

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

136

RSA-139-2023 (O&M)
Date of Order: 19.04.2024

Jaswinder Singh and others

..Appellants

Versus

Jasvir Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amardeep Singh Gill, Advocate,
for the appellants.

ANIL KSHETARPAL, J(Oral)

1. This is defendants' regular second appeal against the concurrent findings of fact arrived at by the Courts below while decreeing the plaintiff's suit for grant of declaration that he along with proforma defendants No. 5 & 6 are joint owners in possession of the land to the extent of 1/3rd share each.

2. The dispute is with regard to succession of the property left behind by Sh. Sohan Singh. He left behind his widow, five sons and a daughter. It is the case of the plaintiffs that Sh. Sohan Singh executed a registered Will on 04.10.1999 bequeathing the entire property in favour of his three sons. Defendants while contesting the suit, claimed that Sh.Sohan Singh never executed the will and in fact there has been a memorandum of family settlement after the death of Sh.Sohan Singh, which settled the rights of the parties.

3. In order to prove the execution of the Will, the plaintiff

examined PW-5 Sh. Amarjit Ahir, Scribe of the Will, attesting witness PW-3 Sh. Tara Singh, Namberdar and Sh. Jaswant Rai official from the Office of Sub Registrar as PW-4. Upon appreciation of evidence, the Courts have found that the plaintiff has successfully proved the execution of the Will.

4. Heard learned counsel representing the appellants at length and with his able assistance perused the paper-book.

5. On the request of the Court, learned counsel representing the appellants has produced a photocopy of the registered Will dated 04.10.1999. The Will is scribed in Gurmukhi language. A photograph of late Sh. Sohan Singh is pasted on the top of the page, on which the Will has been scribed. Sh. Sohan Singh has appended his signature in a manner that half of his signatures are on the photograph whereas remaining half are on the paper. Sh. Sohan Singh has not only signed in English but has also appended his right thumb impression. The Will is attested by two attesting witnesses, including PW-3 Sh. Tara Singh, Namberdar. It is scribed by Sh. Amarjit Ahir, who has appeared as PW-5. The second attesting witness is Sh. Jagdish Chander. The Will was presented for registration before the Sub Registrar. Sh. Sohan Singh has appended his thumb impression on two different locations in the office of Sub Registrar. Both the attesting witnesses have also signed in the presence of the Sub Registrar.

6. Learned counsel representing the appellants submits that the following suspicious circumstances prove that the Will is not genuine.

- (i) The testator has not given any reason for excluding other natural heirs, including widow;
- (ii) Will has been produced for the first time after a period of 10 years from the death of the testator;
- (iii) Plaintiff has failed to prove that relationship of testator with the other heirs were not cordial;

- (iv) One of the beneficiary Rajvir Singh disputes the existence of the Will;
- (v) There is a memorandum of family settlement dated 14.08.2000 which has been acted upon between the parties, hence, the plaintiff is estopped from filing the suit;
- (vi) Right hand thumb impression of Sh. Sohan Singh has allegedly been appended, whereas a male person is required to append his left hand thumb impression.

7. This Court has considered the submissions advanced by the learned counsel representing the appellants.

8. While executing a Will, it is not required that a testator give detailed reasons for excluding his natural heirs. In this case, in the Will there is a recital that he has five sons, wife and a daughter, however, he preferred to bequeath his entire property in favour of his three sons. The Will is not like a judgment where justifiable reasons are required to be recorded.

9. With reference to the second argument, it be noticed that the Will is a registered document. The correctness of the signatures, thumb impression and photograph of the testator is proved to have been appended by Sohan Singh. The plaintiff while filing the suit has stated that the Will of late Sh. Sohan Singh came to his knowledge, when he searched an old box belonging to his father lying in his room. Moreover, the Will was registered in the year 1999, there is hardly any chance of subsequently fabricating the registered Will.

10. With reference to next argument of learned counsel for the appellants, it be noticed that the testator is not required to prove that relationship of testator with the remaining heirs were not cordial. In any

case, the testator has considered it appropriate to bequeath his property in favour of his three sons in preference to remaining heirs.

11. The next contention of the learned counsel representing the appellant is not relevant because Rajvir Singh has joined the defendants, however, that would not adversely impact on the validity of the Will.

12. The last submission of the learned counsel representing the appellants, also lacks substance because existence of the Will came to the notice of the plaintiff subsequent to the execution of the memorandum of a family settlement.

13. Undoubtedly, in ordinary circumstance, a male person is required to append his left hand thumb impression, however, in this case it has come in evidence that left hand of Sh. Sohan Singh did not had thumb. Moreover, late Sh. Sohan Singh has appended his signatures apart from putting his thumb impression. No evidence has been led to prove that late Sh. Sohan Singh did not append his thumb impression. Hence, no ground to interfere is made out.

14. Dismissed.

15. All the pending miscellaneous applications, if any, are also disposed of.

19.04.2024

Satyawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No