Before Anil Kshetarpal, J.

ANJANA RAHI—*Petitioner*

versus

SUBHASH CHANDER—*Respondents*

RSA No. 420 of 1989

June 16, 2020

Registration Act, 1908, validity of a will—not signed before the Registrar by testator and attesting witness—but signed before official of Registrar.

Held, *that* no doubt, in an ideal situation, the signatures on the testament should have been taken before the Registrar, however, that itself would not be sufficient to ignore the will, particularly when registration of the Will is not compulsory.

(Para 20)

Amit Jain, Advocate and Abhishek Dhull, Advocate, *for the appellant.*

Aashish Aggarwal, Sr. Advocate with Akash Jindal, Advocate, for respondent no.1.

ANIL KSHETARPAL, J.

(1) Defendant no.1-appellant (Anjana Rani) has filed present regular second appeal against judgments passed by the courts below. Learned trial court decreed the suit filed by the plaintiff-respondent-(Subhash Chander Jhanji) for declaration to the effect that he is joint owner of a residential house, details whereof have been given in the plaint. It was held that the residential house was an ancestral property in the hands of late Sh. Rattan Lal Jhanji, hence, although, a registeed testament excuted by him stands proved, however, does not result in bequeathing the suit property in favour of the appellant because the testator had no power to bequeath. Learned first appellate court has held that the registered will is surrounded by suspicious circumstances and therefore, appeal filed by Smt. Anjana Rani-appellant was dismissed whereas appeal filed by Sh. Subhash Chander Jhanji, respondent no.1 to that extent was allowed.

(2) In the considered view of this court, following substantial questions of law arise for determination:-

(1) If an official posted in the office of Registrar under The Registration Act, 1908, gets signatures of the Testator and attesting witnesses on the endorsement to be signed at the time of registration of the Testament in his room in absence of the Registrar, the Testament becomes doubtful or invalid?

(2) Whether to prove that the property held by the members of a Joint Hindu family in their individual names, is a Joint Hindu Family property, is it sufficient to prove that the family resides in one house having a common ration card?

(3) Facts in a nutshell are that late Sh. Rattan Lal Jhanji was common ancestor of the parties to the suit. Inter-se relationship between the parties can be understood from the following pedigree table as drawn in para 1 of the plaint:-

Rattan Lal Jhanji

Subhash Chander (son) Plaintiff	Smt. Anjana Rani (daughter) Defdt. No.1-appellant	Smt. Kiran Bala (daughter) Defdt. No.2	Hari Mohan Jhanji (son) (pre-deceased)
Tarsem Rani (widow) (Defdt. No. 3)	Munish Kumar (son) Defdt. No.4	Meena Kumari (daughter) Defdt. No.5	Shalu (daughter) Defdt. No.5

(4) Subhash Chander Jhanji through the present suit claims that he is joint owner of a residential house on the basis of natural succession claiming that late Sh. Rattan Lal Jhanji was 'Karta' of Joint Hindu Family and the house is ancestral coparcenary and undivided Joint Hindu family property. He also claims that late Sh. Rattan Lal Jhanji did not execute will (Testament) in favour of any person.

(5) The defendant no.1-appellant-Anjana Rani contested the suit by filing written statement claiming that the plaintiff is no longer a member of the Joint Hindu family and as he had severed his relationship with his father many years ago when late Sh. Rattan Lal Jhanji had to only sell the residential house at ridiculously low price to save the plaintiff from criminal proceedings for embezzlement of funds of Cooperative Store, Model Town, Ludhiana. She also claims that due to ill treatment of the plaintiff, late Sh. Rttan Lal Jhanji was forced to spend his last days of life with the appellant- defendant no.1 in her matrimonial house at Nawanshehar along with his grand children

(children of pre deceased son Hari Mohan) where he breathed his last. She claims that late Sh. Rattan Lal Jhanji (her father) executed a registered testament dated 17.07.1981 bequeathing the house in question in her favour in the presence of attesting witnesses. It may be noted here that the remaining defendants supported the case of the plaintiff.

(6) On appreciation of pleadings, learned trial court framed following issues:-

1. Whether the suit property is the coparcenary property of the parties?OPP
2. Whether the plaintiff is not a member of the Joint Hindu Family?OPD
3. Whether Rattan Lal executed a Will in favour of defendant no.1 on 17.07.1981?OPD
4. Relief.

Plaintiff in order to prove its case, examined following witnesses:-

1. Sh. Som Nath, PW1
2. Manohar Lal, PW2
3. Bal Mukand PW3
4. Kiran Bala PW4
5. Ved Parkash PW5
6. Hari Bhagwant Thapar PW6
7. Subhash Chand, PW7
8. Shri Gian Chand Dhanda, PW8.

(7) On the other hand, defendant no.1 examined the scribe and both the attesting witnesses of the registered will (Testament) apart from examining herself as DW5.

(8) Learned trial court on appreciation of evidence held that the execution of the Will has been proved. It further held that the suit property is a coparcenary property of the parties and hence, Late Rattan Lal Jhanjhi had no right to bequeath the property exclusively in favour of the appellant. The plaintiff being a member of Joint Hindu family is entitled to share therein..

(9) Two appeals filed, one by Smt. Anjana Rani and second by Subhash Chander Jhanji against the judgment and decree passed by the trial court have decided by the learned first appellate court. The appeal filed by Subhash Chander Jhanji, respondent no.1 has been accepted

while reversing the finding of the trial court with regard to validity of the will, whereas, dismissed the appeal filed by Anjana Rani, appellant-defendant no.1.

(10) It may be noted here that in this regular second appeal defendant-appellant has assailed the correctness of both the decrees passed by the learned first appellate court i.e Civil Appeal No.211-T dated 05.01.1985 and 212-T dated 07.01.1985.

(11) This court has heard learned counsels for the parties at length and with their able assistance gone through the judgments and decrees passed by the Courts below along with requisitioned record.

(12) Learned counsel appearing for the appellant has submitted that the execution of the Will (Testament) has been duly proved as held by both the courts below and the finding arrived at by the Ist Appellate court that the will (Testament) was surrounded by suspicious circumstances, is not sustainable. Late Sh. Hari Mohan, the other son of the testator had died during the life time of the testator and it is proved on file that the appellant was looking after the testator, the widow and children of the pre-deceased son. The relationship between the testator and the plaintiff were not cordial. The findings of the learned first appellate Court about existence of suspicious circumstances with respect to the Will executed by the testator while discarding the testament are erroneous. Merely because the signatures of the testator and the attesting witnesses were obtained in a separate room, which is very much part of the office of the Registrar, would not be sufficient to ignore a registered will. Presence of the beneficiary at the time of execution of the will itself would not be sufficient to hold that the will is surrounded by suspicious circumstances in absence of evidence that the beneficiary did influence the wishes of the testator. The plaintiff has failed to lead sufficient evidence to prove that the suit property (residential house) is a Joint Hindu Family Ancestral property.

(13) On the other hand, learned senior counsel appearing for the respondent-plaintiff has contended that the judgment passed by the learned first appellate court require no interference. He drew attention of the court to the ration card which proves that the entire family was living jointly. He further contended that one appeal could not be filed against 2 decrees. He further contended that the Will was executed before the alleged attesting witnesses came present and signed. He further drew attention of the court to the statement of the various witnesses, who have admitted that relationship between the plaintiff

and the testator were cordial.

(14) On careful analysis of the arguments of learned counsels for the parties, in the considered view of this court, the questions of law which have been culled out in the initial part of the judgment arise for consideration.

QUESTION (i)

> If an official posted in the office of Registrar under The Registration Act, 1908, gets signatures of the Testator and attesting witnesses on the endorsement to be signed at the time of registration of the Testament in his room in absence of the Registrar, the Testament becomes doubtful or invalid?

(15) It may be noted here that as per provision of the Registration Act, 1908, a Will/testament is not compulsorily required to be registered. The registration of the Will is optional. In the present case, execution of the Will has been proved by examining scribe as well as both the attesting witnesses i.e. Surjit Kumar as DW2 and Yashpal as DW3. It is also proved that late Sh. Rattan Lal Jhanji, the testator, had with his own hand scribed one line at the end of the registered will in "Urdu' language. Both the courts have held that execution of the will in accordance with Section 63 of the Indian Succession Act, 1925 has been proved while complying with the requirement of Section 68 of the Indian Evidence Act, 1972.

(16) Learned first appellate court has ignored the will on following grounds:-

> (1) There is no evidence that the plaintiff was having strained relationship with the testator-his father;
>
> (2) Beneficiary under the Will i.e. Smt. Anjana Rani was present at the time of execution of the Will;
>
> (3) Signatures at the time of registration of the Will were obtained in the presence of the official in a separate room in the office of the Sub-Registrar and not in the presence of the Registrar.
>
> (4) One of the attesting witness was inimical to the plaintiff.

(17) Now the stage is set for critically analyzing the reasons given by the learned first appellate court in detail.

(18) It is the case of the defendant no.1-appellant that the relationship between the plaintiff-Subhash Chander Jhanji with his father- the testator. Late Sh. Rattan Lal Jhanji were strained. Learned first appellate court has overlooked the evidence to hold that there is no evidence to that effect. The plaintiff when appeared as PW7 has himself admitted that he had filed a suit against Sh. Rattan Lal Jhanji 4 months prior to his death on 22.10.1981. The registered will was executed on 17.07.1981 i.e. approximately 3 months prior to the death of Sh. Rattan Lal Jhanji. Even as per his own admission, the suit filed by the plaintiff against Sh. Rattan Lal Jhanji was pending at the time of execution of the Will. Thus, obviously the learned first appellate court has overlooked the very significant admission of the plaintiff.

(19) Next reason to ignore the registered testament in the considered opinion of this Court is not itself sufficient to hold that the registered will is surrounded by suspicious circumstances particularly in absence of evidence that Smt. Anjana Rani had influenced the wishes of the testator or had exercised undue influence on the testator. It has come on record that late Sh. Rattan Lal Jhanji started residing at Nawanshehar i.e. with defendant no.1-appellant at her matrimonial home where he breathed his last. It has also come on record that he was also cremated at Nawanshehar- the city where the appellant resides. It may be noted here that the suit property is situated at Bassi Pathana, which is approximately at the distance of 100 Kms. from Nawanshehar. Late Sh. Ratttan Lal Jhanjhi lived and worked at Basssi Pathana except during last days before his death when he started residing with appellant Smt. Anjana Rani. It has also come on record that children of Late Sh. Hari Mohan also used to reside with Smt. Anjana Rani, defendant no.1-appellant. This fact is admitted by Smt. Kiran Bala- other daughter of Late Sh. Rattane Lal Jhanjhi while appearing as PW4. Thus, in the considered view of this court mere presence of Smt. Anjana Rani would not itself be sufficient to discard a registered Will. Reliance in this regard can be placed on the judgment in ***Mahesh Kumar (dead) by LRs*** *versus* ***Vinod Kumar and others***[1]. Paragraph 20 of the judgment reads as under:-

> 20. In Uma Devi Nambiar v. T.C. Sidhan (supra), the Court held that active participation of the propounder / beneficiary in the execution of the Will or exclusion of the natural heirs

[1] (2012) 4 SCC 387

cannot lead to an inference that the Will was not genuine. Some of the observations made in that case are extracted below:

"A Will is executed to alter the ordinary mode of succession and by the very nature of things, it is bound to result in either reducing or depriving the share of natural heirs. If a person intends his property to pass to his natural heirs, there is no necessity at all of executing a Will. It is true that a propounder of the Will has to remove all suspicious circumstances. Suspicion means doubt, conjecture or mistrust. But the fact that natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be a suspicious circumstance especially in a case where the bequest has been made in favour of an offspring. As held in P.P.K. Gopalan Nambiar v. P.P.K. Balakrishnan Nambiar it is the duty of the propounder of the Will to remove all the suspected features, but there must be real, germane and valid suspicious features and not fantasy of the doubting mind. It has been held that if the propounder succeeds in removing the suspicious circumstance, the court has to give effect to the Will, even if the Will might be unnatural in the sense that it has cut off wholly or in part near relations. (See Pushpavathi v. Chandraraja Kadamba.) In Rabindra Nath Mukherjee v. Panchanan Banerjee it was observed that the circumstance of deprivation of natural heirs should not raise any suspicion because the whole idea behind execution of the Will is to interfere with the normal line of succession and so, natural heirs would be debarred in every case of Will. Of course, it may be that in some cases they are fully debarred and in some cases partly."

(20) Next reason assigned by the learned first appellate court is also erroneous. As noticed above, it is not mandatory to get the will registered. The registration of the will is optional. Therefore, an unregistered wills are also valid and enforceable. Still further, office of the Registrar is a complete office. The officials posted in the office of Registrar are there to assist the Registrar. In such circumstances, even if the signatures of the testator and the attesting witnesses were obtained on the endorsement to be signed at the time of registration in a separate room in the presence of the officials of the Registrar and not

in its presence would not be sufficient to ignore the registered testament unless it is proved that the testator and the attesting witnesses did not appear before the Registrar while acknowledging their signatures on the registered Will and accepting the correctness of the Will. No doubt, in an ideal situation, the signatures on the testament should have been taken before the Registrar, however, that itself would not be sufficient to ignore the will, particularly when registration of the Will is not compulsory.

(21) Last reason assigned by the learned first appellate court to ignore the Will is also erroneous because the Will was executed and registered on 17.07.1981. Some dispute arose between PW3 Bal Mukand and Subhash Chander Jhanji in the year 1982. In other words, at the time of execution of the Will, there was no dispute/ill-will between the plaintiff and PW3 Bal Mukand.

(22) It may be noted here that the testator was admittedly working as a typist since 1950 in the court complex at Bassi Pathana. The testator had rich experience of working in the courts for more than 30 years. The testator had also made an endorsement with his own hand in 'Urdu' language. The testator while executing the Will had given details of all the members of his family. He noted that he has already married his two daughters, who are now residing with their respective in-laws. Sh. Hari Mohan his son has pre-deceased him whereas the second son, Subhash Chander is negligent and disobedient. The testator also noticed that he is staying during his last days of life at the house of his daughter Smt. Anjana Rani, the appellant, who is also taking care of widow and children of late Sh. Hari Mohan (her deceased brother). As noticed above, it is proved on file that late Sh. Rattan Lal Jhanji not only died at the residence of his daughter Smt. Anjana Rani but was also cremated there.

(23) In view of the above, question No.(i) is answered in favour of the appellant and against the plaintiff-respondent no.1.

QUESTION No.(ii)

> Whether to prove that the property held by the members of a Joint Hindu family in their individual names, is a Joint Hindu Family property, is it sufficient to prove that the family resides in one house having a common ration card?

(24) Learned first appellate court has held that the suit property is ancestral on the basis of two following findings:-

(i) The suit property is proved to be same property received by Durga Parshad from his father Sh. Nand Lal as per document dated 09.04.1960.

(ii) The family is proved to be Joint Hindu Family and therefore, the property is also proved to be Joint Hindu Family property.

(25) It may be noted here that the plaintiff while filing the suit has failed to explain how the suit property is Ancestral Coparcenary and Undivided Joint Hindu Family property. The plaintiff has examined as many as 7 witnesses including himself but none of the witness has explained or stated that how the suit property is Joint Hindu Family Ancestral Coparcenary property. Learned first appellate court has noticed this fact in its judgment. However, the learned first appellate court has held that since the witnesses have made a statement that the suit property is ancestral and the aforesaid statement has not been challenged in the cross- examination of the aforesaid witnesses, hence, the property is proved to be ancestral property.

(26) Whether the property is ancestral or not is a question of fact? It is for the Court to determine as to whether a particular property is ancestral or not. For determination of that question, it is necessary to lead evidence. The courts cannot be expected to depend upon the bald statements of the witnesses to the fact that the property is ancestral. What would be ancestral property has been explained in paragraph 221 of 23rd Edition of Mula's Hindu Law in following manner:-

Ancestral property.-- (1) Property inherited from paternal ancestor.- All property inherited by a male Hindu from his father, father's father or father's father's father, is ancestral property. The essential feature of ancestral property according to Mitakshara law is that the sons, grandsons, and great-grandsons of the person who inherits it, acquire an interest, and the rights attached to such property at the moment of their birth. Thus, if A inherits property, whether movable or immovable, from his father of father's father, or father's father's father, it is ancestral property, as regards his male issue. If A has no son, son's son, or son's son's son in existence at the time when he inherits the property, he holds the property as absolute owner thereof, and he can deal with it as he pleases. However, if he has son's, son's sons or sons' sons' sons in existence at the time, of if a son, son's son or son's son's son

is born to him subsequently, they become entitled to an interest in it by the mere fact of heir birth in the family and A cannot claim to hold the property as absolute owner nor can he deal with the property as he likes. The position has been materially affected after section 8 of The Hindu Succession Act, 1956, came into force.

A father cannot change the character of the joint family property into absolute property of his son by merely marking a will and bequeathing it or part of it to the son as if it was the self acquired property of the father. In the hands of the son, the property will be ancestral property and the natural or adopted son of that son will take interest in it and be entitled to it by survivorship, as joint family property. However, an affectionate gift of his self acquired property by a father is not ipso facto ancestral property in the hands of the son.

A person inheriting property from his three immediate paternal ancestors holds it, and must hold it, in coparcenary with his sons, son's son and son's son's sons, but as regards other relations, he holds it, and is entitled to hold it as his absolute property. The result is that if a person inheriting property from another one of his three immediate paternal ancestors has no son, son's son, or son's son's son, the property is his absolute property, and no relations of his are entitled to any interest in it in his lifetime.

Property inherited by a Hindu male from his father, father's father, or father's father's father, is ancestral as regards his male issue, even though it was inherited by him after the death of a life-tenant. Thus, if a Hindu settles the income of his property on his wife for her life, and the property after her death passes to his son as his heir, it is ancestral property in the hands of the son as regards the male issue of such son."

(27) In these circumstances, it was required to be proved by the plaintiff that the property was inherited by a male Hindu from his father, father's father, father's father's father. Thus, it was required to be proved that the property was inherited by late Sh. Rattan Lal Jhanji from his father, or father's father or father's father's father. In the present case, as noticed above, none of the witnesses examined by the plaintiff has even made an oral bald statement including the plaintiff

that the property was at one point of time was received by the testator from Sh. Nand Lal Jhanjhi or Durga Parshad. It may be noted here that it is the case of the defendant-appellant that the ancestral house had to be sold by late Sh. Rattan Lal Jhanji in order to pay off the amount to the employer in order to save Subhash Chand from criminal prosecution. It was further pleaded by the defendant that the land underneath the house in question was purchased as well as constructed by late Sh. Rattan Lal Jhanji. The onus to prove that the suit property is ancestral was on the plaintiff. Since, the plaintiff has failed to discharge its onus, therefore, learned first appellate court has erred. It may be noted here that in absence of positive evidence in examination-in-Chief, failure of the defendant to cross-examine the witnesses produced by the plaintiff on a particular aspect cannot be conclusive to hold that the property is ancestral.

(28) The second reason assigned by the learned first appellate court to hold that the property is ancestral also suffers from an error. Learned court has relied upon document Ex.P1 allegedly executed by Durga Parshad, father of late Sh. Rattan Lal Jhanji. Learned first appellate court itself has noticed that the property received by Durga Parshad from his father Sh.Nand Lal in a family partition as per document in the year 1960 has been identified by the properties situated on all 4 directions in following manner:-

"1. <u>East</u> Fields, being Muslims property	2. <u>West</u> Street
3. <u>North</u> Road	4. <u>South</u> Muslim Property."

Whereas the description of the house in the plaint is as under:-

> "One residential house known as "Durga Hermitage" situated in the town of Bassi Pathana near sub-Jail and bounded as follows:-
>
East:- Field of Basia Ram	West: Street
North: Road	South: Vacant plot of Municipality Bassi"

(29) It is apparent that the details of the properties situated on East and South directions do not match/tally. Learned first appellate court has held that the suit property is the same property which was received by Durga Parshad from Nand Lal Jhanji on the ground that the

description of the properties situated on North and Western side match/tally. The details of the properties on North and Western directions are vague. Neither the name of the road on which the property is located has been specified nor the street number or its name has been given. There can be more than one property having road on the North side and street on the West side. In fact there can be hundreds in each city. Thus, the learned first appellate court has erred on this account.

(30) Still further, learned first appellate court has factually erred while returning a finding that the description of the properties situated on East and South directions have changed due to migration of the Muslims living in the area to Pakistan at the time of partition of the country. It may be noted here that the document was executed on 09.04.1960. There is no evidence that the persons belonging to Muslim community had shifted after 09.04.1960. On partition of the country in the year 1947, no doubt, certain persons belonging to Muslim religion did shift to the area now forming part of Pakistan, however, as noticed above the document in question was executed on 09.04.1960 i.e. 13 years after the partition of the country. In such circumstances, the findings of the learned first appellate court are erroneous.

(31) Learned first appellate court has also erred while observing that since in the ration card got prepared by late Sh. Rattan Lal Jhanji, all the members of the family are shown to be residing in the same house and the ration card also has a joint photograph of all the family members, therefore, the property is ancestral Joint Hindu Family property. It may be noted here that there is a distinction between Joint Hindu Family and Joint Hindu Family ancestral property. Merely because the family is having a joint ration card is not sufficient to hold that the property is also Joint Hindu Family ancestral property. It at the most prove that the family is joint. This fact has been noticed and discussed in detail by the Hon'ble Supreme Court in ***D.S. Lakshmaiah & Anr*** *versus* ***L. Balasubramanyam & Anr***[2]. It was held that the property cannot be presumed to be Joint Hindu Family property merely because of existence of Joint Hindu Family. The burden to prove that the property is Joint Hindu Family property lies on the person, who asserts so. Relevant discussion in the aforesaid judgment is in paragraph 18, which is extracted as under:-

"The legal principle, therefore, is that there is no

[2] (2003) 10 SCC, 310

presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available.

(32) In view of the above, question no.(2) is also answered in favour of the appellant and against the plaintiff-respondent no.1

(33) Consequently, the judgments passed by the courts below are set aside while allowing the present appeal. The suit filed by the plaintiff shall stand dismissed.

Dr. Payel Mehta