

Before M.L. Singhal, J

DALJINDER SINGH @ LAKHVINDER SINGH—*Appellant*

versus

HARBANS KAUR & OTHERS—*Respondents*

R.S.A. NO. 379 OF 1981

4th January, 2001

Indian Succession Act, 1925—S. 63—Registered will in favour of brother's grandson—Daughter excluded—Will for services rendered—Testator died after 7 years of execution of will—Attesting witnesses not of the village—No ground to discard their testimony—Exclusion of natural heir—Such exclusion not a ground for discarding the will.

Held that, will was refused to be given effect to by the two Courts below for reasons which are not at all tenable and which are alien to the requirement which governs the appreciation of evidence in respect of wills. Both the Courts below refused to give effect to will saying that none of the attesting witnesses belongs to the village of the testator.

(Para 14)

Further held, that the will is resorted to, to deprive the natural heirs of inheritance. If inheritance is to pass on to a natural heir, then there will be no necessity of executing will. As such, merely because natural heir has been deprived, is no ground to discard the will. All that the Court has to see is whether the will was executed by a person while in sound disposing mind and it was his voluntary and conscious act. Hence, will dated 13th May, 1968 executed by Khazan Singh in sound disposing mind in favour of Daljinder Singh, who is his real brother's grandson, is a valid will.

(Paras 24 & 26)

Arun Jain, Advocate for the appellant

Deepak Agnihotri, Advocate for the respondents

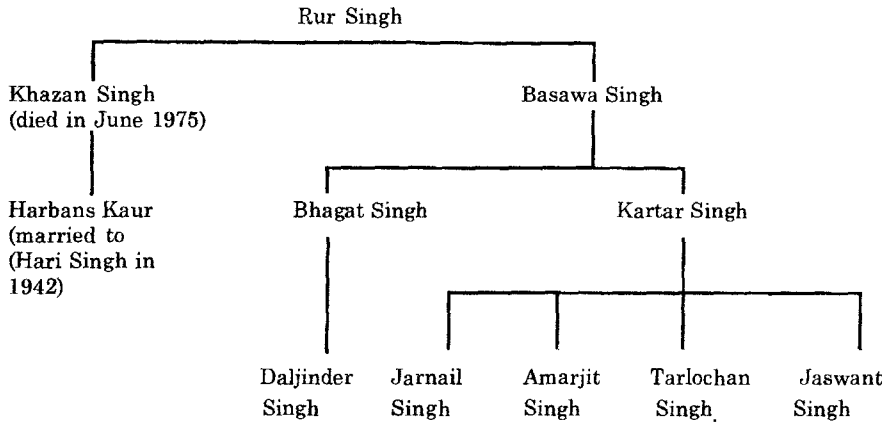
JUDGMENT

M.L. Singhal, J.

(1) Khazan Singh son of Rur Chand son of Hira Nand was owner and in possession of land measuring 55 kanals 17 marlas situated in the revenue estate of village Kanjari, Tehsil Nabha, and he had half share in "Chah Pukhta" bearing khasra No. 28//26 of Khewat Khatauni No. 60/83 per jamabandi 1973-74. He died in June, 1975 leaving behind his daughter Smt. Harbans Kaur as his only heir. She continued to be owner and in possession of the land and chah pukhta after the death of her father as his sole heir. At the time of the death of Khazan Singh, in some land sugar cane/narma etc, was lying sown. In some land she got cultivated maize, fodder and groundnut through Avtar Singh son of Partap Singh, who she had given it on batai. She apprehended her forcible dispossession from the land at the hands of Daljinder Singh alias Lakhwinder Singh son of Bhagat Singh son of Basawa Singh and others—defendants on the basis of will alleged to have been executed in their favour by Khazan Singh. Khazan Singh never executed any will in their favour. If they set up any will in their favour that is false and forged, having no effect on her rights so far as the inheritance of her father is concerned. On these allegations, Harbans Kaur daughter of Khazan Singh filed suit for permanent injunction against Daljinder Singh alias Lakhwinder Singh son of Bhagat Singh s/o Basawa Singh etc, restraining them from interfering with her possession of land and chah pukhta ibid, in the alternative, she prayed for degree for possession in case court came to the finding that Daljinder Singh alias Lakhwinder Singh son of Bhagat Singh and others—defendants were in possession.

(2) Daljinder Singh alias Lakhwinder Singh—defendant No. 1 contested the suit of the plaintiff urging that in fact he used to reside with Khazan Singh and was cultivating land belonging to Khazan Singh. He had sown crop standing in the land at the time of the death of Khazan Singh. After the death of Khazan Singh, he continued in possession of the land and cultivation thereof. It was denied that plaintiff was ever in possession of the land or that she got the land cultivated from Avtar Singh. It was urged that he was owner and in possession of the land in suit on account of registered will dated 13th May, 1968 executed by Khazan Singh in his favour. Will dated 13th May, 1968 was a genuine will, which had been executed in his favour by Khazan Singh. Khazan Singh was not a stranger to him as would

be evident from the pedigree table given below :—



(3) He was thus the grand son of Basawa Singh who was real brother of Khazan Singh. Khazan Singh had no son. He had one daughter named Smt. Harbans Kaur, who was married long ago. It was urged that his father Bhagat Singh died when he was only 2/3 years old. After the death of Bhagat Singh, he (Khazan Singh) began residing with him (Daljinder Singh) and serving him and looking after his land. It was in lieu of the services being rendered by him, which Khazan Singh reciprocated and showered love and affection on him and become disposed to executing will in his favour dated 13th May, 1968. Will was presented for registration to Sub Registrar, Nabha which was duly registered by him. It was the last will of Khazan Singh.

(4) Kartar Singh son of Basawa Singh son of Rur Singh and others-defendants No. 2 to 6 filed separate written statement, contesting the suit of the plaintiff-Harbans Kaur. It was urged that Khazan Singh had executed will in their favour on 17th December, 1970 which was his last will and testament. Plaintiff had nothing to do with the inheritance of Khazan Singh when he had executed will in their favour dated 17th December, 1970 and they are owners and in possession of the property in suit on account of will dated 17th December, 1970.

(5) On the pleadings of the parties, the following issues were framed :—

1. Whether Khazan Singh executed a valid will dated 13th May, 1968 in favour of defendant No. 1, if so its effect? OPP
2. Whether the plaintiff is in possession of the suit land? OPP.

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3. Whether Khazan Singh executed a valid will dated 17th December, 1970 in favour of defendants No. 2 to 6? OPP
 4. If issue No. 1, 2 and 3 are not proved, whether the plaintiff is entitled to the possession of the suit land ? OPD
 5. Relief.

(6) *Vide* order dated 3rd August, 1979, Subordinate Judge Ist Class, Amlah decreed the plaintiff's suit for possession in view of his findings that Khazan Singh had not executed any will dated 13th May, 1968 in favour of Daljinder Singh alias Lakhwinder Singh—defendant and also he had not executed any will dated 17th December, 1970 in favour of Kartar Singh etc, defendants No. 2 to 6.

(7) Daljinder Singh alias Lakhwinder Singh son of Bhagat Singh defendant went in appeal against the decree of Subordinate Judge Ist Class, Amlah dated 3rd August, 1979.

(8) Appeal was dismissed by Additional District Judge, Patiala,—*vide* order dated 20th January, 1981.

(9) Still not satisfied, Daljinder Singh alias Lakhwinder Singh has come up in further appeal to this Court.

(10) In this case it is not required to be determined whether will Ex. D-1 was or was not valid because Kartar Singh etc,—defendants No. 2 to 6 have not filed any appeal to this Court against the findings of the two courts below whereby they found against this will and held it false and forged. In this appeal, therefore, thrust would be only to determining “whether will Ex. DW 8/A dated 13th August, 1968 had or had not been executed by Khazan Singh in favour of Daljinder Singh alias Lakhwinder Singh to the exclusion of his only child—Smt. Harbans Kaur”?

(11) Will Ex. DW8/A was scribed by Nathu Lal. It was attested by Bir Singh son of Sunder Singh of village. Khanyan and Niranjana Singh, Sarpanch of village Raipur. Bir Singh was dead and as such could not be produced to support this will. Nathu Lal and Niranjana Singh appeared and supported this will. Dewan K.S. Puri, Document Expert, Patiala compared the purported thumb impressions of Khazan Singh appearing on will with his admitted thumb impressions and opined that the thumb impressions tallied.

(12) It was submitted by the learned counsel for the appellant

that will Ex. DW8/A should be held to have been executed by Khazan Singh in favour of Daljinder Singh alias Lakhvinder Singh-appellant from the statements of Niranjana Singh DW who is its attesting witness and Nathu Lal who is its scribe, more so, when will Ex. DW8/A is natural and speaks of the mind of the testator who did not have any male issue but had only a daughter who had been married long ago. It was submitted that will Ex. DW8/A is registered. Niranjana Singh DW8 stated that he is the attesting witness of will Ex. DW8/A which was scribed by Nathu Lal. Other attesting witness of this will is Bir Singh, Khazan Singh thumb marked the will after it had been read-over to Khazan Singh who admitted the same to be correct. He and Bir Singh attested the will in the presence of Khazan Singh after Khazan Singh had admitted the same to be correct. Will dated 13th August, 1968 could not be produced for registration that day. It was produced for registration before the Sub Registrar on 14th August, 1968. It could not be registered that day. It was registered on 28th August, 1968. Sub Registrar also read-out the will to Khazan Singh and then, Khazan Singh thumb marked the will before the Sub Registrar and they also thumb marked and will was registered. It was submitted that will was natural, inasmuch as Daljinder Singh's father Bhagat Singh died in or about the year 1958. At that time, Daljinder Singh was two-four years old. Two years after the death of Bhagat Singh. Khazan Singh's wife died. He was brought up by Khazan Singh. Khazan Singh was putting up with Daljinder Singh. His mother used to cook meals for Khazan Singh and he was earlier cultivating the land of Khazan Singh. Harbans Kaur was residing at village Sahnewal. She was not on visiting terms with her father Khazan Singh. Last rites of Khazan Singh were performed by Daljinder Singh. Daljinder Singh and his mother immersed the last remains of Khazan Singh. It was submitted that Khazan Singh was acting for Daljinder Singh. He (Daljinder Singh) purchased plot from one Sucha Singh *vide* agreement Ex. D-2 dated 31st January, 1975 and Khazan Singh acted for him. Khazan Singh negotiated with Sucha Singh on his behalf for that plot. It was submitted that Daljinder Singh was in close association with Khazan Singh and he was favourably disposed towards Daljinder Singh and wanted to benefit him. It was submitted that Hari Singh husband of Smt. Harbans Kaur has stated that Daljinder Singh's father Bhagat Singh died about twenty years ago. Daljinder Singh's grand father Basawa Singh had died earlier to the death of Bhagat Singh. He married Harbans Kaur in the year 1942. Harbans Kaur's mother died two years after the death of Bhagat Singh. It was submitted that after the death of Daljinder Singh's father, Daljinder Singh was brought up by Khazan Singh and Khazan Singh was looked after and served by Daljinder Singh and his mother. It was submitted that Harbans Kaur was married

long ago and there is recital in the will that he had spent a lot on his daughter's marriage and as such was bequeathing in favour of Daljinder Singh.

(13) It was submitted that will Ex. DW/8/A is registered. Khazan Singh died in the year, 1975. It was submitted that will Ex. DW8/A was thus allowed to hold the field for 7 years. Will Ex. DW8/A was natural inasmuch as there was none to look after and bring up Daljinder Singh after the death of his father when he was only 2/3 years old. It was submitted that Khazan Singh began putting up with Daljinder Singh. Khazan Singh's wife died 2 years after the death of Daljinder Singh's father and thus Khazan Singh became in need of Daljinder Singh and his mother for his needs.

(14) Will Ex. DW8/A is quite natural inasmuch as it is in favour of Khazan Singh's real brother's grand son whose father had died when he was 2/3 years old and after whose father's death, he was brought up by Khazan Singh and Khazan Singh was looked after by Daljinder Singh and his mother. Will Ex. DW. 8/A is registered one. It held the field for 7 long years. Fact that Daljinder Singh had association with Khazan Singh is clear from the fact that plot was sold by Sucha Singh to Daljinder Singh *vide* deed Ex. D-2. On that deed, Khazan Singh figures as acting for Daljinder Singh. Kartar Singh-defendant attested deed Ex. D-2. This means that Kartar Singh is also subscribing to the version of Daljinder Singh that he was in association with Khazan Singh. Will Ex. DW8/A was refused to be given effect to by the two courts below for reasons which are not at all tenable and which are alien to the requirement which governs the appreciation of evidence in respect of wills. Both the courts below refused to give effect to will Ex. DW8/A saying that none of the attesting witnesses belongs to village, Kanjari i.e. the village of Khazan Singh, Bir Singh belonged to village Khanyan while Niranjan Singh belonged to village Raipur. Another reason which weighed with them while discarding will Ex. DW8/A is that in the year, 1968, Daljinder Singh was 8/9 years old and it is difficult to believe that he was rendering any service to Khazan Singh or will was the result of any services being rendered by Daljinder Singh to Khazan Singh and Daljinder Singh's mother should have come forward to say that she was serving Khazan Singh and she has not come forward to say so.

(15) In my opinion, both the reasons given by the two courts below for discarding will Ex. DW8/A are alien to the principles which govern the appreciation of evidence so far as will is concerned. There were two contestants who were staking their claim to the property of

Khazan Singh from his own clan. One was Daljinder Singh and other was Kartar Singh. If Khazan Singh had taken people from his own village to attest the will and they had disclosed about the will in favour of Daljinder Singh to Kartar Singh and his sons or they themselves had come to know of the will in favour of Daljinder Singh, Khazan Singh would have exposed himself to the displeasure of Kartar Singh and his sons. Nirranjan Singh DW8 who is attesting witness of this will was not stranger to Khazan Singh. He stated that his village is at a distance of 3/4 kilometres from the village of Khazan Singh and Khazan Singh had been on visiting terms with him.

(16) Learned counsel for the respondents, on the other hand, submitted that Harbans Kaur-respondent was Khazan Singh's daughter, rather his only child and there was no reason to deprive her of the inheritance of her father Khazan Singh. It was submitted that there is no evidence that Khazan Singh had strained relations with Harbans Kaur. He was on visiting terms with Harbans Kaur and had been attending the marriages of her children and making presents on those occasions.

(17) Suffice it to say, Harbans Kaur was married in the year, 1942. When Daljinder Singh was being brought up and looked after by Khazan Singh from the period when he was 2/3 years old after the death of his father, who was his real nephew, it cannot be said that he would think of his daughter Harbans Kaur who was married about 26 years prior. Hari Singh PW has nowhere stated that after the death of his wife, Khazan Singh started putting up with him or he and his wife Harbans Kaur served him. In his cross-examination, he had stated that Kartar Singh and his sons used to serve Khazan Singh. Kartar Singh is the son of Basawa Singh who was the real brother of Khazan Singh. It is, thus, apparent that Khazan Singh was not being served and looked after by Hari Singh and his wife Harbans Kaur. He was being looked after either by Daljinder Singh and his mother or by Kartar Singh and his sons. If Khazan Singh is found to have been looked after and served by Daljinder Singh and his mother, it would be natural for Khazan Singh to bestow upon Daljinder Singh his inheritance. Khazan Singh was being looked after and served by Daljinder Singh is apparent from this fact also that Khazan Singh acted for Daljinder Singh when the plot was purchased by Daljinder Singh from Sucha Singh *vide* deed Ex. D-2. After the death of Bhagat Singh, Khazan Singh and his wife took the responsibility of bringing up and looking after Daljinder Singh when Daljinder Singh was only 2/3 years old. Khazan Singh's wife died 2 years after the death of Bhagat Singh and after his wife's death in village Kanjari, Khazan Singh was the solitary

soul apart from Daljinder Singh, his mother and nephew Kartar Singh and his sons.

(18) It was held in *Kartar Kaur and another vs. Bhagwan Kaur and others* (1) that registration of will is strong circumstance to prove its genuineness. Registration of will dispels doubt as to genuineness. Where testator died about 4 years after execution and registration of will and took no steps to cancel or revoke will, it per se dispels suspicious circumstances allegedly attaching to will. Certificate of Registering Officer under Section 60 of the Registration Act is a relevant piece of evidence for proving execution of will. Initial onus that testator had a disposing mind and will was the result of his own volition lies on propounder of will, once it is proved that will was executed by a person of competent understanding. Burden of proving that will was invalid for any reason shifts to person who challenges will.

(19) It will be useful to reproduce the observations of Lord Cranworth in *Boyse vs. Ross Borough*, (2) "that if a will has been executed with due solemnities by a person of competent understanding and apparently a free agent, burden of proving that it was executed under undue influence is on the party who alleges it". These observations were approved by the Hon'ble Supreme Court in *Naresh Charan Das Gupta vs. Paresh Charan Das Gupta and another* (3)

(20) In *Satya Pal Gopal vs. Smt. Panchubala Dasi and others* (4) the Hon'ble Supreme Court made the following observations :

As we said there are certain outstanding features of the case which should dispel all suspicion that may possibly otherwise attach itself to the will. The will was registered on 30th June, 1946 and the testator died on 12th March, 1950. That is to say, the testator lived for nearly four years after the execution and registration of the will and yet he took no steps to have the will cancelled or to revoke it. It could not be that the will was somehow brought into existence and the signatures of Narsingha Prosad Das were obtained on the will by practising some fraud. The endorsements on the will show that Narsingha Prosad Das himself had presented the will for registration to the Sub Registrar and that the Sub Registrar had been called to the residence of Narsingha Prosad Das for the purpose of registering the will. Narsingha

(1) 1993 PLJ 63

(2) (1857) 6 HLC 2 (A)

(3) AIR 1955 SC 363

(4) AIR 1985 SC 500

Prosad Das affixed his signature twice again in the presence of the Sub Registrar, as shown by the endorsements. The endorsements also show that execution was admitted by Nrisingha Prosad Das. As earlier mentioned by us, every page of the will has been signed by Nrisingha Prosad Das and at the foot of the will, a note listing the various corrections made has also been signed by Nrisingha Prosad Das. Therefore, there cannot even be the slightest doubt that the document was executed by Nrisingha Prosad Das, that its execution was admitted by Nrisingha Prosad Das before the Sub Registrar and that Nrisingha Prosad Das himself presented it to the Registrar having called him to his own residence for that purpose.”

(21) It was submitted by the learned counsel for the appellant while relying on *Smt. Chhoto vs. Sardar Singh* (5) that non-bequest of property to children of testator does not make the will invalid, if the execution of the will was satisfactorily proved. In the will, it is recorded that he had performed marriage of his daughter, simply because testator has excluded his daughter from inheritance is not a suspicious circumstance to render will invalid.

(22) In *Inderjit Kaur alias Jagir Kaur vs. Bhag Singh and another* (6) it was held that where a daughter who is sole heir of the deceased was deprived of his inheritance, is an important circumstance relevant in determining the validity of the will. Registered will executed in favour of nephews of testator-Parties being agriculturists choice of testator to keep the land within the family not abnormal.

(23) In *Biru Ram (deceased) through LRs vs. Barkha Ram alias Barkat* (7) it was held registration of a will itself suggests that it was executed by the testator while in sound disposing mind.

(24) Why the will is resorted to? It is resorted to, to deprive the natural heirs of inheritance. If inheritance is to pass on to a natural heir, then there will be no necessity of executing will. As such, merely because natural heir has been deprived, is no ground to discard the will. All that the court has to see is whether the will was executed by a person while in sound disposing mind and it was his voluntary and conscious act. If it is proved to have been executed by a person while

(5) 1994 (1) RRR 663

(6) 1999 (2) PLJ 431

(7) 1997 (1) RCR 545

in sound disposing mind, will has to be given effect to even if it is viewed by the Court as a heartless act on the part of the testator in depriving his natural heir of his inheritance.

(25) In this case will was not got registered on 13th August, 1968 and 14th August, 1968 because Sub Registrar was not available. It was got registered on 28th August, 1968. If Daljinder Singh figured before the Sub Registrar on 28th August, 1968 i.e. at the time of registration of the will, his presence before the Sub Registrar cannot be construed as impinging upon the validity of the will. Khazan Singh, Daljinder Singh and his mother were putting up together since the year, 1958 i.e. when Daljinder Singh's father Bhagat Singh died. If Daljinder Singh was with Khazan Singh at the time of registration of the will, that shows rather his association with Khazan Singh and inextricability of each other Land is in possession of Daljinder Singh. This also shows his association with Khazan Singh. It is not believable as stated by Hari Singh (husband of Harbans Kaur) that possession remained with Harbans Kaur for 2/3 months and, thereafter Daljinder Singh stepped into possession. At the time of institution of the suit, possession was with Daljinder Singh.

(26) For the reasons given above, I am of the opinion that will Ex. DW8/A is a valid will, which had been executed by Khazan Singh in sound disposing mind in favour of Daljinder Singh who is his real brother's grandson and whom he had started bringing up, in the wake of his father Bhagat Singh's death when he was 2/3 years old and therefore will Ex. DW8/A is held to have been executed by Khazan Singh in favour of Daljinder Singh and Daljinder Singh is entitled to inherit him. So, this appeal succeeds and is allowed. In consequence, judgments and decrees of the courts below are set aside and the suit of the plaintiff-Harbans Kaur is dismissed. Parties shall bear their own costs through out.

S.C.K.

Before S.S. Sudhalkar & Mehtab S. Gill, JJ

GANESH DUTT & OTHERS—Petitioners

versus

THE STATE OF HARYANA & OTHERS—Respondents

C.W.P. No. 16164 of 1999

10th October, 2000

Constitution of India, 1950—Arts. 12 & 226—Company dealing in sale & manufacture of motor vehicles—Though Govt. holding 50%