(1983) 03 P&H CK 0002

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 268 of 1975

Smt. Rukman alias Rukmani		APPELLANT
	Vs	
Ujagar Singh and others		RESPONDENT

Date of Decision: March 25, 1983

Hon'ble Judges: J.V. Gupta, J

Bench: Single Bench

Advocate: L.M. Suri, for the Appellant; Rajinder Krishan Aggarwal, for the Respondent

Final Decision: Allowed

Judgement

J.V. Gupta, J.
This is plaintiff''s second appeal whose suit for the grant of the declaration and the injunction was decreed by the trial court, but dismissed in appeal.

2. The plaintiff filed the suit for the grant of a declaration to the effect the effect the she was the owner in possession of one-half share of the land measuring 77 Kanals and 12 Marlas, and also for the grant of the permanent injunction restraining the defendants from interfering with her possession on the allegations that Bhagwan Singh was the owner of the suit land The plaintiff was the wife of Ujagar Singh son of Natha Singh the pichlaq son of Bhagwan Singh. After the death of Natha Singh, his widow, i.e. the mother of the plaintiff''s husband, had remarried Bhagwan Singh, deceased. Defendants Nos. 1 and 2 i.e. Ujagar Singh and Hazara Singh are the two sons of Bhagwan Singh, deceased. During his life time, Bhagwan Singh made the gift of one-half share of his land in favour of the plaintiff. Ujaggar Singh, defendant, challenged that gift in a suit in the year 1954. That suit was finally disposed of by the High Court on October 19, 1959, wherein it was held that the gift was not binding on the reversionary rights of the heirs of Bhagwan Singh with respect to the land mentioned in sub-clauses (A) and (B) of paragraph 3 of the plaint. Subsequently, Bhagwan Singh made a will of the remaining one-half of his land in favour of the plaintiff on May 13, 1963, Exhibit P 1. Bhagwan Singh died on March 8, 1964. The revenue authorities, however, ignored, the will and sanctioned mutation of the

estate of Bhagwan Singh, deceased, in favour of defendants Nos. 1 and 2 in equal shares. It was also alleged that the will in her favour was made by Bhagwan Singh, deceased, on account of the services rendered by her to him and as such the same was valid. The suit was contested on behalf of Ujaggar Singh, defendant No. 1. It was denied that the plaintiff was in any way related to Bhagwan Singh, deceased. The factum of the execution of the will by Bhagwan Singh, deceased, in favour of the plaintiff was also denied. Any such document in favour of the plaintiff was alleged to be a forged one. A plea was also raised that the suit land was ancestral and, thus, the same could not be the subject-matter of the will under custom by which the parties were governed. The trial Court held that the due execution of the will was proved and that the suit was maintainable as framed inasmuch as there was no worthwhile evidence to show that either party was in actual possession of the suit land. It was also found that a part of the suit land was proved to be ancestral and that regarding that part, the will was invalid. As a result, the will was held to be invalid to the extent of 594/844 6th share of the suit land Consequently, the suit was dismissed to that extent and was decreed to the extent of three fourth share of the remaining part of the suit land inasmuch as Hazara Singh, defendant No 2, was also a beneficiary under the will to the extent of one fourth share Aggrieved against the same, both the parties filed separate appeals before the District Judge. During the pendency of the appeals, it was enacted that no disposition of property could be challenged under the custom on the plea that it was ancestral. Therefore the only question that survived for determination before the lower appellate Court was whether there was due execution of the will, Exhibit P1 or not. The learned District Judge came to the conclusion that the will, Exhibit P. 1, being an unregistered document, was surrounded by suspicious circumstances and, therefore the plaintiff had failed to prove that a valid will was executed in her favour. As a result, the plaintiff''s suit was dismissed, and the defendant''s appeal was allowed Dissatisfied with the same, she has come up in the second appeal to this Court.

3. The learned counsel for the appellant contended that all the alleged suspicious circumstances surrounding the execution of the will, Exhibit P 1, were non existent and in any case the same had been fully explained on the record. The trial Court came to the right conclusion in this behalf, but the lower appellate Court reversed that finding arbitrarily and against the evidence on the record.

4. After hearing the learned counsel for the parties, I am of the considered opinion that there is considerable force in this conention.

5. According to the lower appellate Court, the will, Exhibit P. 1, was an unregistered one and under the circumstances, its non-registration was a highly suspicious circumstance because according to the lower appellate Court, there was time for getting it registered and that competent advice was also available for getting it registered. In my opinion this approach of the lower appellate Court is wholly wrong and unwarranted. Law does not require the will to be a registered one simply

because there was time for its registration, but if it was not registered, it did not mean that it was a suspicious circumstance attaching to its execution by the testator The other ground alleged to be suspicious one, taken into consideration by the lower appellate Court is, that the attesting witnesses thereof were chance witnesses who are summoned from the Court premises just in a casual manner. This is also wrong. Ajudhiya Dass, P. W. 3, one of the marginal witnesses was very well known to Bhagwan Singh, deceased, as his land was contiguous to the land, indispute and, thus, he could not be said to be a stranger or a chance witness Similarly, Dalip Singh, P. W. 2, was not unknown to the testator, and the lower appellate Court has wrongly observed that both these witnesses who known nothing about the parties, had no connection with the testator and as such could not be believed.

6. The next suspicious circumstance relied upon by the lower appellate Court was that the name of Ujagar Singh, defendant, who is a son of Bhagwan Singh, deceased, was not mentioned in the will, Exhibit P 1, nor any reasons were given as to why he had been disinherited from the estate Admittedly, Ujaggar Singh, defendant, had been in litigation with his father Bhagwan Singh, deceased. Besides, from the contents of the will it is clear that he excluded and I disinherited his son Ujagar Singh, defendant, and willed away the property in favour of his sons widow, and another son, Hazara Singh, defendant, to the extent of three fourth and one fourth share, respectively, thus, there was nothing wrong or unusual in not mentioning the name of Ujagar Singh, defendant, in the will. In any case, under the circumstances, it could not be said to be a suspicious circumstance as found by the lower appellate Court The lower appellate Court also found that Hazara Singh, defendant, one of the propounders of the will, took active part in the execution of the will and that this was again another suspicious circumstance to hold the will to be an invalid document. However, from the facts and circumstances of this case, it could not be said that the presence of Hazara Singh, defendant, at the time of the execution of the will was fatal to such an extent as to hold the will be invalid. It is in evidence that Hazara Singh defendant, was given only one fourth share whereas three fourth, share of the estate was given to the plaintiff In case Hazara Singh, defendant, was to influence the mind of the testatory then in that situation, he would not accept a lesser share because in the case of death of Bhagwan Singh without the execution of any will, Hazara Singh, defendant, was entitled to one half share of the estate.

7. Lastly, it was found by the lower appellate Court that the plaintiff did not render any services to the testator and, therefore, there was no occasion for making the will in her favour However, this finding is against the evidence on the record. The lower appellate Court has mis read the evidence in this respect It is nowhere in the evidence on the record that the plaintiff did not live with Bhagwan Singh, deceased. There is ample evidence on the record that her husband Ujaggar Singh had died much earlier and after his death, she was living with Bhagwan Singh, deceased, i.e. her father-in-law and had been serving him till his death It is in the testimony of

Kabal Singh, P.W. 4, that even the last rites of Bhagwan Singh, deceased, were performed by the plaintiff As a matter of fact, it appears that it was for this reason that Bhagwan Singh, testator, had executed the will in her favour The whole approach of the lower appellate Court in reversing the well reasoned judgment of the trial Court was based on wrong approach and a complete mis reading of the evidence. From the facts and circumstances of the case, it is quite evident that Bhagwan Singh, deceased, had executed the valid will, Exhibit P 1, in favour of the plaintiff to the extent of three fourth share and one fourth share of his estate in favour of Hazara Singh, defendant depriving his son Ujaggar Singh, defendant, of his entire estate because of his strained relations with him during his life time.

8. As a result of the above discussion, this appeal succeeds and is allowed The judgment and decree of the lower appellate Court are set aside and that the trial Court decreeing the plaintiff''s suit are restored with no order as to costs.