IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

112

FAO-9567-2014 (O&M)
Date of decision : 17.02.2025

Rajinder Pal Singh Dhaliwal **..... Appellant**

versus

General Public and others **..... Respondents**

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Karan Nehra, Advocate and
Mr. Harvinder Singh, Advocate
for the appellant.

Mr. Arihant Jain, Advocate and
Mr. Varun Jain, Advocate
for respondent No.2.

Mr. Puneet Singh, Advocate for
Mr. Manmeet Singh, Advocate
for respondent No.3.

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PANKAJ JAIN, J. (Oral)

1. Instant appeal is directed against order dated 22.07.2014 passed by Additional District Judge, Chandigarh whereby petition filed by appellant seeking letter of administration on account of Will dated 26.01.1990 executed by his father Sarwan Singh Dhaliwal stands declined.

2. The appellant propounded unregistered Will dated 26.01.1990 claiming that the same was executed by late Col. Sarwan Singh Dhaliwal and was witnessed by Inderpal Singh Waraich and one Malkiat Singh. In order to prove the Will, Malkiat Singh was examined as PW-2. The petition was contested by respondent No.2. After

examining the evidence on record, Lower Court came to conclusion that apart from suspicious circumstances, PW-2 Malkiat Singh-the alleged contesting witness to the Will has not come out with true version. He was found to be untrustworthy. The Court found that even though in his examination-in-chief, Malkiat Singh claimed to have seen the Will having been executed in terms of Section 63(c) of The Indian Succession Act, 1925, but his cross-examination demolished the version spelled out in examination-in-chief.

3. Court enlisted numerous facts including the false testimony of Malkiat Singh regarding death of wife of executant Sarwan Singh Dhaliwal, namely Pritam Kaur. He was also caught testifying in contradiction to his testimony in the earlier *lis* in Civil Court at Patiala. The same was brought on record as Ex.R-1 and Malkiat Singh was confronted with contents thereof.

4. Mr. Nehra while assailing the impugned judgment submits that the Lower Court has erred in disbelieving the testimony of Malkiat Singh merely for the reason that his version with respect to typing of Will was at variance with the one that he uttered before Civil Court at Patiala as recorded in Ex.R-1. He submits that the attesting witness is only required to prove compliance of Section 63(c). He cannot be held to be the one who knows the contents of the Will. He further submits that the version of Malkiat Singh was recorded almost 23 years after the execution of the Will. Further submits that respondent No.2 cannot be allowed to contest the Will as he himself is a beneficiary under the Will and has admitted the signatures of Col. Sarwan Singh Dhaliwal on the Will.

5. *Per contra*, Mr. Jain submits that the Court has rightly declined petition seeking letter of administration qua an unregistered Will after the attesting witness was found to be untrustworthy. He further submits that a *lis* qua one of the properties stands adjudicated vide judgment and decree dated 24.02.2015 by the Civil Judge, Junior Division, Patiala in Civil Suit No.644T/22.01.2009. The said suit was decreed on the basis of compromise between the parties. The said property was also subject matter of Will. Though, as per Will, the same was bequeathed in favour of Mohinder Paul Dhaliwal and Devinder Pal Singh Dhaliwal only, but as per the settlement, all the three brothers, got their share in defiance of the mandate of the Will propounded by the plaintiff. He thus, submits that even by conduct of the parties, they have diluted the Will and have agreed to be governed by natural succession.

6. I have heard counsel for the parties and have carefully gone through the records of the case.

7. Section 276 of the Indian Succession Act, 1925 reads as under:-

> **"276. Petition for probate.—**
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> (1) Application for probate or for letters of administration, with the Will annexed, shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the Will or, in the cases mentioned in sections 237, 238 and 239, a copy, draft, or statement of the contents thereof, annexed, and stating—
>
> (a) the time of the testator's death,
>
> (b) that the writing annexed is his last Will and testament,
>
> (c) that it was duly executed,
>
> (d) the amount of assets which are likely to come to

the petitioner's hands, and

(e) when the application is for probate, that the petitioner is the executor named in the Will.

(2) In addition to these particulars, the petition shall further state,—

(a) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge; and

(b) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

(3) Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another State, the petition shall further state the amount of such assets in each State and the District Judges within whose jurisdiction such assets are situate."

8. The provision has been interpreted by Supreme Court in the case of ***Kavita Kanwar vs. Mrs. Pamela Mehta & Ors.***, ***2020 AIR (Supreme Court) 2614*** explaining the scope of the inquiry required to be conducted while dealing with petition under Section 276 of the Act, Supreme Court reiterated the principles laid down in ***Shivakumar & Ors. v. Sharanabasppa & Ors.***, observing as under:-

"1. Ordinarily, a Will has to be proved like any other document; the test to be applied being the usual test of the satisfaction of the prudent mind. Alike the principles governing the proof of other documents, in the case of Will too, the proof with mathematical accuracy is not to be insisted upon.

2. Since as per Section 63 of the Succession Act, a Will is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.

3. The unique feature of a Will is that it speaks from the death

of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last Will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a Will.

4. The case in which the execution of the Will is surrounded by suspicious circumstances stands on a different footing. The presence of suspicious circumstances makes the onus heavier on the propounder and, therefore, in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last Will of the testator.

5. If a person challenging the Will alleges fabrication or alleges fraud, undue influence, coercion et cetera in regard to the execution of the Will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the Will may give rise to the doubt or as to whether the Will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

6. A circumstance is “suspicious” when it is not normal or is ‘not normally expected in a normal situation or is not expected of a normal person’. As put by this Court, the suspicious features must be ‘real, germane and valid’ and not merely the ‘fantasy of the doubting mind.’

7. As to whether any particular feature or a set of features qualify as “suspicious” would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependants; an active or leading part in making of the Will by the beneficiary thereunder et cetera are some of the circumstances which may give rise to suspicion. The circumstances above-noted are only illustrative and by no

means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the Will. On the other hand, any of the circumstance qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.

8. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the Will of the testator is surrounded by suspicious circumstance/s. While applying such test, the Court would address itself to the solemn questions as to whether the testator had signed the Will while being aware of its contents and after understanding the nature and effect of the dispositions in the Will?

9. In the ultimate analysis, where the execution of a Will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the Court and the party which sets up the Will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the Will."

9. Thus, the inquiry as contemplated under law to be conducted by the Probate Court, primarily involves the satisfaction of the Court regarding compliance of Section 63(c) of the Succession Act. Section 63 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 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. This Court is of the opinion that mere admission of signatures on a paper does not amount to admission of Will as claimed by Mr. Nehra. Will in law is a unique document which speaks after the death of testator. The judicial conscience needs to be satisfied that testator signed the WILL being aware of its contents. In order to prove that the Will was in fact executed by the testator, the propounder has to lead evidence of unimpeachable character. Attesting witness must satisfy judicial conscience that he saw testator signing the WILL being aware of its contents.

11. Attesting witness needs to be trustworthy and truthful. In the present case, it has come on record that attesting witness Malkit Singh has been found to be untrustworthy. It has been proved on record that he has been changing his version as per his convenience. The other attesting witness was not examined.

12. As a sequel of the discussion held hereinabove, this Court finds that testimony of Malkiat Singh is enough to demolish the case of of the appellant. It does not meet the standard required.

13. Keeping in view the aforesaid facts, the present appeal is dismissed.

14. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

17.02.2025
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : Yes