

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****111****RSA-9865-2018 (O&M)****Date of Decision : 18.12.2024**

Jagir Singh (deceased) through LR

....Appellant

VERSUS

Randhir Singh and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : M. Harshit Jain, Advocate for the appellant.

ALKA SARIN, J. (Oral)**CM-12594-C-2024**

1. This is an application for bringing on record the legal representatives of appellant – Jagir Singh – who is stated to have died.

2. For the reasons stated in the application, the same is allowed. The legal representatives as mentioned in para 2 of the application are impleaded as party. Amended memo of parties is taken on record. *Vakalatnama* signed by legal representatives of the appellant has already been appended with the application, which is taken on record.

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3. Present appeal has been preferred by the plaintiff-appellant challenging the judgments and decrees dated 18.10.2016 and 07.07.2018 passed by the Trial Court and the First Appellate Court, respectively.

4. The brief facts relevant to the present *lis* are that two civil suits were filed : one by Jagir Singh (appellant herein) titled 'Jagir Singh vs. Randhir Singh and Another' in which the plaintiff-appellant herein claimed

that he is joint owner in possession of land measuring 22 Kanals 12 Marlas being 1/7th share out of the land measuring 158 Kanals 07 Marlas comprised in Khewat/Khatauni No.205/226, 207/230, 208/231, 209/232, 210/233, 211/234, 212/235, 213, 236, Rect. No.66, Killa No.22/1, Khasra No.152/1, Rect. No.66, Killa No.13, 18 Rect. No.63, Killa No.23/2, 24/1, 25/1, Rect. No.66 Killa No.21/1, Rect. No.72, Killa No.3, 4 Rect. No.65, Killa No.6/2, 13, 14, 15, 16, 17, 18/2, 24/3, 25/3, Rect. No.66, Killa No.11, 12, 19, 20, 21/3, 22/3, 23/1 Rect. No.65, Killa No.6/1, 9/2, 12/1, Rect. No.71, Killa No.1/1, Rect. No.72, Killa No.5, Khasra No.152/2 as per Jamabandi for the year 2006-07 situated at village Bhumal, Tehsil Jagraon, District Ludhiana, on the basis of a Will dated 01.10.1984 registered on 10.10.1984 and that the Will set up by sons of Harnam Kaur, defendants Randhir Singh etc. dated 01.08.2002 was not a valid Will. The defendant-respondents filed their written statement. Ownership of Harnam Kaur was admitted. It was stated that the plaintiff-appellant did not serve Harnam Kaur and she revoked the Will dated 01.10.1984 by executing a Will dated 01.08.2002 in favour of the defendant-respondents. It was further claimed that the defendant-respondents had served her during her life-time. The second suit was filed by Randhir Singh etc. (respondents herein) setting up a Will dated 01.08.2002 alleged to have been executed by Harnam Kaur. Both the suits were consolidated.

5. On the basis of pleadings of the parties the following issues were framed :

1. Whether plaintiff is entitled to decree of permanent injunction as prayed for ? OPP

2. Whether plaintiff is entitled to decree for declaration as prayed for ? OPP

3. Relief.

6. Both the suits were dismissed vide judgment and decree dated 18.10.2016 passed by the Trial Court. Aggrieved by the same, two appeals were filed : one by the plaintiff-appellant herein against the dismissal of his suit and the other by the respondents herein against the dismissal of their suit. Both the appeals were dismissed vide the judgment and decree dated 07.07.2018 passed by the First Appellate Court. Hence, the present regular appeal by the plaintiff-appellant in the suit which was filed by him.

7. Learned counsel for the plaintiff-appellant would contend that both the Courts have erred in dismissing his suit. It is urged that there was a registered Will in favour of the plaintiff-appellant and the Will set up by the defendant-respondents was an unregistered Will dated 01.08.2002. It is further the contention that the Will propounded by the plaintiff-appellant being more than 30 years old would be presumed to be a valid document as per Section 90 of the Indian Evidence Act, 1872 even though the attesting witnesses of the Will had not been examined.

8. Heard.

9. Section 63 of the Indian Succession Act, 1925 reads as under :

“ 63. Execution of unprivileged Wills – Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or

engaged, or a mariner at sea, shall execute his will according to the following rules :

- (a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.*
- (b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.*
- (c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”*

10. Section 63 of the Indian Succession Act, 1925 reproduced above clearly reveals that an unprivileged Will is required to be attested by two or more witnesses each of whom has seen the testator sign or affix his

mark to the Will. The provisions of Sections 63 of the Indian Succession Act, 1925 have been held to be mandatory and Hon'ble Supreme Court in the case of **Bharpur Singh & Ors. vs. Shamsheer Singh [2009(1) RCR (Civil) 826]** has held as under :

“ 11. The legal principles in regard to proof of a will are no longer res integra. A will must be proved having regard to the provisions contained in clause (c) of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872, in terms whereof the propounder of a will must prove its execution by examining one or more attesting witnesses. Where, however, the validity of the Will is challenged on the ground of fraud, coercion or undue influence, the burden of proof would be on the caveator. In a case where the Will is surrounded by suspicious circumstances, it would not be treated as the last testamentary disposition of the testator.”

11. The argument of learned counsel for the appellant that the presumption of Section 90 of the Indian Evidence Act, 1872 would be applicable in the present case is wholly ill-founded. Hon'ble Supreme Court in the case of **Ashutosh Samanta (D) by LRs & Ors. vs. Smt. Ranjan Bala Dasi & Ors. [AIR 2023 SC 1422]** has held as under :

“ 12. This court, in M.B. Ramesh (D) by L.Rs. v K.M. Veeraje Urs (D) by L.Rs. & Ors., Civil Appeal

No.1071/2006, decided on 03.05.2013 while dealing with a similar argument regarding applicability of Section 90 in the case of proof of will, held as follows:

*"At the same time we cannot accept the submission on behalf of the Respondents as well that merely because the will was more than 30 years old, a presumption under section 90 of the Indian Evidence Act, 1872 ('Evidence Act' for short) ought to be drawn that the document has been duly executed and attested by the persons by whom it purports to have been executed and attested. As held by this Court in *Bharpur Singh v. Shamsheer Singh* reported in 2009 (3) SCC 687, a presumption regarding documents 30 years old does not apply to a will. A will has to be proved in terms of section 63(c) of the Succession Act read with Section 68 of the Evidence Act.*

That takes us to the crucial issue involved in the present case, viz. with respect to the validity and proving of the concerned will. A Will, has to be executed in the manner required by section 63 of the Succession Act. Section 68 of the Evidence Act requires the will to be proved by examining at least one attesting witness. Section 71 of the Evidence

Act is another connected section "which is permissive and an enabling section permitting a party to lead other evidence in certain circumstances", as observed by this Court in paragraph 11 of Janki Narayan Bhoir v. Narayan Namdeo Kadam reported in 2003 (2) SCC 91 and in a way reduces the rigour of the mandatory provision of Section 68. As held in that judgment Section 71 is meant to lend assistance and come to the rescue of a party who had done his best, but would otherwise be let down if other means of proving due execution by other evidence are not permitted."

12. In view of the law laid down by the Hon'ble Supreme Court in the cases of **Bharpur Singh** (*supra*) and **Ashutosh Samanta** (*supra*), and the plaintiff-appellant not having examined even one of the attesting witnesses to the Will set-up by him, I do not find any merit in the present appeal. No question of law much less substantial question of law arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

18.12.2024
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO