

(1985) 02 P&H CK 0007

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1896 of 1976

Smt. Pritam Kaur and
others

APPELLANT

Vs

Chanan Singh and
others

RESPONDENT

Date of Decision: Feb. 8, 1985

Acts Referred:

- Succession Act, 1925 - Section 63

Hon'ble Judges: B.S. Yadav, J

Bench: Single Bench

Advocate: M.L. Sarin, for the Appellant; R.P. Bali, for the Respondent

Final Decision: Dismissed

Judgement

B.S. Yadav, J.

The facts giving rise to this appeal are that Ujjagar Singh was owner of that suit land measuring 193 Kanals 10 Marias situated in village Aulakh, Tehsil Batala. He died on 23rd May, 1967 leaving behind his widow Pritam Kaur (Plaintiff No 1), two daughters named Chhiboo and Chhindo (Plaintiff No. 2 and 3 respectively) and 3 sons, namely Charan Singh, Atma Singh and Phuman Singh (Defendant Nos 1 to 3 respectively). After his death mutation Exhibit D-2 in respect of his inheritance was entered on 26th July, 1967 by the Patwari in favour of his 3 sons and eventually the Revenue Officer sanctioned it on 10th December, 1970 on the basis of a will. The Plaintiffs filed the present suit on 3rd September, 1974 for possession of half share in the above land on the ground that they were entitled to that share in the inheritance of Ujjagar Singh being his heirs. They further alleged that the will propounded by the Defendant was a forged, fictitious and bogus document.

2. Only Defendant Nos. 1 and 2 contested the suit. They admitted the relationship of the Plaintiffs with Ujjagar Singh deceased but pleaded that the deceased had

executed a valid will in favour of the Defendants Phuman Singh (Defendant No. 3) filed a written statement admitting the allegations of the plaint as correct.

3. The learned trial Court held that Ujjagar Singh deceased did not execute the will and in any case it was surrounded by suspicious circumstances. Accordingly, he decreed the suit of the Plaintiffs. Feeling aggrieved Defendant Nos. 1 and I filed an appeal which was heard by learned Additional District Judge, Gurdaspur. He upset the findings of the learned trial Court about the will and consequently accepted the appeal and dismissed the suit of the Plaintiffs. The Plaintiffs have now come to this Court in second appeal.

4. Before I proceed further I may take up [H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others](#), [Ramchandra Rambux Vs. Champabai and Others](#), and [Gorantla Thataiah Vs. Thotakura Venkata Subbaiah and Others](#), , in which certain principles have been laid down for adjudging the validity of a will. The sum total of the principles is as follows:

The mode of proving a will does not ordinarily differ from that of proving any other document except as to special requirements of attestation prescribed In the case of a will by Section 63 of the Succession Act In a case in which a will is prepared under circumstances which raise the suspicion of the Court that it does not express the mind of the testator, the (sic) is upon the pro-pounder to explain them to the satisfaction of the Court before the Court accepts the will as genuine. In such a case the Court naturally expects that all legitimate suspicions should be completely removed before the document is accented as the last will of the testator. If, however, the propounders themselves take a prominent part in the execution of the wills which confer a substantial benefit on them that itself is a suspicious circumstance surrounding the execution of the will and in appreciating evidence in such a case, the courts should proceed in a vigilant and cautious manner.

The arguments of the Learned Counsel for the parties will be considered in the light of above principles laid down by their Lordships of the Supreme Court.

5. Exhibit D-1 is the will executed by Ujjagar Singh on 6th May, 1963. The execution of the will has been duly proved by D W. 2 Rattan Lal, deed writer, who is its scribe and D W. 1, Thakur Singh of parties" village and D.W. 3 Ganga Singh, who are the attesting witnesses One Moola Singh, Lambardar, of the parties" village was also an attesting witness of this will. He was not examined as he is said to have left India It is to be noted that in the plaint there is no allegation to the effect that ujjagar Singh was not of sound disposing mind at the time of the will purports to have been executed by him. In fact, P W-3 Phuman Singh (Defendant No. 3) has admitted that Ujjagar Singh did not fall ill prior to his death.

6. The Learned Counsel for the Appellants argued that Chanan Singh (Defendant No 1) who is beneficiary under the will, has denied his presence at the time of the execution of the will but his presence on that occasion has been established by D

W-3 Ganga Singh. I am of the opinion that merely because Chanan Singh happened to be present at the time of the execution of the will, it cannot be said that he took any part in its execution. The Learned Counsel for the Appellants argued that Chanan Singh had admitted that he had given Rs. 21/- to Ujagar Singh towards his share of the expenses incurred in the execution of the will. On that account alone it cannot be said that Chanan Singh was instrumental in getting the will executed by Ujjagar Singh. Chanan Singh alone is not the only beneficiary under the will. The other two beneficiaries are his brothers and all have got the testator's property under the will in equal share.

7. Ganga Singh (D W-3) is, of course, father-in-law of Chanan Singh but other two attesting witnesses were of parties' village and one of them was the village Lambardar. Therefore, the genuineness of the will cannot be doubted merely on the ground that one relation of one of the legatees attested the will.

8. It was next argued by the Learned Counsel for the Appellants that Ujjagar Singh is said to have died after about 4 Years of the execution of the will but surprisingly enough it was not got registered by the executant. Thus according to him, this is a suspicious circumstance surrounding the will. This argument has no force. Reference can be made to [Ishwardeo Narain Singh Vs. Sm. Kamta Devi and Others](#), wherein it was remarked:

The High Court has relied on the fact that the will was not registered or deposited with the District Registrar. There is nothing in law which requires the registration of a will and wills are in majority of cases not registered at all. To draw any inference against the genuineness of the will on the ground of its non-registration appears to us to be wholly unwarranted.

9. Therefore merely because the will Exhibit D.1 is unregistered its genuineness can not be doubted on that account alone.

10. The Learned Counsel for the Appellants next argued that there is unnatural disposition under the will. According to him, the testator disinherited his widow and two daughters. In my view there is nothing unnatural or unofficious about the will, if the circumstances of the case are taken into account. The will was executed in May, 1963. By that time the agricultural tribes had not totally reconciled themselves with the Hindu Succession Act. Instead of allowing the ancestral property to go into the hands of strangers, a land owner preferred to give the property to the male members of the family. One of the daughters of Ujjagar Singh had been married prior to the execution of the will. Only one daughter had remained unmarried. Ujjagar Singh could well expect that her brothers would perform her marriage according to the standard of the family. As far as his widow Pritam Kaur was concerned, Ujjagar Singh made a provision in the will to the effect that she would be entitled to the income of 3 kallas of land for her maintenance.

11. The Learned Counsel for the Appellants argued that the provision about the maintenance of Pritam Kaur was inserted after the remaining body of the will had been scribed. His argument was that if Ujjagar Singh was conscious about maintenance to his wife he could have executed a fresh will. This argument has no force. The addanda made in the will purports to bear the thumb-impression of Ujjagar Singh and it has been scribed above the signatures or thumb-impressions of the witnesses. Thus it can not be said that addanda was introduced sometime after the death of Ujjagar Singh just to show that the will contains a natural disposition. Ujjagar Singh might not have considered it economical to get a new will executed because he had to pay the charges of deed-writer. Therefore, the above argument of the Learned Counsel for the Appellants has to be rejected.

12. The Learned Counsel for the Appellants next argued that P W 3 Phuman Singh, who is one of the beneficiaries under the will, has disowned the will and has supported the Plaintiffs and his statement should be given due weight as he is deposing against his own interest. No reliance can be placed upon the statement of Phuman Singh. As noticed earlier, the suit was filed in 1973 and till then Phuman Singh did not raise a single finger against the validity of the will.

13. In fact, there are circumstances to show that the will is a genuine document. The mutation Exhibit D-2 was entered on the basis of the will Exhibit D-1 soon after the death of Ujjagar Singh. The contesting Defendants failed to tender in evidence this mutation before the learned trial Court, though it had been placed on the record. On their application the learned lower Appellate Court admitted the mutation in evidence and gave an opportunity to the Plaintiffs to lead evidence in rebuttal. Chhibbo (Plaintiff No 2) and Chhindo (Plaintiff No 3) appeared in that court as P W 5 and P W.6 respectively. Both of them have stated that after the death of their father, their brothers had started saying that he (i.e. father) had made a will in their favour. Thus it is clear that at the earliest possible opportunity the will was propounded by them.

14. The mutation proceeding shows that on 10th December, 1970 on which date the Revenue Officer sanctioned the mutation, the Plaintiffs had appeared and stated that the mutation be sanctioned in accordance with the will. It is not disputed that mutation proceedings are admissible in evidence. Reference can be made to AIR 1940 118 (Lahore) Lah 118, wherein it was remarked:

Mr. Shamair Chand for the Defendant-Respondent on the other hand contends that what is stated in a mutation carried with the presumption of truth and that as all official acts are to be presumed to have been regularly performed it was not necessary to produce every official who made an entry in the mutation proceedings, and that all entries in the mutation proceedings were admissible in evidence without the necessity of producing the official or officials who made them.

In this connection he relied on AIR 1934 40 (Privy Council) but a more direct authority in, his favour is AIR 1929 93 (Lahore) where Bhide J. observed as follows:

The Plaintiff produced certain copies of mutations and the entries in the mutation had been incorporated in the jamabandis also There was a presumption of correctness of the letter entries u/s 44, Punjab Land Revenue Act..... The mutation show that in one case the Defendant himself and in the other his son were present and admitted transfers at the time of mutations were sanctioned. The learned District Judge apparently thinks that the Revenue Officer who sanctioned the mutations or the Girdawar should have been produced as witness to prove the mutations, but no authority in support of this view has been cited.....

15. It appears thus in that case that was recorded by revenue officials in mutation proceedings was accepted as evidence without those officials being produced. In (sic) v. Bodhal (1936) 38 P. L P. 225 again Bhide J laid down that mutation proceedings should have been taken into consideration even when the revenue official who sanctioned them was not produced as a witness

16. Though the Plaintiffs have now stated that they did not appear before the Revenue Officer at the time the matation was sanctioned but their denial can be hardly believed The mutation had remained pending for about 3 years but none of the Plaintiffs approached the Revenue Officer to get the mutation entered or sanctined in accordance with natural succession Of ourse, when the mutation was taken up for sanction on 28th January, 1970 Pritam Kaur had appeared and raised objection to the will. As noticed earlier, later on all the Plaintiffs appeared before the Revenue Officer and admitted the will as correct If the Plaintiffs had not appeared before the Revenue Officer, they would have filed appeal against the order sanctioning the mutation. Surprisingly enough, they kept quiet and the present suit was filed long after the death of Ujjagar Singh. These circumstances clearly show that the Plaintiffs bad first accepted the will as correct but now perhaps their relations with the contesting Defendants have not remained cordial and, therefore, they have filed the suit P. W. 5 Chhibbo Plaintiff was frank enough to state that she had filed the suit late as her relations with her brothers became strained and earlier the relations were cordial.

17. For the foregoing reasons lam of the opinion that the learned lower appellate Court was right in holding that Ujjagar Singh executed the will Exhibit D.1 and that it was not surrounded by suspicious circumstances.

18. For the foregoing reasons I do not find any force in the present appeal and dismiss the same. In the circumstances of the case, parties are left to bear their own costs.