

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 759 of 2020 (O&M)

Date of Decision: 12.02.2024

Shashi Lal

... Appellant(s)

Versus

Anoop Krishan Sood and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Amit Jain, Senior Advocate
with Mr. Chetan Salathia, Advocate
for the appellant(s).

Mr. Ashish Aggarwal, Senior Advocate
with Mr. Vaibhav Sehgal and Ms. Aashna Aggarwal,
Advocates, for the respondent No.1 to 5.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab and Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

2. In this regular second appeal, the plaintiff challenges the concurrent findings of facts arrived at by both the Courts below while dismissing her suit for the grant of decree of declaration that she is the owner of 1/5th share of the suit property.

3. In order to comprehend the controversy, a small family tree

ROSHAN LAL SOOD (Died On 13.06.1985)				
SMT. PREM RANI (Died On 17.05.1995)				
Anoop Krishan Sood (Son)	Ravinder Lal Sood (Son)	Narinder Lal Sood (Son)	Veena Sood (Daughter)	Shashi Lal (Daughter)
Manu Sood (Grandson)				

4. Late Sh.Roshan Lal Sood died on 13.06.1985 leaving behind his widow, three sons and two married daughters. The plaintiff claims that her father died intestate, whereas the defendants claim that he left behind a Will dated 01.04.1985 bequeathing his property in favour of his widow and three sons. The execution of the Will has been proved by examining the attesting witness, namely Subhash Chander Gupta as DW.2. The plaintiff also admitted the execution of Will by way of an affidavit in the previous proceedings for the grant of succession certificate, however, in this case, she claims that her father late Sh.Roshan Lal Sood died intestate.

5. Both the Courts below, on appreciation of the evidence, dismissed the suit.

6. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book along with the requisitioned record.

7. The learned senior counsel representing the appellant submits that DW.2 Subhash Chander Gupta, the attesting witness, has failed to identify the signatures of late Sh.Roshan Lal Sood on some other document.

Hence, he was not acquainted with the signatures of the testator. He further

submits that PW.2 Rajeev Sood son of late Sh.Krishan Baldev (another attesting witness, who died) had produced an affidavit Ex.DW.2/7 of his father to claim that he was not present when the Will was signed but his father's signature was obtained subsequently. The learned senior counsel further submits that Anoop Krishan Sood has admitted that his father was having cordial relation with all the children.

8. This Court has considered the submissions made by the learned counsel representing the parties.

9. DW.2 Subhash Chander Gupta, the attesting witness, has proved the execution of the Will in accordance with Section 68 of the Indian Evidence Act, 1872. He has also proved that the Will was executed in accordance with Section 63 of the Indian Succession Act, 1925. The learned counsel representing the plaintiff before the Trial Court, while cross-examining DW.2 Subhash Chander Gupta, confronted him with another document which was allegedly signed by late Sh.Roshan Lal Sood. However, he stated that he does not know whether late Sh.Roshan Lal Sood had signed this document or not. The pre-requisite qualification of the attesting witness is not that he must be well versed with the signatures of the testator. The attesting witness is required to attest the document including the Will by certifying that the testator has signed the Will in his presence. He is not supposed to be acquainted with the signatures of the testator.

10. As far as the deposition of PW.2 Rajeev Sood son of late Sh.Krishan Baldev, it shall be noted that in the affidavit (Ex.DW.2/7), his father admitted his signatures on the Will. Furthermore, such an affidavit

cannot be permitted to override the Will particularly when the defendants never got an opportunity to cross-examine late Sh.Krishan Baldev. Hence, the affidavit (Ex.DW.2/7) cannot be relied upon. Moreover, it was produced by the plaintiff in rebuttal evidence and the defendants never got an opportunity to rebut the same.

11. With reference to the last submission of the learned senior counsel representing the appellant, it shall be noted that late Sh.Roshan Lal Sood, while executing the Will, had specifically stated that he has two married daughters. In these circumstances, the testamentary disposition has been made in order to make deviation from natural succession. In this case, late Sh.Roshan Lal Sood had bequeathed his property in favour of his widow and three sons while excluding the married daughters. Veena Sood has not disputed the correctness of the Will.

12. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of facts arrived at by both the Courts below. Hence, the present appeal is dismissed.

13. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

February 12, 2024

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No