

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

116

1. RSA-4276-2014 (O&M)
Date of decision: 08.04.2024

JANG SHER SINGH

..Appellant

Versus

ROHTASH SINGH (DECEASED) THROUGH LRS.
AND ORS

..Respondents

2. RSA-540-2019 (O&M)

JAGSHER SINGH

..Appellant

Versus

ROHTASH SINGH (DECEASED) THROUGH LRS.
AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sherry K. Singla, Advocate
for the appellant.

Mr. S.S. Dinarpur, Advocate
with Mr. Arvind Singh, Advocate
Mr. Aman Godara, Advocate
Mr. Rohit Singh, Advocate
and Mr. Parminder Singh, Advocate
for respondent No.1.

ANIL KSHETARPAL, J(Oral)

CM-14207-C-2023

1. For the reasons stated in the application which is supported by an affidavit, the application is allowed.
2. The delay of 537 days in filing the application for restoration of appeal is condoned.
3. CM stands disposed of.

CM-14208-C-2023

4. For the reasons stated in the application for readmission of the appeal which is supported by an affidavit, the application is allowed.
5. CM stands disposed of.
6. Taken on board for final disposal today itself.

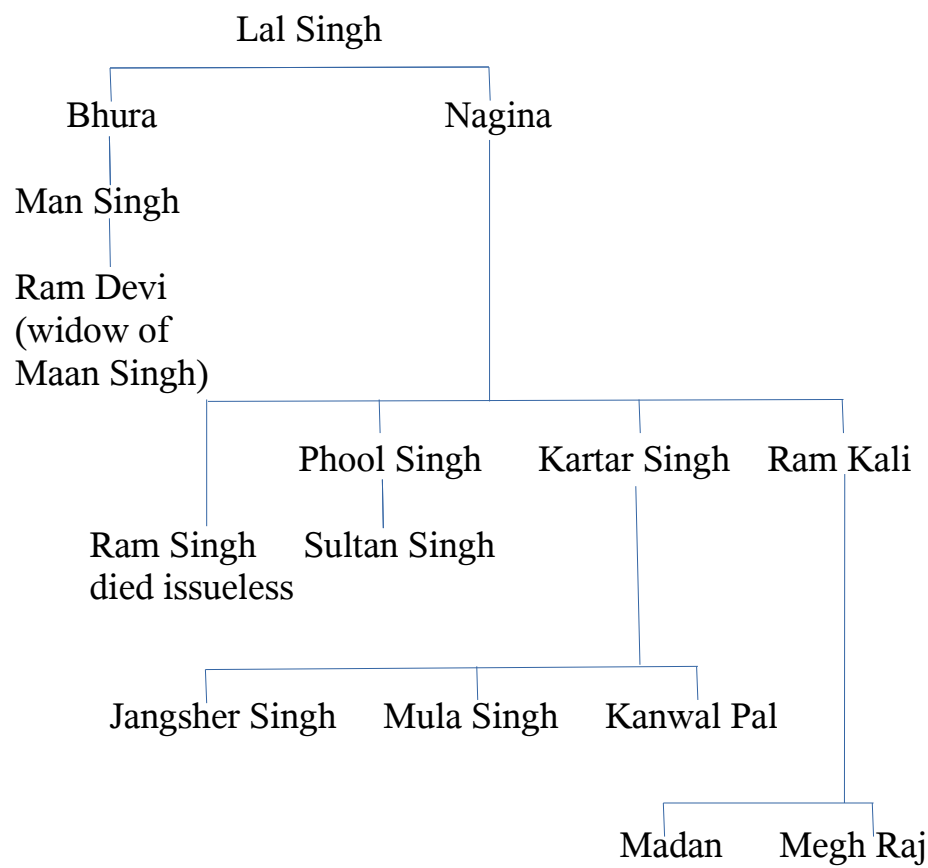
Main case

7. **Brief facts of the case:-**

7.1 With the consent of the learned counsel representing the parties, two connected regular second appeals, arising from two separate suits shall stand disposed of by this order.

7.2 The dispute in the present case is with respect to the inheritance of property left behind by Smt. Ram Devi, widow of Sh. Maan Singh. She was owner of property located in three different villages namely Lal Chhappar, Majri and Karera. The plaintiff Sh. Jang Sher Singh (appellant) is son of Sh. Kartar Singh son of Sh. Nagina Singh, who was brother of Sh. Bhura, Sh. Maan Singh's father.

7.3 To demonstrate the inter se relationship between the parties, a small pedigree of the family is extracted as under:-



7.4 As evident, the plaintiff is related to Smt. Ram Devi through her deceased husband, whereas, Sh. Rohtash Singh son of Sh. Madho Singh is her nephew. Smt. Ram Devi and Sh. Madho Singh were brother and sister.

7.5 Pursuant to a family settlement, Smt. Ram Devi suffered a Civil Court decree on 19.07.1994, with respect to property located in villages Lal Chhappar and Majri in favour of Sh. Rohtash Singh defendant No.1 in both the suits. With respect to the property located in village Karera, Smt. Ram Devi was a mortgagee. She executed an unregistered Will bequeathing her residuary property in favour of Sh. Rohtash Singh on the same day i.e. 10.06.1994. Subsequently, Smt. Ram Devi was declared owner of the property by virtue of Civil Court decree dated 20.09.1997.

8. **Reasons recorded by the trial Court:-**

8.1 In both the suits, the trial Court passed decrees in favour of the plaintiff on the following grounds:-

- i. The trial Court with regard to the consent decree observed that Sh. Rohtash Singh has no pre-existing right in the property, hence, the decree being unregistered does not result in transferring the property.
- ii. The execution of the Will of Smt. Ram Devi is not proved because the attesting witness Sh. Randeep Singh (DW-3) has stated that he signed the Will even before the testator herself thumb-marked it, hence his evidence is not worth the credibility, so it cannot be accepted.
- iii. The attesting witnesses have signed both the pages of the Will with different as it is quite evident from the ink used to sign the pages.
- iv. Sh. Rohtash Singh has failed to prove that he was taking care of Smt. Ram Devi at the time of execution of the Will.

9. Reasons recorded by the First Appellate Court:-

9.1 The First Appellate Court in both the suits reversed the judgment of the trial Court. It was held that a judgment and decree passed by the Court acknowledging a family settlement is not mandatorily registrable. Moreover, the Will is not surrounded by suspicious circumstances as made out by the trial Court.

10. Arguments put forth by the learned counsel representing the parties:-

10.1 This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the requisitioned lower Court record.

10.2 The learned counsel representing the appellant has made the following submissions in RSA-540-2019:-

- i. That the Will was executed on 10.06.1994, whereas, Smt. Ram Devi became the owner of the property located in village Karera on 20.09.1997.
- ii. Both the attesting witnesses signed the Will even before the testator appended her thumb impression. Hence, the Will has not been executed in accordance with Section 63 of the Indian Succession Act, 1925.
- iii. The execution of the Will has not been proved as only one attesting witness has been examined.
- iv. Sh. Gurnam Singh, the Notary Public has stated that the Will was not typed in his presence.
- v. The beneficiaries have actively participated in the execution of the Will.

10.3 Per contra, the learned counsel representing the respondents while supporting the judgment passed by the Courts below acknowledging the family settlement does not amount to transfer of the property and hence, it is not required to be registered. He relies upon the judgment passed in **Dhian Singh and others Vs. Mohinder Singh, 2017 (4) PLR 729.**

10.4 He further submits that as per Section 68 of the Indian Evidence Act, 1872, one attesting witness is required to be examined and in this case, Sh. Randeep Singh son of Sh. Nathi Ram has testified while appearing as DW-3. He further submits that the intention of the testator to acknowledge

Sh. Rohtash Singh as owner of her property is established from a Civil Court decree, which was passed on the same day.

11. Discussion by this Court:-

11.1 This Court has considered the submissions of the learned counsel representing the parties.

11.2 With reference to RSA-4276-2014, it may be noted here that the Civil Court decree acknowledging the family settlement does not require registration as Section 17 of the Registration Act, 1908, is not applicable to the family settlements. The Hon'ble Supreme Court in a recent judgment passed in *Khushi Ram and others Vs Nawal Singh, (2021) 16 SCC 279, Ravinder Kaur Grewal and others Vs Manjeet Kaur, (2020) 9 SCC 706 and Mohammade Yousuf and others Vs Raj Kumar and others, (2020) 10 SCC 264*, has held that a consent decree passed by the Court acknowledging family settlement does not require registration.

11.3 Hence, there is no substance in RSA-4276-2014, particularly, when Sh. Rohtash Singh is nephew of Smt. Ram Devi. He was closely related to Smt. Ram Devi.

11.4 With reference to RSA-540-2019, it may be noted here that Ex.D-1 is the Will, which is typed in the 'gurmukhi' language and it runs onto two pages. It is attested by two attesting witnesses namely Sh. Randeep Singh and Sh. Jagpal Singh. The second attesting witness Sh. Jagpal Singh has died. Sh. Randeep Singh has testified while appearing as DW-3. He has stated that Smt. Ram Devi and both the attesting witnesses went to Jagadhari Court. The Notary Public got the Will typed. The Notary Public also entered the Will in his register. Thereafter, Sh. Randeep Singh, the attesting witness

signed the Will, which was followed by Sh. Jagpal Singh another witness. In the last, the testator i.e. Smt. Ram Devi appended her thumb impression on both the pages of the Will. During the cross-examination, the explanation of Sh. Randeep Singh with regard to the use of different pens while signing both the pages of the Will has not been sought during his cross-examination.

11.5 As per Section 63 of the Indian Succession Act, 1925, the Will is required to be attested by at least two witnesses. Section 63 nowhere mandates the presence of testator and attesting witnesses at the same place while the testator signs or thumb marks it, it also does not lay down an order of signing a document, i.e. parties are free to choose who signs first and last. Section 63 only mandates the attestation of Will by two witnesses. The Will is a solemn document, which comes into operation after the death of the testator. The Courts are required to honour the wishes of testator unless it is established by the cogent evidence that the testator did not execute the Will or it is surrounded by suspicious circumstances, which has not been explained by the propounder of the Will. Despite the lengthy cross-examination, the credibility of the testimony of Sh. Randeep Singh could not be impeach by the learned counsel representing the plaintiff. His explanation was not sought for use of different pens while signing the first and second page of the Will. Smt. Ram Devi has thumb marked the Will on the first page and appended two thumb impressions on the second page. It is not the case of the plaintiff that Sh. Randeep Singh, the attesting witness has not signed the Will on both the pages. The other attesting witness has died. Sh. Gurnam Singh has testified as DW-5. He has also proved the Will. He has brought his register, wherein, thumb impression of Smt. Ram Devi has been appended.

He has specifically stated that he read over the Will to Smt. Ram Devi. Though, he has stated that the Will was not typed in his presence, however, that would not make any difference particularly when the Notary Public has stated that the Will was thumb marked and signed in his presence.

11.6 In order to prove the thumb impressions of Smt. Ram Devi, hand writing and fingerprint expert have also been examined by the defendants.

11.7 It may be noted here that on a careful reading of the Will, it has been recited that Sh. Rohtash Singh is Smt. Ram Devi’s nephew, who is taking care of her. This is coupled with the fact that Smt. Ram Devi suffered a consent decree on the same day with respect to the property located in two villages namely Lal Chhappar and Majri.

12. Decision:-

12.1 Keeping in view the aforesaid discussion, there is no merit in both the appeals.

12.2 Hence, dismissed accordingly.

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

April 08th, 2024
Ay

(ANIL KSHETARPAL)
JUDGE

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