

(1992) 03 P&H CK 0015

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2188 of 1990

Balbir Wati

APPELLANT

Vs

Jagbir Singh Arora

RESPONDENT

Date of Decision: March 27, 1992

Acts Referred:

- Succession Act, 1925 - Section 63

Hon'ble Judges: A.S. Nehra, J

Bench: Single Bench

Advocate: B.S. Bhatia, for the Appellant; A.S. Jain with Monish Jain, for the Respondent

Final Decision: Dismissed

Judgement

A.S. Nehra, J.

This appeal is directed against the judgment and decree dated 30.10.1990 passed by the Additional District Judge, Chandigarh, by which the appeal filed by the appellants was dismissed and the judgment and decree dated 13.6.1985 passed by the trial Court (decreeing the suit filed by Jagir Singh Arora Plaintiff-respondent) was upheld.

2. Jagbir Singh Plaintiff-respondent brought an interpleader suit for adjudication of the question as to who out of the rival claimants to the estate of Kundan Lal who had inducted him as a tenant in the demised shop, was entitled to receive the rent, as Kundan Lal landlord had died on 19.1.1983. The Plaintiff-Respondent alleged that Zorge and Ashok Kumar, who are the sons of Randhir Kumar, claimed to be the landlords on the basis of will dated 20.12.1982 (Exhibit. DW-3/1) executed by Kundan Lal in their favour; the Plaintiff-respondent also pleaded that Baldev Raj and Kuldip Kumar have also claimed to be the landlords of the premises, in dispute; and that they have also filed a rent application against him.

3. During the pendency of the suit, Baldev Raj defendant died and his legal heirs were impleaded.

4. In their joint written statement, Baldev Raj defendant (now his legal heirs) and Kuldeep Kumar have pleaded that, since Kundan Lal executed a Will in favour of his three sons, namely, Baldev Raj, Kuldeep Kumar and Randhir Kumar, in respect of his entire property, thereof, they are the landlords of the premises, in dispute.

5. In their joint written statement, defendants No. 3 to 5, namely, Randhir Kumar and his sons Zorge and Ashok Kumar, have pleaded that, since Kundan Lal executed a registered Will dated 20.12.1982 (DW-3/1), vide which the shop, in dispute, was bequeathed in favour of Zorge and Ashok Kumar, therefore, they are landlords of the premises, in dispute.

6. On the pleadings of the parties, the following issues were framed:-

(1) Who is entitled to receive rent from the plaintiff?

(2) Relief.

The trial Court upheld the registered Will dated 20.12.1982 (Exhibit DW-3/1) propounded by Zorge and Ashok Kumar, and discarded the Will dated 18.1.1983 propounded by Baldev Raj and Kuldeep Kumar.

7. It is not in dispute that Kundan Lal was the owner of the shop in possession of the Plaintiff-respondent as a tenant and he left behind three sons, namely, Baldev Raj (since deceased), Kuldeep Kumar and Randhir Kumar. By his registered Will Exhibit DW-3/1, Kundan Lal divided his movable and immovable property in unequal shares. He gave the demised shop to his grandsons, namely, Zorge and Ashok Kumar (sons of Randhir Kumar) to the exclusion of other sons and daughter. Of the two residential houses mentioned in paragraph 4 of the Will, he gave One-half share in house No. 890 to the sons of his son Baldev Raj, whereas the remaining One-Half there in was given to son of Kuldeep Kumar (second son of Kundan Lal) and the second house bearing No. 897 (899 in ink) and cash was given by Kundan Lal to his son Randhir and his wife Sarita Devi in equal shares.

8. In order to prove the execution and attestation of the Will Exhibit DW-3/1, Mangal Singh and Ram Singh, attesting witnesses thereof, have been examined. They have consistently deposed about Kundan Lal having got Will- Exhibit DW3/1 executed and his having signed the same, in their presence, and about their attesting the same in the presence of Kundan Lal. They also deposed about the presentation of the said Will by Kundan Lal before the Sub Registrar, Chandigarh, for its registration on the same day. The testimony of neither of these two attesting witnesses could be shaken in their Cross-examination. Both the Courts below have rightly held that Will Exhibit DW-3/1 has been duly proved to have been executed by the testator in his sound and disposing mind. The Learned Counsel for the appellants did not question the genuineness and validity of this Will in the course of arguments and confined his arguments to the correctness of the finding of the lower Courts with regard to the later Will Exhibit D-2 dated 8.1.1983 propounded by the appellants showing that it

was the last Will which is to prevail and that it could not have been rejected simply because of its non-registration.

9. The Learned Counsel for the appellants has argued that Will Exhibit D-2 has been proved by Dhan Raj DW-2 who stated that he is the son-in-law of Kundan Lal; that he scribed Will Exhibit D-2 at the instance of Kundan Lal; that he signed the Will as a derive and as a witness signed Will Exhibit D-2 in the presence of each other. The Learned Counsel for the appellants has further submitted that Rattan Lal DW-3, another attesting witness of Will Exhibit D-2, has corroborated the statement of Dhan Raj DW-2, that Shiv Ram DW-4 (real brother of the testator) is another attesting witness of Will Exhibit D-2 who has also corroborated the statement of Dhan Raj DW-2; that the execution of Will Exhibit D-2 has been proved in accordance with law; and that will Exhibit D-2 has been executed in accordance with Section 63 of the Indian Succession Act, because it was attested by three attesting witnesses, and the witnesses and the testator had signed it in the presence of each other.

10. The Learned Counsel for the respondents has submitted that Will Exhibit D-2 is surrounded by suspicious circumstances. He has pointed out that Will Exhibit D-2 was scribed on 18.1.1983, whreas Kundan Lal died on 19.1.1983, as admitted by the attesting witnesses of this Will. He also submitted that Dhan Raj DW-2 has stated that, at the time of execution of the Will Exhibit D-2, the condition of Kundal Lal, who had received an injury on his body, was bad; and that, in view of this categorical statement of Dhan Raj DW-2, which has not been disputed by any of the witnesses examined on behalf of the defendants, Baldev Raj (now his legal heirs) and Kuldip Kumar, Kundan Lal could not be stated to be in a sound and disposing mind at the time of execution of Will Exhibit D-2 The Learned Counsel for the respondents had also submitted that there are material discrepancies in the statements of the witnesses examined by the appellants. He pointed that Dhan Raj DW-2 has stated that, at the time of execution of Will Exhibit D-2, the condition of Kundan Lal, who hak received an injury on his body, was bad, whereas Rattan Lal DW-3 states that he did not see any injury on the body of Kundan Lal who was not ill and was sitting on a cot; and that Shiv Ram DW-4 has also stated that the condition or Kundan Lal had been bad for the last. 2-3 days before his death, because he was suffering from fever. The Learned Counsel for the respondents has further argued that it is clearly established from the statement of Dhan Raj DW-2 and Shiv Ram DW-4 that Kundan Lal testator, at the time of execution of Will Exhibit D-2 was suffering from fever and had an injury on his body; that Kundan Lal died just on the next day after execution of Will Exhibit D-2; that, therefore, the condition of Kundan Lal, at the time of execution of this Will, was serious and, as such, he could not be said to be in a sound and disposing mind, and that the Will Exhibit D-2 was not executed in accordance with Section 63 of the Indian Succession Act.

11. The Learned Counsel for the respondents has further submitted that in Will Exhibit D-2, it is mentioned that it supersedes Will dated 20.12.1982 (Exhibit DW-3/1);

that Will Exhibit DW-3/1 is duly registered, whereas Will Exhibit D-2 is not duly registered because it was got registered only after the death of the testor; and that generally a registered document should be cancelled only by a registered document.

12. After hearing the Learned Counsel for the parties, I hold that execution of Will Exhibit D-2 had not been proved in accordance with Section 63 of the Indian Succession Act, because the testator was not in a sound and disposing mind at the time of execution of Will Exhibit D-2. Kundan Lal was suffering from fever and also had an injury on his person at the time of execution of Will Exhibit D-2. Even if Will Exhibit D-2 is taken to have been executed by Kundan Lal as testified by the attesting witnessess, it cannot be construed as a valid Will of Kundan Lal. It is in Hindi and the operative part material for determination of its character, when translated into English, reads as under:-

I cancel the Will dated 20.12.1982 and authorise my real brother Shiv Ram and son-in-law Dhan Raj to immediately call on Kuldip and settle his account and get shop No. 1900 and house No. 890, 898/1 transferred among all of my three sons in equal shares. The statement that I have got written has been made in my full senses without pressure of any one.

13. From the said recital in Exhibit D-2, it is clear that it was not intended to be a Will with regard to disposition of property of Kundan Lal, to be operative after his death.

14. The tenor and the contents of Exhibit D-2 clearly suggest that Kundan Lal was making a statement to his son-in-law Dhan Raj, who claimed having scribed this Will, and did not have any intention of making a Will, with regard to his estate. Therefore, there was no question of his calling any of the persons, who claimed to be witnesses of Will Exhibit D-2, to be attesting witnesses. Their signatures were apparently obtained to give it the shape of a Will which is an after-thought. It is also obvious that though a Will is not required to be compulsorily registered and there is no legal impediment to an unregistered Will being accepted, provided its execution and attestation, as required by law, are proved; yet when a case like the present one, a person makes a registered Will, it would normally be expected of him to get the subsequent Will registered if he chooses to supersede the previous one. The non-registration in such a situation, does create some suspicion, which the propounder has to explain. In this case, the testator did not completely exclude his other heirs by Will Exhibit DW-3/1 though the division of property made by him is unequal. Will Exhibit DW-3/1 cannot be rejected simply for that reason when it has been proved to have been executed in a free, sound and disposing mind.

15. For the aforesaid reasons, the appeal fails and is dismissed with no order as to costs.