plaintiffs filed an appeal before

the lower appellate Court, however, the said appeal was also dismissed, vide judgment and decree dated 07.11.2001, passed by the Court of learned Additional District Judge, Faridabad. Hence, the present regular second appeal by the appellants-plaintiffs.

10. Learned counsel for appellants-plaintiffs submitted that the trial Court as well as the first Appellate Court has erred in law and fact in dismissing the suit of the plaintiffs. It is submitted that both the Courts below have failed to consider the material evidence placed on record and the findings have been returned on the basis of inadmissible and inadequate evidence. Learned counsel for appellants would submit that both the Courts below have wrongly discarded the Will dated 07.05.1986 by holding that the appellants have failed to establish due execution of Will dated 07.05.1986 by late Hari Singh. It is submitted that the Will in question is a registered Will and the same was duly proved on record by examining the attesting witness, namely, Om Pal Singh (PW3) and also the scribe of the Will namely Hari Singh (PW5). It is further submitted that the Courts below have erred in holding that the Will in question was surrounded by suspicious circumstances as the attesting witness was not from the village of the testator and also that the defendant no. 4, who was the real brother of testator, was disinherited in the Will without any reason. It is argued that there is no legal requirement that the attesting witness should be from the same village as of testator. It is also argued that the very purpose of execution of Will is to break the line of normal / natural succession. It is contended that the so called suspicious circumstances considered by the courts below are not tenable in law. It is yet further submitted that the Courts below have wrongly relied upon the judgment and decree dated 01.02.1990, passed in

Civil Suit No. 305 of 1986 despite the fact that the suit was decreed subject to rights of the plaintiffs under Will dated 07.05.1986. It is also submitted that the Courts below have taken the suspicious circumstances on assumptions and presumptions. Accordingly, it is prayed that the impugned judgments and decrees be set aside being legally unsustainable and suit filed by appellants-plaintiffs be decreed.

11. Per contra, learned counsel appearing for respondents-defendants controverted the submissions made on behalf of appellants-plaintiffs. It is submitted that both the Courts below have passed a well reasoned and justified judgment taking into consideration all the relevant facts, pleadings as well as evidence available on record. It is further submitted that the alleged Will dated 07.05.1986 is surrounded by suspicious circumstances; which have not been dispelled by the appellants-plaintiffs and, therefore, no reliance could have been placed on the said Will. Therefore, it is contended that the alleged Will dated 07.05.1986 propounded by the appellants-plaintiffs has been rightly discarded by the Courts below.

As regards the judgment and decree dated 01.02.1990 passed in Civil Suit No. 305 of 1986; learned counsel for respondents would submit that although while passing the said judgment, it was observed that the suit was decreed subject to rights of plaintiffs under the Will dated 07.05.1986; however, since the plaintiffs have failed to prove the due execution of the said Will dated 07.05.1986 and neither they have dispelled the suspicious circumstances surrounding the said Will, therefore, the Courts below have rightly held that the plaintiffs are not entitled to any relief. It is further submitted that there is no merit in the appeal and neither there is any substantial

question involved. Accordingly, the prayer for dismissal of the appeal has been made.

12. I have heard the learned counsel for the parties and perused the record.

13. Whether a Will is surrounded by suspicious circumstances or not is essentially a question of fact. The legal principles in regard to proof of a Will are no longer res-integra. A Will must be proved having regard to the provisions contained in clause (c) of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872, in terms whereof the propounder of a Will must prove its execution by examining one or more attesting witnesses. Where, however, the validity of the Will is challenged on the ground of fraud, coercion or undue influence, the burden of proof would be on the caveator. In a case where the Will is surrounded by suspicious circumstances, it would not be treated as the last testamentary disposition of the testator.

14. In *H. Venkatachala Iyengar v. B.N. Thimmajamma*, AIR 1959 *Supreme Court* 443, Hon'ble Apex Court opined that the fact that the propounder took interest in execution of the Will is one of the factors which should be taken into consideration for determination of due execution of the Will. It was also held that one of the important features which distinguishes Will from other documents is that the Will speaks from the date of death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his Will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last Will

and testament of the departed testator.

It was also held that the propounder of Will must prove:

- (i) that the Will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and he put his signature on the document of his own free will, and
- (ii) when the evidence adduced in support of the Will is disinterested, satisfactory and sufficient to prove the sound and disposing state of testator's mind and his signature as required by law, Courts would be justified in making a finding in favour of propounder, and
- (iii) If a Will is challenged as surrounded by suspicious circumstances, all such legitimate doubts have to be removed by cogent, satisfactory and sufficient evidence to dispel suspicion.

In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts indicated therein.

15. In ***Jaswant Kaur v. Amrit Kaur and ors., (1977) 1 SCC 369***, Hon'ble Apex Court pointed out that when the Will is allegedly shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and defendant. An adversarial proceeding in such cases becomes a matter of Court's conscience and propounder of the Will has to remove all suspicious circumstances to satisfy that Will was duly executed by testator wherefor cogent and convincing explanation of suspicious circumstances shrouding the making of Will must be offered

16. In ***Bharpur Singh v. Shamsher Singh, 2009 (1) RCR (Civil) 826;***

Hon'ble Supreme Court held as under:-

“17. Suspicious circumstances like the following may be found to be surrounded in the execution of the Will:

i) The signature of the testator may be very shaky and doubtful or not appear to be his usual signature.

ii) The condition of the testator's mind may be very feeble and debilitated at the relevant time.

iii) The disposition may be unnatural, improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate provisions for the natural heirs without any reason.

iv) The dispositions may not appear to be the result of the testator's free will and mind.

v) The propounder takes a prominent part in the execution of the Will.

vi) The testator used to sign blank papers.

vii) The Will did not see the light of the day for long.

viii) Incorrect recitals of essential facts.

18. The circumstances narrated hereinbefore are not exhaustive.

Subject to offer of reasonable explanation, existence thereof must be taken into consideration for the purpose of arriving at a finding as to whether the execution of the Will had duly been proved or not...”

17. Coming to the case in hand, the Will dated 07.05.1986

(Ex. PW3/1) allegedly executed by late Hari Singh is stated to be scribed by PW5 (Hari Singh) whereas one Shri Nanak and Shri Om Pal Singh (PW3) are stated to be the attesting witnesses of the said Will. Concededly, testator – Hari Singh expired on 14.05.1986 It is required to be noticed here that the Will in question was got registered on 30.06.1986 i.e. subsequent to the death of the testator (Hari Singh).

18. The learned trial Court has noticed the following suspicious circumstances surrounding the aforesaid Will dated 07.05.1986 :-

- i) *Witness Om Pal Singh (PW3) stated that the contents of the Will were read over and explained to deceased Hari Singh, who thereafter thumb marked it and then he thumb marked the Will as a witness. However, this witness has deposed that the executant was blind but has also stated that he was called as a witness by the executant himself. The attesting witness has not disclosed his relationship with the executant nor has he disclosed his identity and status. It appears very strange that a blind man living in village Khelra would call a person from some village called Bholral leaving the other respectable persons of his own village ;*
- ii) *There are contradictions in the statements of the plaintiff witnesses as regards the execution of the Will. According to the attesting witness, the executant was accompanied by plaintiff No. 1 (Ranjit) and defendant No. 1 (Puran Lal), whereas according to the scribe (PW5), the executant was brought to him by defendant No. 1 (Puran Lal), plaintiff No. 1*

(Ranjit) and plaintiff No. 2 (Pitamber). However, plaintiff No. 2 (PW10) denied that the plaintiffs had any knowledge about the Will till the time it was received by them. The trial Court observed that it is strange that one of the plaintiffs had got the Will executed but the remaining plaintiffs had no knowledge about the execution of the said Will ;

iii) As per the plaintiffs, the alleged Will was drafted by Hari Singh (PW5), who was working as Clerk with Shri K.D. Bhardwaj, Advocate; but the attesting witness-Om Pal (PW3) denied that the Will was drafted by the Clerk ;

iv) Attesting witness-Om Pal (PW3) stated that the paper for the Will was purchased from the stamp vendor, whereas the original Will has been written on a plain paper ;

v) Attesting witness-Om Pal (PW3) admitted that he has several cases pending in the Court, conducted by Shri K.D. Bhardwaj, Advocate and in the absence of any established link between Shri Om Pal and executant of Will (Hari Singh), it appears that this witness did not actually know the executant and just happened to be present in the Court when he was called to sign the Will by the Clerk of Shri K.D. Bhardwaj, Advocate ;

vi) The details of the land bequeathed by deceased Hari Singh by way of the alleged Will dated 07.05.1986 is not given ;

vii) Scribe of the Will (Hari Singh) admitted that he was not a professional deed writer at the time when the Will was executed. There is sufficient evidence on record that there

- were about 15-16 deed writers nearby, who were professionally equipped and trained to write the deed or will and this makes it highly improbable that the executant (Hari Singh) chose to call Hari Singh, Clerk to scribe the Will ;*
- viii) Scribe of the Will (Hari Singh) stated that he did not know the executant of the Will personally ;*
- ix) The fact about the executant of the Will being blind is not mentioned in the Will ;*
- x) From a perusal of the original Will and its margin, it appears that the Will is written in such manner so as to cover the thumb impression of the executant ;*
- xi) Defendant No. 4, who is the only heir of deceased Hari Singh being his real brother, has been disinherited in the Will without any reason.*

19. Further, apart from the aforementioned suspicious circumstances noticed by trial court, the first appellate court has also noticed the following circumstances:-

- (a) Pedigree table clearly shows that the appellants-plaintiffs are very distant relation of Hari Singh (testator), having a common ancestor as far back as four generations; whereas in the Will (Ex. PW3/1) Bhoji (father of appellants-plaintiffs) is mentioned as younger brother of deceased Hari Singh.*
- (b) The report of handwriting and finger expert (PW7) has also not of much aid to the plaintiffs as the thumb impression alleged to be that of the executant Hari Singh on the same is so dim that the*

ridges cannot be distinguished.

20. I have considered the contentions raised on behalf of the appellant-plaintiffs. Onus of proving the impugned Will set up by appellants-plaintiffs was on them. It is well established that if there are suspicious circumstances about the execution of Will, it is the duty of the person seeking declaration about the validity of the Will to dispel with suspicious circumstances. In this regard, reference can be made to the decision of Hon'ble the Supreme Court in ***Rani Purnima Debi and another Versus Kumar Khagendra Narayan Deb and another, AIR 1962 SC 567.*** It has been held that registration of Will by itself was not sufficient to remove the suspicion. In this case, concededly the Will in question was got registered subsequent to the death of the testator. By examining an attesting witness of the Will, the plaintiff-appellant might have complied with requirement of Section 68 of the Evidence Act. However, this is not sufficient to hold the impugned Will to be genuine. In the instant case, admittedly the testator (Hari Singh) was a blind person and the attesting witness-Om Pal Singh (PW3) stated that he was called as a witness by the executant himself. The attesting witness has not disclosed his relationship with the executant nor has he disclosed his identity and status. It is indeed strange that a blind man living in village Khelra would call a person from some other village leaving the other respectable persons of his own village. Although, there is no legal requirement that the attesting witness should be from the same village, however considering the peculiar facts of this case, especially the fact that the testator (Hari Singh) was blind, the said factor assumes some significance. Further, there are contradictory statements of plaintiff's witnesses as regards the execution of the Will. According to the attesting witness, the

executant was accompanied by plaintiff No. 1 (Ranjit) and defendant No. 1 (Puran Lal), whereas according to the scribe (PW5), the executant was brought to him by defendant No. 1 (Puran Lal), plaintiff No. 1 (Ranjit) and plaintiff No. 2 (Pitamber). However, according to plaintiff No. 2-Pitambar (PW10), the plaintiffs had no knowledge about the Will till the time it was received by them. That apart, the statements of the plaintiffs' witnesses as regard the scribe of the Will are also discrepant. According to plaintiffs, the Will was drafted by Hari Singh (PW5), who was working as Clerk with Shri K.D. Bhardwaj, Advocate; but the attesting witness-Om Pal (PW3) denied that the Will was drafted by the said Clerk. Moreover, the Scribe of the Will (Hari Singh) admitted that he was not a professional deed writer at the time when the Will was executed. This fact also makes it highly improbable that the executant (Hari Singh) chose to call Hari Singh, Clerk, to scribe the Will, especially when it has been observed by courts below that there is sufficient evidence on record that there were about 15-16 deed writers nearby, who were professionally equipped and trained to write the deed or Will.

21. It may be true that the purpose of execution of Will is to break the line of normal/natural succession; however in the peculiar facts and circumstances of this case, I find substance in the observation of the first appellate court that the Pedigree table clearly shows the appellants-plaintiffs to be very distant relation of Hari Singh (testator), having a common ancestor as far back as four generations; whereas in the Will (Ex. PW3/1) Bhoji (father of the appellants-plaintiffs) is mentioned as younger brother of deceased Hari Singh (testator). Therefore, the reflection of relationship of appellants-plaintiffs being sons of Bhoji with the testator, which forms the basis of execution of the

Will in question, is false/factually incorrect.

Learned counsel for the appellants-plaintiffs has also failed to dislodge the finding returned by the courts below that the Will is written in such manner so as to cover the thumb impression of the executant.

22. Considering the totality of circumstances, this court is of the view that the suspicious circumstances indicated by the trial Court and also mentioned by the 1st Appellate Court, indeed creates suspicion on the validity as well as due execution of the Will dated 07.05.1986. The appellants-plaintiffs have miserably failed to dispel all the suspicious circumstances, as noticed above. Therefore, the Will set up by the plaintiffs-appellants cannot be taken as the true and valid testament of late Hari Singh (testator) and the same has been rightly discarded by the courts below. Concurrent finding recorded by the courts below discarding the said Will does not suffer from any infirmity much less perversity or illegality nor it is based on misreading or mis-appreciation of evidence, so as to call for interference in second appeal.

23. Furthermore, drawing of a different inference other than that of the lower appellate Court, upon re-appreciation of the evidence, is outside the purview of Section 100 of Civil Procedure Code. In para 25 of ***Mst. Sugani Versus Rameshwar Dass and another***, 2006 (4) RCR (Civil) 319 (SC), the Hon'ble Apex Court has observed as under :-

"It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal, when it is found that the

appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible. One drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence."

24. Applying the aforesaid principle to the facts of the present case, no fault can be found with the findings returned by the learned Courts below.
25. No question of law much less substantial question of law arises for adjudication in the instant second appeal. There is no merit in this appeal and the same is accordingly dismissed.
26. No other point has been urged.
27. Appeal dismissed.
28. All pending applications (if any) shall also stand closed.

(HARSH BUNGER)
JUDGE

14.05.2024
sjks

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