

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

133

RSA-3477-2023 (O&M)

Date of decision: 18.01.2024

KAILASH SINGH

..Appellant

Versus

DEVLASH SINGH

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Nitesh Anan, Advocate
for the appellant.ANIL KSHETARPAL, J(Oral)

1. In this regular second appeal, the correctness of the concurrent findings of fact arrived at by the Courts below is assailed by the defendant. The dispute in the present case is with regard to the succession of property left behind by Sh. Shiv Kumar Singh. The appellant claims that Sh. Shiv Kumar Singh executed an unregistered Will exclusively in his favour on 22.03.1999. In order to prove the Will, the appellant examined only one attesting witness. Both the Courts found that there are material contradictions in the deposition of Sh. Suresh Chand Mishra, the attesting witness and Sh. Prem Pal Saini, the Notary Public. The First Appellate Court on reappreciation of evidence has recorded the following findings:-

“In the light of this much evidence pertaining to the Will in question, due execution of the Will in question cannot be held to have been proved, as per law, as there are material contradictions in the statements of concerned witnesses, in as much as PW2 Suresh Chand Mishra i.e. attesting witness, states that the Will was hand-written and was written on white papers, however, the Will ExD1 is typed one and is not on white papers. Not only this, DW2 Suresh Chand Mishra also states that the Will was written in the chamber of Prem Pal Saini, Advocate, Notary Public and in the presence of said Prem Pal

Saini, Advocate and the same was got written by Prem Pal Saini, Advocate, however, DW3 Prem Pal Saini categorically states that Will was not typed in his presence and that he does not know who had typed the Will in question. Still further, DW2 Suresh Chand Mishra admits in his cross-examination that he is resident of Devaria (U.P.) which is about 870 k.m. from Jagadhri and that he was not having any ration card or voter card in Jagadhri or Yamuna Nagar and if this aspect is seen in the light of afore discussed material contradictions in the testimony of these witnesses, then suspicious circumstances surrounding the Will in question become conspicuous. Moreover, propounder of the Will i.e. DW1 Kailash Singh in his testimony vide his affidavit Ex.DW1/A has, inter-alia, stated that his father was suffering from spine bone cancer, due to which his hands and legs were not working properly and that is why he (his father Shiv Kumar Singh) had put thumb impressions on the Will and that his father was mentally fit and that his father expired on 27.4.1999 and his mother expired on 5.9.2008 and that he had served his father and mother well and had borne the entire expenses of their treatment/medicines and his father had bequeathed his property in his favour on account of the fact that he had served him well during his life time. DW1 Kailash Singh in his cross-examination states that he does not know as to whether his father had got the Will registered or not and that he did not know as to whether their father had executed any Will in his favour or not and his mother disclosed this to him after the death of his father. Further states that he is not having any proof regarding the illness of his father and further voluntarily stated that treatment of his father was done at Gaba Hospital, but he is not having any proof regarding the same. Thus, in the light of testimony of defendant No.1, suspicious circumstances surrounding the execution of the Will in question further become prominent, especially in view of the fact that on the one hand, this witness states that his father was suffering from spine bone cancer and on account of the same, his legs and hands were not working properly and so he had put his thumb impressions on the Will; but in his cross-examination, this witness states that he was not having any document/proof pertaining to treatment of his father regarding his illness and also states that he was not having any knowledge about execution of the Will by his father and instead his mother had disclosed the same to him after the demise of his father, which in a way is totally contradictory and further creates deep suspicion about the due execution of the Will in question. Had the deceased Shiv Kumar Singh been residing with defendant No.1 and defendant No.1 would

have served him well and got him treated well, then defendant No.1 would certainly have been in possession of document(s) pertaining to treatment of his seriously ill father and even otherwise, if a person is suffering from bone cancer and is unable to move his legs and hands, then it is further highly improbable that such person would come to the court complex to get any Will executed (as DW2 Suresh Chand Mishra has deposed that Shiv Kumar Singh had come to court complex to execute the Will) and that too without the knowledge of his own son who claims to be the sole beneficiary of such Will. Even otherwise, as per the own testimony of defendant No.1, the Will in question is alleged to have been executed on 22.3.1999 and his father Shiv Kumar Singh is stated to have expired on 27.4.1999 and given the fact that Shiv Kumar Singh was suffering from spine bone cancer and was unable to move his legs and hand, the proximity of time between date of execution of the Will in question and demise of Shiv Kumar Singh would further make the circumstances suspicious regarding due execution of the Will Ex.DI. Still further, if the testimony of plaintiff i.e. PW3 Dev Lash Singh, his wife Seema i.e. PW1 and defendant No.1 i.e. DW1 Kailash Singh is read as a whole, then it apparently appears that none of them had taken care of their ailing father in his last days, as none of the two sons had been able to bring on record any treatment records of their ailing father and it apparently appears that both his sons, who are now at loggerheads over his property left by him (Shiv Kumar Singh), had left him (ailing father) to fend for himself and after his demise, both are fighting with each other over the suit property purchased by their father during his life time. Nevertheless, it is not in dispute that plaintiff as well as defendants No.1 to 5 are legal heirs of deceased Shiv Kumar Singh and resultantly, share of Shiv Kumar Singh (since deceased) would devolve upon his legal heirs i.e. plaintiff and defendants No.1 to 5, as per Hindu Succession Act and accordingly, learned trial court has rightly returned findings to the effect that veracity of the Will Ex.DI and due execution of the same by Shiv Kumar Singh (since deceased) is quite doubtful and surrounded by suspicious circumstances and accordingly, the suit of the plaintiff has been decreed partly by passing preliminary decree thereby holding the plaintiff entitled to 1/6th share in the residential house in question.”

2. The learned counsel representing the appellant though made a sincere attempt, however, failed to draw the attention of the Court to any

substantive misreading or non-reading of evidence. He has also failed to

point out any material error in the findings of fact arrived at by the Courts below. While entertaining the regular second appeal under Section 41 of the Punjab Courts Act, 1918, the Court interferes only if there is some material irregularity, which goes to the root of the matter.

- 3. Hence, no ground to interfere is made out.
- 4. Dismissed accordingly.
- 5. All the pending miscellaneous applications, if any, are also disposed of.

January 18th, 2024

Ay

(ANIL KSHETARPAL)
JUDGE

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