

Before Tejinder Singh Dhindsa, J

NARINDER KUMAR AND OTHERS,—Appellants

versus

MANOHAR LAL AND OTHERS,—Respondents

RSA No.4854 of 2010

10th January, 2012

*Code of Civil Procedure, 1908 - Indian Succession Act, 1925
- Will-Testator knew Urdu and English and had been signing in
English all his life-But later Will had his thumb impression and was
executed on the date of death of the testator-Cannot be believed and
held to be not genuine.*

Held, That the will dated 5.1.1984 contained only the thumb impression of the deceased-testator Sant Lal. It was proved on record that Sant Lal was a literate man and he knew Urdu and English and had been signing regularly in English throughout his life. There was no plausible explanation forthcoming for the beneficiaries i.e. defendant-appellants for such a state of affairs wherein Sant Lal had only thumb marked will dated 5.1.1984.

(Para 8)

M. K. Dogra, Senior Advocate, *for the appellants.*

TEJINDER SINGH DHINDSA, J.

(1) This judgment shall decide two Regular Second Appeals No. 4854 and 4915 of 2010 as both arise out of a common judgment dated 20th April, 2010 passed by the Additional District Judge, Ludhiana. Vide impugned judgment, the Additional District Judge, Ludhiana disposed of two appeals arising out of one judgment dated 18th March, 2006 passed by the trial Court whereby the suit of the plaintiff-respondent was decreed.

(2) The defendant-appellants are in second appeal before this Court.

(3) The plaintiff-respondent, Manohar Lal, filed a suit for declaration in terms of pleading that his father Sant Lal was the owner in possession of plot No. 1071 measuring 200 sq. yards situated at village Haibowal Kalan, Ludhiana. His father expired on 5th January, 1984. It was stated that said Sant Lal had bequeathed this property in favour of plaintiff, vide Will dated 25th December, 1983. On the other hand, the defendants were stated to have set up a Will dated 5th January, 1984 which was purported to have been executed in favour of defendant-appellant Smt. Sumitra Devi. The plaintiff-respondent pleaded that Will dated 5th January, 1984 is forged and the same was never executed by Sant Lal. It was pleaded that it was only the plaintiff-respondent who had been looking after and serving his father. The forgery on the part of the defendants came to the knowledge of the plaintiff-respondent when he went to the Patwari to get the mutation entered in respondent of the plot in dispute on the basis of Will dated 25th December, 1983. It was upon coming in knowledge reading the fabrication of a Will dated 5th January, 1984 that the suit was instituted. Upon notice and during the course of the proceedings before the trial Court, defendant No. 2 contested the suit in terms of filing a separate written statement wherein a preliminary objection was taken that the suit had been filed by the plaintiff in collusion with the other defendants and with a malafide intention. Defendant No. 2 admitted Sant Lal to be the owner of the plot in question and also admitted the factum of death of Sant Lal on 5th January, 1984, but categorically denied that any will was executed by his father either on 25th December, 1983 or on 5th January, 1984. As such, it was asserted in the written statement that upon Sant Lal's death, the property in dispute devolved by inheritance upon the plaintiff-defendants in equal shares. It was also pleaded that the plaintiff's possession over the plot in dispute was as a co-owner and that a false and forged Will had been set up. Defendants No. 1,4,5 and 6 filed a separate written statement taking a stand that Will dated 25th December, 1983 was fabricated. A stand was taken that as a matter of fact, Sant Lal had executed a Will on 5th January, 1984 in sound disposing mind in favour of his wife Sumitra Devi. It was stated in the written statement that Sant Lal's daughter Sushma Rani was unmarried at that point of time and it was quite strange that in the alleged Will dated 25th December, 1983 set up by the plaintiff, no arrangements as regards her marriage had been made. It was also pleaded that the plaintiff had been residing separately

from his father and mother and he was not on cordial terms with them. It was also averred that Sumitra Devi had gone to the extent of disinheriting the plaintiff, and a publication to this effect had been effected in the newspaper.

(4) The trial Court accepted the Will dated 25th December, 1983 relied upon by the plaintiff as genuine and accordingly, the suit was decreed in his favour. Feeling aggrieved against such judgment, the appellant-defendants filed two civil appeals in the Court of Additional District Judge, Ludhiana. Both the civil appeals have been dismissed vide impugned judgment dated 20th April, 2010 wherein the findings of the trial Court have been affirmed.

(5) I have heard Mr. M.K. Dogra, learned counsel appearing for the appellants in both the connected second appeals at length.

(6) Learned counsel has vehemently argued that the alleged will by Shri Sant Lal dated 25th December, 1983 was surrounded by suspicious circumstances and the same was not proved in accordance with law and on such count, both the Courts below had gravely erred. The apart, learned counsel would also contended that the findings of both the Courts below suffered from material infirmities and a mis-appreciation of the evidence placed on record.

(7) I find that the Courts below have considered both the Wills i.e. one in favour of the plaintiff-respondents, dated 25th December, 1983 and one which was relied upon by the defendant-appellants, dated 5th January, 1984 and have discussed the same threadbare as regards the same being genuine or not. All the relevant facts and evidence adduced on record have been discussed. A concurrent finding has been recorded that Will. Primarily, two vital circumstances have weighed by the Courts below to conclude that the Will dated 5th January, 1984 is not genuine. Firstly, it has been noticed that Sant Lal suffered a heart-attack on 5th January, 1984, whereupon he was taken to Vidya Sheel Maternity Hospital and Nursing Home, Goraya. He was admitted in such Hospital and Nursing Home at around 10.00 a.m. Sant Lal is stated to have died at around 3.00 p.m. on the same day i.e. 5th January, 1984. On such facts, there is no dispute *inter se* the parties. As such, it has been inferred that there could have been no occasion during such time for Sant Lal to have executed to Will on 5th January, 1984 itself in favour of his wife Sumitra Devi, defendant-appellant in RSA No. 4915 of 2010.

(8) The second reasoning furnished by the Courts below is that the Will dated 5th January, 1984 contained only the thumb impression of the deceased-testator Sant Lal. It was proved on record that Sant Lal was a literate man and he knew Urdu and English and had been signing regularly in English throughout his life. The testimony of Mr. A.K. Arora, Branch Manager, Union Bank of India, was conclusive in this regard in relation to various banking transactions involving Sant Lal. There was no plausible explanation forthcoming for the beneficiaries i.e. defendant-appellants for such a state of affairs wherein Sant Lal had only thumb marked Will dated 5th January, 1984.

(9) On the other hand, Will dated 25th December, 1983 in favour of the plaintiff-respondent has also been tested. Even though, the defendant-appellants had projected such Will to be surrounded in suspicious circumstances but the conclusion drawn by the Courts below is otherwise. Will dated 25th December, 1983 stood proved in terms of the testimony of one of the attesting witnesses, namely, Dev Dutt. Witnesses PW3-Krishan Kumar and PW4-Charan Singh have clearly deposed that Sant Lal was, in fact, enjoying very close relation with his son i.e. the plaintiff-respondent, who, in turn, had been looking after him. The Will dated 25th December, 1983, Exhibit P1, has also been perused minutely by the Court below. It has been noticed that Sant Lal has not left any of his legal heirs untouched. His two sons Sohan Lal and Anil Kumar were not given any property for the reason that they were well settled in life and residing abroad i.e. in Germany. Two other sons Brij Mohan and Narender Kumar were also stated to be well settled in their business and as such, had been left out of the Will. Accordingly, the property had been bequeathed to his one son i.e. plaintiff-respondent and his wife Sumitra Devi. The plot in question was given to the plaintiff-respondent and the remaining property, whatsoever, to his wife. The contention of the defendant-appellants that there was nothing left to be given to Sumitra Devi has also been noticed by the first Appellate Court wherein it has been stated that Sumitra Devi, to prove the fact that she did not inherit any property, had not even turned up in the Court to face the cross-examination. The facts as proved on record would only show that Sumitra Devi, the defendant-appellants had not been left empty-handed and even the unmarried daughter Sushma Rani had been taken care of inasmuch as a responsibility for her marriage had been fixed upon the

plaintiff-respondent as also upon Sumitra Devi. It is in the light of such detailed discussion and appreciation of the evidence and testimony on record that Will dated 25th December, 1983 has been held to be genuine and duly proved. I do not find any preversity in the findings of the Courts below. The conclusions drawn by the Courts are upon due appreciation of the pleadings and evidence placed on record. The High Court would be bound to accept such findings.

(10) I find that there is no question of law, much less substantial question of law that is required to be adjudicated upon in the present second appeals.

(11) The present appeals are without merit and are, accordingly, dismissed.

(12) Appeals dismissed.

S. Gupta

Before Alok Singh, J.

JAGJOT SINGH,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

CWP No. 19747 of 2010

22nd September, 2011

Constitution of India - Art. 226/227 - Punjab Package Deal Properties (Disposal) Act 1976-S.7-Order of eviction-Cannot be passed without giving reasonable opportunity of showing cause to the occupier.

Held, that from the perusal of Section 7 (2)(b), I have no hesitation to hold that Tehsildar (Sales) or Naib-Tehsildar (Sales) or any other person duly authorised by Tehsildar (Sales) or Naib-Tehsildar (Sales) may pass order of eviction only after giving a reasonable opportunity of showing cause to the occupier. In the present case, no opportunity was ever granted to the petitioners before passing the impugned order (Annexure P/14).

(Para 5)