

interest of persons forcing an adjudication, ought to be treated in a different manner from a situation when persons, who have a joint right to contend that a particular order passed was erroneous and their joint interests as such lessees are liable to be prejudiced by the impugned order. The jointness of action could be either of joint interest in the land or a common character in relation to the land. In this case the common character envisaged is that they were lessees of different portions of land and they surely have right of challenge to the correctness of the order.

(8) The order impugned is erroneous and liable to be quashed and is, accordingly, quashed.

(9) The writ petition is allowed on the above terms.

A. AGG

Before Ram Chand Gupta, J.

CHARAN SINGH & ANOTHER,—Appellants

versus

AMAR SINGH AND OTHERS,—Respondents

RSA No.1609 of 2005

31st October, 2011

Code of Civil Procedure 1908 - S. 11 - Hindu Succession Act, 1956 - S. 15(2) - Indian Evidence Act, 1872 - Indian Succession Act, 1925 - S. 63 - Execution of Will - Whether valid - Appellant failed to prove executants was suffering from major diseased - Will registered - Finding of Court below not illegal - Appeal dismissed.

Held, That it has been rightly observed by learned courts below that simply by finding 'S KAUR' on the copy of passport, it cannot be said " that Smt. Sodhan was only signing the documents and that she was not putting her thumb impressions and that the Will does not contain her thumb impression. Moreover, no other fingerprint expert has been examined to discard testimony of Shri Sardara Singh Armar, fingerprint expert.

(Para 23)

Further held, that There is no other suspicious circumstance brought to the notice of the Courts surrounding the Will. The Will was executed by Smt. Sodhan Kaur in favour of respondents-defendants no. 1 to 4, who are her brothers and their sons. Moreover, it has come in evidence that after death of her husband Hazara Singh, she had started residing with her brother and their sons as she was being harassed by brothers of her husband. She had to contest various suits with brothers of her husband Hazara Singh. Moreover Will is dated 21.8.1987 and Smt. Sodhan Kaur has died in January 1991. She remained alive for four years after execution of Will. Will is also registered one. Hence, it cannot be said that finding recorded by learned Courts below on the point is, in any way, illegal.

(Para 24)

Santosh Kumar Sharma, Advocate for Akshay Bhan, Advocate for the appellants in RSA No.1609 of 2005.

Arun Jain, Sr.Advocate with Kushagra Mahajan, Advocate for the appellants in RSA No.1653 of 2005 and for respondents no.7 and 8 in RSA No.1609 of 2005.

Puneet Jindal, Advocate and Parambir Singh, Advocate for respondents no.1 to 6 in both the appeals.

RAM CHAND GUPTA, J.

(1) Facts giving rise to both the aforementioned regular second appeals are as under:-

(2) Dispute is regarding property left by deceased Hazara Singh son of Nathu. The present suit has been filed by Bhola Singh since deceased and represented by his legal representatives. He has claimed to be exclusive owner in possession of the property in dispute previously owned by Hazara Singh. Plea has been taken that after death of Hazara Singh, property was inherited by his wife, Smt.Sodhan Kaur, being his only legal heir and that the entries in favour of appellants-defendants no.5 and 6, namely, Charan Singh and Bachan Singh, who are none else than sons of present appellant-plaintiff-Bhola Singh, is illegal and void. He has also challenged Will allegedly executed by Smt.Sodhan Kaur in favour of respondents-defendants No.1

to 4, i.e., brothers and nephews of Smt.Sodhan Kaur. Plea has been taken that Smt.Sodhan Kaur, wife of Hazara Singh died on 21.1.1991 and that plaintiff is the only legal heir to inherit the property left by Smt.Sodhan Kaur as per Section 15(2) of the Hindu Succession Act, as she has inherited the property in dispute from her husband and he being brother of Hazara Singh is the only legal heir to inherit the said property left by Smt.Sodhan Kaur, which came to her from her husband. He has also challenged the Will allegedly executed by Hazara Singh in favour of his sons, i.e., defendants no.5 and 6, namely, Charan Singh and Bachan Singh. He has also challenged the decrees allegedly suffered by Hazara Singh in favour of defendants no.5 and 6.

(3) Suit was contested by respondents-defendants no.1 to 4 on the ground that earlier Hazara Singh was owner in possession of the property in dispute and after his death the same was inherited by his wife, Smt.Sodhan Kaur, being his only legal heir.

(4) It is further contended that Charan Singh and Bachan Singh, defendants no.5 and 6 and the appellants in RSA No.1609 of 2005, after death of Hazara Singh, started claiming their ownership over the land in dispute by virtue of two decrees dated 10.10.1984 and 29.5.1984 and they also asserted that Hazara Singh executed a Will in their favour on 3.8.1983 and that they became owners of the property of Hazara Singh by virtue of the said Will. It is further contended that Smt.Sodhan Kaur filed a suit for declaration against Charan Singh and Bachan Singh and that similarly Charan Singh and Bachan Singh also filed suit against Smt.Sodhan Kaur regarding some of the land in dispute. It is further pleaded that the suit filed by Smt.Sodhan Kaur was decreed by the Court of Sub Judge, Ist Class, Phillaur, vide judgment and decree dated 1.10.1987 and in the said judgment it was decided that Will of Hazara Singh dated 3.8.1983, allegedly executed by him in favour of defendants No.5 and 6 is forged and fabricated document and it was also held that decrees dated 10.10.1984 and 29.5.1984 were also illegal and void and hence Smt.Sodhan Kaur was declared owner of the land in dispute. Suit filed by Charan Singh and Bachan Singh against Smt.Sodhan Kaur was also dismissed by learned trial Court vide judgment and decree dated 1.10.1987. Appeal filed by Charan Singh and Bachan Singh before learned Additional District Judge, Jalandhar, was also dismissed. Smt.Sodhan Kaur was held to be owner in possession of the property in

dispute after death of Hazara Singh. Smt.Sodhan used to reside with them after death of Hazara Singh and they used to serve Smt.Sodhan and hence, Smt.Sodhan in her sound disposing mind and without any pressure executed Will dated 21.8.1987 regarding her land situated in Village Dalla and Fatehpur in their favour and regarding her land situated in village Bhallowal in favour of defendants no.3 and 4 and hence, defendants became owners in possession to the extent of their respective shares after death of Smt.Sodhan Kaur.

(5) Present appellants-defendants, namely, Charan Singh and Bachan Singh sons of Bhola Singh filed separate written statement admitting that Hazara Singh was original owner of the land in dispute and, however, plea has been taken that the land was transferred in their names by Hazara Singh by virtue of civil court decrees passed by Civil Judge Ist Class, Phillaur. They have also taken the plea that Hazara Singh also executed a Will dated 3.8.1983 in their favour and also handed over possession of the land in dispute to them and that entry in the revenue record in their favour is passed on the basis of actual possession at the spot. Plea has been taken that Smt.Sodhan Kaur never became the owner of the land in dispute and that she never came in possession of land in dispute. Plea has been taken that plaintiff is having no concern with the land in dispute.

(6) On the pleadings of the parties, following issues were framed by learned trial Court:-

- “1. Whether the plaintiff is the exclusive owner in possession of the suit land? OPP.
2. Whether Smt.Sodhan Kaur widow of Hazara Singh was the owner in possession of the suit land? OPP
3. Whether Smt.Sodhan Kaur executed Will dated 21.8.1987 in favour of defendants No.1 to 4? OPD No.1 to 4.
4. Whether the decrees dated 10.10.1984 and 29.5.1984 passed in favour of defendants No.5 and 6 by the Civil Court are valid and are binding on the parties to the present suit? OPD No.5 and 6

5. Whether the plaintiff has no locus standi to file the present suit? OPD
6. Whether the suit is not maintainable in the present form? OPD
7. Whether the plaintiff is barred by his act and conduct from filing the present suit? OPD
8. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD
9. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
10. Whether the suit is time barred? OPD
11. Whether the suit is barred u/s 11 C.P.C.? OPD
12. Relief.”

(7) Parties adduced evidence in support of their respective contentions before learned trial Court.

(8) Learned trial Court first discussed issue No.4 and decided the same against present appellants-defendants no.5 and 6. Issues no.2 and 3 thereafter discussed together and it was held that Will dated 21.8.1987 was validly executed by Smt.Sodhan Kaur in favour of respondents-defendants No.1 to 4 and hence, the said issues were decided in favour of respondents defendants no.1 to 4. Issue No.1 has been decided against plaintiff. Issue No.5 has also been decided against plaintiff. While discussing issue No.6, it was held that suit for declaration with joint possession is maintainable. Regarding issue No.7 it was observed that the same was not pressed by learned counsel for the defendants during the course of arguments. Regarding issue No.8 it was observed that proper parties have been impleaded in the case. Regarding issues no.9 and 10, it was observed that the same were not pressed during the course of arguments. Regarding issue no.11, it was observed that Section 11 of the Code is not attracted in this case as in the earlier suit plaintiff was not a party. However, in view of the findings on various issues, suit of plaintiff-Bhola (since deceased) now represented by his legal representatives, for declaration with joint possession with permanent injunction was ordered to be dismissed with cost.

(9) Aggrieved against the said judgment and decree passed by learned trial Court, legal representatives of original plaintiff-Bhola filed appeal before learned Additional District Judge, Jalandhar, which was also dismissed. Still aggrieved against the judgment and decree passed by learned Additional District Judge, Jalandhar, the present appeal has been filed by legal representatives of original plaintiff-deceased Bhola. Another appeal has been filed by defendants no.5 and 6, i.e., Charan Singh and Bachan Singh, sons of Bhola.

(10) I have heard learned counsel for the parties and have gone through the whole record carefully.

(11) Learned counsel for the appellant-plaintiffs has framed the following substantial questions of law, stated to be arising for consideration in appeal No.1653 of 2005:

- “(i) Whether the Will dated 21.8.1987 has been proved in accordance with the provisions of Indian Succession Act?
- (ii) Whether the judgments and decrees of the Courts below are erroneous and perverse as the beneficiaries of the alleged Will dated 21.8.87 have failed to dispel the doubt created by the appellants regarding the sound disposing state of mind of Smt.Sodhan Kaur at the time of execution of the Will?
- (iii) Whether the courts below have erred at law while holding that Section 15(2) of the Hindu Succession Act are not attracted to the facts of the present case? Admittedly, Hazara Singh was the owner of the property who died issueless leaving behind Smt.Sodhan Kaur as his only legal heir and after the death of Smt.Sodhan Kaur, who died intestate (as Will dated 21.8.1987 is full of suspicious circumstances and is liable to be discarded), the appellant who is the real brother of Hazara Singh, husband of Smt.Sodhan Kaur from whom she had inherited the property was the only legal heir under the provisions of Section 15(2) of the Hindu Succession Act.”

(12) Learned counsel for the appellants-Charan Singh and Bachan Singh framed the following substantial questions of law, stated to be arising in appeal No.1609 of 2005:-

- “(i) Whether in the facts and circumstance of the present case the Will dated 21.8.87 has been proved in accordance with the provisions of Indian Successions Act?
- (ii) Whether in the facts and circumstance of the present case the judgments and decrees of the Courts below are erroneous and perverse as the beneficiaries of the alleged will dated 21.8.87 have failed to dispel the doubt created by the appellants regarding the sound disposing state of mind of Smt.Sodhan Kaur at the time of execution of the Will?
- (iii) Whether in the facts and circumstance of the present case the Court below have erred at law while holding that Section 15(2) of the Hindu Succession Act are not attracted to the facts of the present case? Admittedly, Hazara Singh was the owner of the property who died issueless leaving behind Smt.Sodhan Kaur as his only legal heir and after the death of Smt.Sodhan Kaur, who died intestate (as Will dated 21.8.87 is full of suspicious circumstances and is liable to be discarded), the appellant who is the real brother of Hazara Singh, husband of Smt.Sodhan Kaur from whom she had inherited the property was the only legal heir under the provisions of Section 15(2) of the Hindu Succession Act.”

(13) It has been contended by learned counsel for the appellants-Charan Singh and Bachan Singh that both the Courts below dismissed the suit filed by appellants-plaintiffs by taking note of judgment and decree passed in civil suit filed by Smt.Sodhan, wife of Hazara Singh against appellants-Charan Singh and Bachan Singh and, however it is contended that earlier litigation has not yet become final as regular second appeal against the said judgment and decree is still pending before this Court. However said regular second appeal has been heard and is being decided alongwith these appeals. The said regular second appeal filed by appellantsdefendants no.5 and 6, Charan Singh and Bachan Singh is being dismissed and the judgments and decrees allegedly suffered by Hazara

Singh in their favour have not been held to be valid and the Will allegedly executed in their favour by Hazara Singh has also not been held as valid and hence it cannot be said that there is any merit in the appeal filed by Charan Singh and Bachan Singh in view of the fact that the finding recorded against them in civil suit filed by Smt.Sodhan Kaur has become final.

(14) So far as appeal filed by Bhola-plaintiff through his legal representatives is concerned, he is claiming rights in the property in dispute on the basis of inheritance through Smt.Sodhan. However, respondents defendants No.1 to 4 have propounded a Will allegedly executed in their favour by Smt.Sodhan Kaur. Both the Courts below held the Will to have been validly executed in their favour by Smt.Sodhan and hence, it was held that present appellant-plaintiff-Bhola is having no right to succeed to the property left by Smt.Sodhan.

(15) It has been contended by learned counsel for the appellants that Will dated 21.8.1987, allegedly executed in favour of respondents defendants No.1 to 4 by Smt.Sodhan is surrounded by suspicious circumstances and hence, the said Will is to be discarded. It has also been contended that Smt.Sodhan Kaur was not in sound disposing mind at the time of execution of alleged Will. It is also contended that though the Will is stated to have been thumb marked by Smt.Sodhan Kaur and, however, Smt.Sodhan Kaur used to sign the document and she never used to thumb mark the documents. It has also been contended that the attesting witnesses of the Will have not been examined and hence, it is contended that Will has not been proved as per the evidence Act and the Indian Succession Act. On the point he has also placed reliance upon **Kartar Singh and another versus Dilber Singh (dead) through legal representatives.**

(16) On the other hand it has been contended by learned counsel for the respondents-defendants No.1 to 4 that the Will has been rightly held to be validly executed by Smt.Sodhan Kaur in favour of respondentsdefendants No.1 to 4 by both the Courts below and the same has been duly proved as per Indian Evidence Act and Indian Succession Act and that the said finding of fact recorded by both the Courts below cannot be interfered in the second appeal. He has also placed reliance upon

(1) 2009(3) RCR(Civil) 253

Gurdev Kaur and others versus Kaki and others (2); Sundhri (Dead) through LRs. versus Lala Ram (Dead) through LRs, (3); Daya Ram versus Kanwar Pal (4); and Daljinder Singh versus Harbans Kaur (5).

(17) The principles, which govern the proving of a Will were considered by Hon'ble Apex Court in **H.Venkatachala Iyengar versus B.N.Thimmajamma (6)** and in a later judgment passed by a Bench of four Hon'ble Judges of Hon'ble Apex Court in **Rani Purnima Debi and another versus Kumar Khagendra Narayan Deb and another (7)**. It was observed as under:-

“5. Before we consider the facts of this case it is well to set out the principles which govern the proving of a will. This case was considered by this Court in *H.Venkatachala Iyengar v. B.N.Thimmajamma*, 1959 Supp (1) SCR 426. It was observed in that case that the mode of proving a will did not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by Section 63 of the Indian Succession Act. The onus of proving the will was on the propounder and in the absence of suspicious circumstances surrounding the execution of the will proof of testamentary capacity and signature of the testator as required by law was sufficient to discharge the onus. Where, however, there were suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the Court before the will could be accepted as genuine. If the caveator alleged undue influence, fraud or coercion, the onus would be on him to prove the same. Even where there were no such pleas but the circumstances gave rise to doubts, it was for the propounder to satisfy the conscience of the Court. Further, what are suspicious circumstances was also considered in this

(2) 2006(2) RCR (Civil) 561

(3) 2005(2) PLR 493

(4) 2010(3) RCR (Civil) 40

(5) 2001(2) RCR (Civil) 294

(6) 1959 Supp (1) SCR 426

(7) (1962) AIR (SC) 567 : 1962(3) SCR 195

case. The alleged signature of the testator might be very shaky and doubtful and evidence in support of the propounder's case that the signature in question was the signature of the testator might not remove the doubt created by the appearance of the signature. The condition of the testator's mind might appear to be very feeble and debilitated and evidence adduced might not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will might appear to be unnatural, improbable or unfair in the light of relevant circumstances; or the will might otherwise indicate that the said dispositions might not be the result of the testator's free will and mind. In such cases, the Court would naturally expect that all legitimate suspicions should be completely removed before the document was accepted as the last will of the testator. Farther, a propounder himself might take a prominent part in the execution of the will which, conferred on him substantial benefits. If this was so it was generally treated as a suspicious circumstance attending the execution of the will and the propounder was required to remove the doubts by clear and satisfactory evidence. But even where there were suspicious circumstances and the propounder succeeded in removing them, the Court would grant probate, though the will might be unnatural and might cut off wholly or in part near relations."

(18) In **Savithri and others versus Karthyayani Amma and others (8)**, it was observed by Hon'ble Apex Court that a Will like any other document is to be proved in terms of provisions of Indian Succession Act and the Indian Evidence Act, relevant paragraph of which reads as under:-

"14. The legal requirements in terms of the said provisions are now well-settled. A Will like any other document is to be proved in terms of the provisions of the Indian Succession Act and the Indian Evidence Act. The onus of proving the Will is on the propounder. The testamentary capacity of the propounder must also be established. Execution of the Will by the testator has to

(8) 2007 (4) RCR (Civil) 749: 2008 AIR (SC) 300

be proved. At least one attesting witness is required to be examined for the purpose of proving the execution of the Will. It is required to be shown that the Will has been signed by the testator with his free will and that at the relevant time he was in sound disposing state of mind and understood the nature and effect of the disposition. It is also required to be established that he has signed the Will in the presence of two witnesses who attested his signature in his presence or in the presence of each other. Only when there exist suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the court before it can be accepted as genuine.”

(19) Hence, the legal requirements for proving execution of Will can be summarised as under:-

1. A Will like any other document is to be proved in terms of provisions of Indian Succession Act and the Indian Evidence Act;
2. Onus of proving the Will is on the propounder;
3. Testamentary capability of the propounder must also be established;
4. The execution of the Will by the testator has to be proved;
5. At least one attesting witness is required to be examined for the purpose of proving the execution of the Will;
6. It is required to be shown that the Will has been signed by the testator with his free will and that at the relevant time, he was in sound disposing state of mind and understood the nature and effect of disposition;
7. It is also required to be established that he has signed the Will in the presence of two witnesses, who attested his signatures in his presence or in the presence of each other;
8. When there exist suspicious circumstances, the onus would be on the propounder to explain the same to the satisfaction of the court before it can be expected as genuine.

9. The Court must satisfy its conscience before its genuineness is accepted by taking a rationale approach.

(20) In the present case in order to prove valid execution of Will by deceased Smt.Sodhan Kaur in favour of respondents-defendants no.1 to 4, one of the attesting witnesses of the Will Gurdev Singh appeared as DW7 and deposed regarding execution of Will by Smt.Sodhan Kaur in favour of respondents-defendants No.1 to 4. Bhajan Singh, deed writer also appeared as DW8 and he also deposed that Will was read over to Smt.Sodhan Kaur and she thumb marked the same after duly understanding its contents. The minor discrepancies in the deposition of these witnesses have been discarded by learned courts below.

(21) The main point argued by learned counsel for the appellants is that Smt.Sodhan Kaur was not in sound disposing mind when the Will was allegedly executed by her in favour of respondents-defendants no.1 to 4 and on that point my attention has been drawn towards statement of Dr.Manjit Singh Sain, Psychiatrist, Civil Hospital, Jalandhar, who had issued a certificate Ex.DW2/A. The said certificate shows that Smt.Sodhan Kaur was treated by him as OPD patient and that at that time she was suffering from major depressive order. However DW2, Dr.Manjit Singh deposed that at that time when this OPD slip was issued, Dr.Vijay Kumar was Psychiatrist in the hospital and he could not say as to since how long she was suffering from the disease. There was no other entry in the register except the said entry. Even the said OPD slip was not produced. Even it was not mentioned as to what medicine was prescribed. Hence, it was rightly held by both the courts below that appellants have failed to prove that Smt.Sodhan was suffering from some major disease and that she was not in sound disposing mind when Will was allegedly executed by her in favour of respondents-defendants no.1 to 4.

(22) The other point argued by learned counsel for the appellants is that Smt.Sodhan used to sign and, however, thumb impression is appearing on the Will. However, there is only one signature of Smt.Sodhan, i.e., Ex.D1, which is copy of a passport. A careful perusal of the same shows that word 'S KAUR' has been returned in haphazard manner on the same. On the other had, there are various other documents on the file containing thumb impressions of Smt.Sodhan. Even, she has put her thumb impression

on the vakalatnama and power of attorney, when she filed the suit against appellants-defendants no.5 and 6. Thumb impressions of Smt.Sodhan on the vakalatnama as well as on the power of attorney were also got compared with the thumb impression of Smt.Sodhan on the Will from handwriting expert and he also gave his report to the effect that the same contains thumb impressions of the same person.

(23) Hence, it has been rightly observed by learned courts below that simply by finding 'S KAUR' on the copy of passport, it cannot be said that Smt.Sodhan was only signing the documents and that she was not putting her thumb impressions and that the Will does not contain her thumb impression. Moreover, no other fingerprint expert has been examined to discard testimony of Shri Sardara Singh Armar, fingerprint expert.

(24) Moreover there are only minor discrepancies in the depositions of attesting witnesses, namely, Gurdev Singh and scribe Bhajan Singh. Their depositions further find corroboration from the deposition of fingerprint expert. There is no other suspicious circumstance brought to the notice of the Courts surrounding the Will. The Will was executed by Smt.Sodhan Kaur in favour of respondents-defendants no.1 to 4, who are her brothers and their sons. Moreover, it has come in evidence that after death of her husband Hazara Singh, she had started residing with her brother and their sons as she was being harassed by brothers of her husband. She had to contest various suits with brothers of her husband Hazara Singh. Moreover Will is dated 21.8.1987 and Smt.Sodhan Kaur has died in January 1991. She remained alive for four years after execution of Will. Will is also registered one. Hence, it cannot be said that finding recorded by learned Courts below on the point is, in any way, illegal.

(25) Hence, all the aforementioned substantial questions of law, on which present appeals have been argued by learned counsel for the appellants are decided against the appellants and in favour of respondents.

(26) As a sequel to my above discussion, there is no merit in both the present regular second appeals. The same are, hereby, dismissed.

(27) However, in view of the peculiar facts and circumstances of the cases, the parties are left to bear their own cost.

A. AGG.