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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 vs. Chandrika and others, (2016) 6 SCC 157.**

2. In this Regular Second Appeal, the defendants assail the correctness of the judgment and decree passed by the First Appellate Court, which, in turn, has reversed the judgment and decree passed by the trial court.

3. In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.

4. The dispute between the parties revolves around the inheritance of the property left behind by late Sh.Harraj Singh Sidhu. The plaintiffs namely Smt.Vandana Sidhu and Sh.Paramraj Sidhu claim 40% share in the property on the basis of a Will dated 29.04.2009, whereas the remaining 60% of the property as per the Will has gone to the share of defendant no.1 to 3. The plaintiffs claim that Sh.Harraj Singh Sidhu married plaintiff no.1 on 07.03.1996 and Sh.Paramraj Singh Sidhu was born out of the lions of Sh.Harraj Singh Sidhu.

5. On the other hand, it is the case of the defendants that plaintiff no.1 Smt.Vandana Sidhu was only an employee in the business run by Sh.Harraj Sidhu and therefore, she is not entitled to any property. It has been projected that Smt.Vandana Sidhu had

married thrice previously. The defendants, while filing the written statement, have claimed that Sh.Harraj Singh Sidhu executed a Will on 29.04.2009, in their favour. However, the aforesaid Will has neither been produced nor proved by the defendants.

6. In order to prove the Will, Ms. Sunita Mehta, the attesting witness has been examined as PW4. She is sister of plaintiff no.1 Smt.Vandana Sidhu. Sh. C.B.Kataria who appeared as PW3, had notarized the Will. A hand-writing and finger print expert Sh.Ravinder Parshad has also been examined as PW5. It is the case of the defendants that Smt.Vandana Sidhu forged the Will using the blank signed papers of Sh.Harraj Singh Sidhu, as she was working as an employee.

7. The trial court dismissed the suit on the ground that the Will is surrounded by suspicious circumstances.. However, the First Appellate Court has reversed the judgment and decree passed by the trial court and held that the execution of the Will has been proved by the plaintiffs.

8. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook alongwith the lower court record, which is available in the digital form.

9. Learned senior counsel representing the appellants has made the following submissions:-

- i) Ms. Sunita Mehta is an interested witness being sister of Smt.Vandana Sidhu and the other attesting witness of the Will Sh.Paramjit Singh Sidhu, has not been examined.
- ii) The original Will dated 29.04.2009, has not been produced by the plaintiffs.
- iii) The properties are in the name of the Company and therefore, Sh.Harraj Singh Sidhu has no right to execute the Will.
- iv) The plaintiffs filed an application for DNA profile testing of Sh.Harraj Singh Sidhu, however, the same was withdrawn. Therefore, an adverse inference is required to be drawn against the plaintiffs.
- v) It is proved that Sh.Paramraj Singh Sihdu, plaintiff no.2 is son of Sh.Gurinder Singh as plaintiff no.1-Smt.Vandana married thrice before getting married to Sh.Harraj Singh Sidhu. It has been highlighted by the learned senior counsel that documentary evidence has been led to prove that she had previously married Sh.Vivek Aggarwal, Sh.Moshin Ali and Sh.Gurinder Singh.

10. On the other hand, the learned counsel representing the respondents (plaintiff) has submitted that there is no scope for interference by this Court in appreciation of the evidence, particularly when the execution of the Will has been proved by examining the attesting witness as well as the notary public, who has deposed that the testator and the attesting witnesses signed on the Will in his presence.

11. This Court has analysed the submissions made by the learned counsel representing the parties while re-evaluating the evidence brought on record.

12. With respect to contention no.1, it may be noticed that PW4 Smt. Sunita Mehta is undoubtedly sister of plaintiff no.1, however, she despite a thorough cross examination also, has stood her ground. It was categorically stated by her that she came to Chandigarh on her sister's request on 29.04.2009. The Will had been typed in advance. She alongwith Sh.Harraj Singh Sidhu and Sh.Paramjit Singh went to Sh.C.B.Kataria, Notary Public, Sector 17, Chandigarh where Sh.Harraj Singh Sidhu signed the Will after admitting its contents and thereafter, at the request of Sh.Harraj Singh Sidhu, she and Sh.Paramjit Singh signed the same as witnesses. All the three persons signed the Will in the presence of each other. Sh.C.B.Kataria, the Notary Public also made his endorsement on the Will in the presence of the testator and both the

marginal witnesses. From a bare perusal of the cross-examination of PW4, Smt. Sunita Mehta, it is evident that the main focus of the cross-examination was with regard to the alleged previous marriages of Smt. Vandana. Despite a lengthy cross-examination, the learned counsel representing the defendants had failed to impeach her credibility. PW3-Sh.C.B.Kataria is the Notary Public, who has attested the Will. In his deposition, he has stated that he read over the Will to the testator and the witnesses and they appended their signatures after admitting its contents to be correct. He also made an entry in his notrial register/notebook, which was also signed by late Sh. Harraj Singh Sidhu. As far as the effect of the failure of the plaintiff to examine Sh.Paramjit Singh is concerned, it may be noticed that as per Section 68 of the Indian Evidence Act, 1872 (hereinafter referred to as '1872 Act'), one of the attesting witnesses is required to be examined, who proves that the Will was executed in accordance with Section 63 of the Indian Succession Act, 1925 and is proved in accordance with Section 68 of the 1872 Act. Smt. Sunita Mehta has fulfilled the aforesaid requirements. Moreover, the defendants also had the equal opportunity to examine Sh.Paramjit Singh, if they had any doubt regarding the execution of the Will.

13. The second argument of the learned senior counsel representing the appellants is factually incorrect. In fact, the original Will was produced as it was appended in the documents as

an exhibit in the case titled as 'State vs. Vandana Singh and others'. Smt. Vandana Sidhu, while appearing as PW2, has specifically stated that she has seen the original Will on the documents appended in the aforesaid file. Similarly, Smt. Sunita Mehta and Sh.C.B.Kataria have stated that they have seen the original Will. A perusal of the Will proves that the photograph of Sh.Harraj Singh Sidhu, the testator, has been pasted on the first page. Sh. Harraj Singh Sidhu has appended his signatures on the first page as well as on the second page. It is attested by two witnesses namely Paramjit Singh and Ms. Sunita Mehta. It is also attested by Sh.C.B.Kataria, Notary Public, who has made the entry of the execution of said Will in his notrial register at page no.17. Moreover, certain photographs have been produced and proved to establish that Smt.Vandana Sidhu and Sh.Paramraj Singh Sidhu even after her marriage with late Sh.Harraj Singh Sidhu were spending time together as they had been spotted together a plenty of times. Presence of Sh.Paramraj Singh Sidhu in the photographs proves that Smt. Vandana was not merely an employee of Sh.Harraj Singh Sidhu. Moreover, Smt. Vandana Sidhu has produced a certificate from Gurudwara to prove that she married Sh.Harraj Singh Sidhu on 07.03.1994. Hence, the argument of the learned counsel has no substance.

14. The next argument of the learned counsel representing the appellants is also insubstantial as it is evident that Mohina

Properties Pvt. Ltd and Mrs. Bhupinder Singh and Sons Pvt. Ltd. are closely held Companies. The plaintiff, by filing the suit, has stated that Sh.Harraj Singh Sidhu had 66.67 % share in Mohina Properties Pvt. Ltd and 66.67% share in Mrs. Bhupinder Singh and Sons Pvt. Ltd. Late Sh.Harraj Singh Sidhu bequeathed his share in the aforesaid Companies.

15. Argument no.(iv) of the learned counsel representing the appellants is also without any substance as when defendant no.2- Sh. Gursimran Singh Sidhu, appeared in evidence as DW1, during the proceedings learned counsel representing the appellants proposed a DNA profile matching test with Sh.Paramraj Singh Sidhu. However, he refused, thus, defendant no.2 declined to undergo DNA profile matching test with Sh.Paramraj Singh. Hence, an adverse inference is required to be drawn against the defendants as he refused to undergo a DNA profile matching test. Moreover, the adverse inference is also required to be drawn against defendants as despite having positively asserted in the written statement that late Sh.Harraj Singh Sidhu executed another Will in their favour on 29.04.2009, have failed to produce and prove the same. Although, the Will as referred in the written statement has been produced to get the property mutated in their favour.

16. The last argument of the learned counsel representing the appellants also lacks substance as even if Smt. Vandana was

previously married still it will not make any difference in the present case. Sh. Harraj Singh Sidhu has left behind a testamentary deposition bequeathing 20% share each in favour of his five heirs namely Smt.Vandana Sidhu, Sh.Paramraj Singh Sidhu, Smt.Mohanjit Kaur, Sh.Gursimran Singh Sidhu and Ms.Noor Dhaliwal. It is proved that the testator was well educated and successfully running his business. While filing the written statement, the defendants stated that Smt. Smt.Vandana has taken advantage of the blank signed papers. In their evidence also, they tried to prove that Sh.Harraj Singh Sidhu did not append his signatures on the Will but on blank papers. However, they failed to prove that fact. Though a report from Forensic Science Laboratory has been exhibited, however, the same has not been proved by the defendants (the appellants herein). The author of the aforesaid report has not been examined. The aforesaid report has just been tendered in evidence but it has not been proved by the defendants.

17. Keeping in view the aforesaid facts and discussion, finding no merit, the appeal is dismissed.

18. COCP no.150 of 2018 has been filed by Smt.Vandana Sidhu alias Smt.Vandana Sharma. She prays for initiation of proceedings under Section 10 and 12 of the Contempt of Courts Act, 1972 for allegedly willfully disobeying the judgment and decree passed by the Additional District Judge on 27.01.2017. The

execution petition is an appropriate remedy for the implementation of the judgment and decree passed by the Civil court. In any case, the petitioner alleges that the respondents - Mohanjit Kaur and others have sold the land measuring 4bighas and 16 biswas located in Village Udari. Such sale deed shall be governed by the rule of lis pendens. Keeping in view the aforesaid facts, the contempt petition is also disposed of.

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

01.01.2024

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE