

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.461 of 1993 (O&M)
Reserved on: 09.01.2025
Date of Order:04.04.2025

Brij Lal (since deceased) through LRs

.Appellant

Versus

Ram Kishan and another

..Respondents

RSA No.889 of 1993 (O&M)

Ram Kishan

.Appellant

Versus

Brij Lal (since deceased) through LRs

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajesh Garg, Sr. Advocate, with
Ms. Neha Matharoo, Advocate
Mr. Mandeep Singh, Advocate
for the appellant(s) (in RSA-461-1993)
for the respondent(s)(in RSA-889-1993)

Mr. S.S.Toor, Advocate
for the appellant(s)(in RSA-889-1993)
for the respondent (s)(in RSA-461-1993)

ANIL KSHETARPAL, JUDGE

I. FACTUAL MATRIX:-

1. With the consent of the learned counsel representing the parties, Regular Second Appeal No.889 of 1993, filed by the plaintiff, whereas Regular Second Appeal No.461 of 1993, filed by the defendant shall stand disposed of by this order.

2. The dispute is with regard to succession to the property left behind by Sh. Des Raj, who died issueless on 04.09.1982. The plaintiff-Ram Kishan claims that he is collateral of Sh. Des Raj in the sixth decree

AND not only brought up by Sh. Des Raj but also Sh. Des Raj married him. Hence, on 04.07.1982, Sh. Des Raj executed a Will in his favour.

3. Defendant on the other hand claims that the plaintiff is not a collateral of Sh. Des Raj in the sixth decree. Sh. Des Raj's Guru was defendant's father. Moreover, defendant was residing with Sh. Des Raj, who executed a registered Will in his favor on 25.05.1981. Mutation on the basis of registered Will was sanctioned and the appeal filed by the plaintiff was dismissed.

4. In order to prove the Will, dated 04.07.1982, plaintiff examined PW2-Gurdev Singh, Scribe, PW3-Randhir Singh, Panch and PW4-Jasbir Singh, attesting witness.

5. Per contra, in order to prove the registered Will dated 25.05.1981, defendant examined DW1-Bakshish Singh, Lambardar (headman of the village), DW3-Ajmer Singh, Attesting witness and DW5-Balik Ram, Scribe.

6. Both the courts dismissed the suit on the ground that the parties have failed to remove suspicious circumstances surrounding both the Wills. The courts have also held that the plaintiff has failed to prove that he was collateral in the sixth decree.

7. The plaintiff has filed an application for filing additional evidence for permission to produce and prove the following documents:-

“i) Certified copy of application dated 15.11.1988, copy enclosed with the grounds of appeal as Annexure P-1, an application filed by Brij Lal respondent in proceedings under Section 45 Cr.P.C. stating that receiver may be directed to take over the possession of the suit land.

ii) Certified copy of order of the Assistant Collector II Grade dated 11.1.88 to indicate that Brij Lal respondent had applied for correction of khasra Gidwari entries for the period 1984 to 1987 but when the Tehsidlard wanted to inspect the spot, he withdrew this application.

iii) Certified copy of jamabandi for the year 1987-88.

iv) Certified copy of the order of Assistant Collector II Grade dated 28.6.1984 to indicate that Brij Lal respondent made an application for creation of khasra girdwari with regard to Sauni 1983 but when the Tehsildar wanted to inspect the spot under the procedure, he withdrew this application.”

II. **ARGUMENTS ADDRESSED:-**

8. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the requisition record.

9. On the one hand, the learned counsel representing the plaintiff has asserted that Sh. Des Raj executed last Will in favour of the plaintiff on 04.07.1982, which has been proved by examining both the attesting witness and scribe.

10. Per contra, the learned counsel representing the respondent claims that the registered Will dated 25.05.1981, has been proved by examining both the attesting witness and the scribe and the courts have erred in doubting its correctness.

III. **DISCUSSIONS AND ANALYSIS:-**

11. With respect to unregistered Will in favour of the plaintiff-Sh.

Ram Kishan, both the courts have found various reasons to discard the Will. It has come on record that the plaintiff reported the death of Sh. Des Raj to the Patwari (revenue official) vide Rapat Roznamcha Ex.D3, however, he did not disclose about the Will dated 04.07.1982. The Will dated 04.07.1982 was also not scribed by a professional scribe. Moreover, the plaintiff has failed to prove that he was collateral of Sh. Des Raj in the sixth decree. Both the courts have given cogent reasons to discard the Will dated 04.7.1982, propounded by the plaintiff. This court does not find any reason to interfere with the same.

12. Both the courts have also doubted the correctness of registered Will dated 25.05.1981, on the ground that the signatures of the propounder of the Will at the time of registration were taken in the other room then in the room of the Sub-Registrar. Moreover, both the attesting witnesses have not stated the basic fact that they attested the Will in the presence of Sh. Des Raj and Sh. Des Raj signed the Will in their presence. The scribe has also not stated that the testator signed the Will in the presence of both the attesting witnesses.

13. It may be noted here that on the information of the plaintiff, Sh. Ram Kishan, FIR was registered against Sh. Brij Lal, alleging that he has poisoned Sh. Des Raj, in which he was acquitted. Sh. Ram Kishan filed an appeal which was dismissed. It has come on record that Sh. Des Raj and defendant Brij Lal were residing together. Their ration card has been proved. The plaintiff has failed to prove that he was brought up by Sh. Des Raj.

14. However, the reasons given by the courts below to discard the registered Will are not found sustainable. The first reason given by the

courts is incorrect because the office of the Sub-Registrar is a compact office. In one room, the registration clerk and other officials have their office, whereas in the adjoining room, the Registrar has his office. Hence, even if the testator signed in the room of the Registration Clerk, it would not result in discarding the Will. Moreover, the courts have ignored that as per provision of the Registration Act, 1908, a Will/testament is not mandatorily required to be registered. The execution of the Will is separate from its registration. The Will is stated to have been scribed and attested by witnesses at the office of the scribe. Subsequently, the scribe along with the testator and the attesting witnesses went to the office of Sub-Registrar to get it registered. The signatures of the testator and the attesting witnesses were taken by the registration clerk in the office of the Sub-Registrar.

15. Both the courts have also erred in overlooking the fact that DW1-Bakshish Singh (headman of the village) has stated that he along with Sh. Des Raj and Sh. Ajmer Singh came from the village to Patiala city to get the Will registered. They initially went to the scribe's office where the Will was scribed. The testator signed the Will, whereas both the attesting witnesses thumb marked the Will in the presence of the scribe. The testator's signatures were also taken in the register where entry was made by the scribe. Hence, the execution of the Will was complete. There was no suggestion to both the attesting witnesses to the effect that they were not present when the Will was signed by the testator. From very beginning, it is the case of the defendant that Sh. Des Raj accompanied by both the attesting witnesses came from the village to execute the Will which was duly executed and registered. Hence, the court has erred in observing that both the attesting witnesses have not stated the basic fact that they attested the

Will in the presence of the testator.

16. This court has carefully read the statement of DW1-Bakshish Singh. He has stated that the scribe after writing the Will read over the same to Sh. Des Raj in their presence, who after admitting it to be correct, signed the Will. He and Sh. Ajmer Singh thumb marked the Will as attesting witnesses. Similar is the statement of Sh.Ajmer Singh, who has appeared as DW3. Sh. Des Raj, Sh. Ajmer Singh and Sh. Bakshish Singh are resident of the same village, namely, Daun Kalan. Thus, the first appellate court has erred in observing that the witnesses have not stated that Sh. Des Raj signed in their presence. Similarly, the first appellate court has erred in observing that the scribe has not deposed that the attesting witnesses signed the Will in the presence of Sh. Des Raj. In fact, on careful reading of statement of DW5-Sh. Balak Ram, it is evident that he stated that Sh. Des Raj signed the Will after he read over the same to him. Subsequently, Sh. Bakshish Singh and Sh. Ajmer Singh appended their thumb impression as attesting witnesses. No suggestion was given to him that attesting witnesses did not sign in his presence or in the presence of Sh. Des Raj.

17. It is fundamental that the entire deposition of a witness is required to be considered after comprehensively reading his statement. One or two lines in isolation cannot be read divorced from entire statement. Hence, the findings of the courts below with regard to the registered Will dated 25.05.1981, is set aside.

18. It has also come on record that Sh. Brij Lal (defendant) filed civil suit no.131-T of 04.05.1984, against Sh. Ram Kishan for declaration under Section 45 of the Punjab Land Revenue Act read with provisions of the Specific Relief Act claiming to be in possession of the property which

was decreed on 20.07.1985, Ex.D5. A copy of the decree is Ex.D6. Sh. Ram Kishan filed first appeal which was dismissed on 10.08.1987 and it was declared that Sh. Brij Lal is in continuous possession of the same. Copies of the judgments and decrees are Ex.D6/16 and D6/17. In fact, in the criminal case also, it was found that Sh. Des Raj was residing with Sh. Brij Lal.

19. In the application for permission to lead additional evidence, the plaintiff wants to produce certified copy of application dated 15.11.1988, which was attached with grounds of appeal in the proceedings under Section 145 Cr.P.C. In the considered view of the court, such application would not advance the plaintiff's case. The second document sought to be produced is an order passed by the Assistant Collector 2nd Grade, on 11.01.1988, when Sh. Brij Lal filed application for correction of Khasra Girdwari. The application for correction of Khasra Girdwari is filed for the purpose of correcting revenue record. Hence, that would not be relevant for the decision of the case. The third document is certified copy of jamabandi of the year 1987-1988 which is per-se admission, hence, the same is taken on record. The fourth document is certified copy of the order passed by the Assistant Collector 2nd Grade on 28.07.1984, when Sh. Brij Lal filed an application for correction of Khasra Girdwari. Again this document has no relevant for the purpose of decision of the present case.

IV. DECISION:-

20. Consequently, the application is partly allowed and certified copy of the jamabandi is taken on record.

21. It may be noted here that both the courts have concurrently found that the plaintiff has failed to prove that he is collateral in the sixth decree with Sh. Des Raj.

22. Since, the Will propounded by the defendant has been proved, hence, the directions of the courts directing escheating of the property in favour of the State shall also stand set aside.

23. Consequently, RSA No.461 of 1993, shall stand allowed, whereas RSA No.889 of 1993 filed by the plaintiff shall stand dismissed.

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

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

**(ANIL KSHETARPAL)
JUDGE**

**04th April, 2025
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No