Before Anil Kshetarpal, J.

SODHI BHUPINDER SINGH (SINCE DECEASED) THROUGH LRs—*Appellant*

versus

TIKKA AMARJIT SINGH AND OTHERS—*Respondents*

RSA No.4793 of 2013

April 01, 2019

A) ***Specific Relief Act, 1963—S.34—Suit for declaration that residential property is a Joint Hindu Family Coparcenary Property and therefore, plaintiff has share in same by birth—Held, a party cannot be selective in alleging that one property is Joint Hindu Family coparcenary property whereas remaining are not.***

Held that, it may be noted that once it is not disputed that Sodhi Kuldeep Singh was a big land owner owning various properties in various villages i.e. agricultural land as well as residential constructed properties, it was obligatory on the part of the plaintiff to disclose and give details of all the properties which according to him form part of Joint Hindu Family Coparcenary property. A party cannot be selective in alleging that one property is Joint Hindu Family Coparcenary property whereas the remaining are not. Still further, there is a significant admission of the plaintiff admitting that he was given 10-12 acres of land apart from a residential property. Obvious inference from the aforesaid admission is that Sodhi Kuldeep Singh during his life time divided the property amongst his heirs. It is in that process that he executed the Will in favour of Surinder Kaur dated 08.03.1976. The aforesaid Will is registered. Plaintiff does not challenge the correctness of the Will even after it has been implemented in the revenue record 25 years ago. Plaintiff has woken up only when Smt. Surinder Kaur had transferred the property in favour of one of his son or his legal heirs. No doubt, some of the witnesses examined by the defendants have admitted that the property is ancestral, however, such admission would not help the plaintiff particularly in view of the facts which have been noticed above.

(Para 10)

B) ***Succession Act, 1925—S.63(c)—Execution of unprivileged Wills—Whether a particular form of attestation of registered Will is required and it is mandatory that testator must sign first of all even in***

a situation when all witnesses and testator are present at one point of time—Held, No—Testator must sign before attesting witnesses had put their thumb impressions/signatures for validity of Will is not correct interpretation of provisions of Section 63(c) of Act, 1925.

Held that, testator must sign before the attesting witnesses had put their thumb impressions or signatures for validity of the Will is not correct interpretation of the provisions of Section 63(c) of the Succession Act, 1925.

(Para 17)

Vijay Lath, Advocate
for the appellant.

R.S.Rai, Sr. Advocate with
Harsh Bunger, Advocate for respondents no.5 and 6.
Vikram Bali, Advocate for respondents no.1 and 7.

ANIL KSHETARPAL, J.

(1) Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by both the courts below, dismissing the suit filed by him for declaration that the residential property is a Joint Hindu Family Coparcenary Property and therefore, he has share in the same by birth, consequently the Will executed by his father bequeathing the property in favour of his wife (mother of the plaintiff) dated 08.03.1976 is illegal and not binding on the rights of the plaintiff.

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

> (i) Whether after division of the property and plaintiff having got his share, the Joint Hindu Family Coparcenary still continues and whether the plaintiff can select one property and claim the same to be Joint Hindu Family Coparcenary while remaining has already been either sold or distributed amongst the family members?
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> (ii) Whether a particular form of attestation of the registered Will is required and it is mandatory that the testator must sign first of all even in a situation when all the witnesses and the testator are present at one point of time?

(3) Gurdas Singh was common ancestor of the parties, who died in the year 1935-36 leaving behind his son Kuldeep Singh. Admittedly,

Kuldeep Singh or Sodhi Kuldeep Singh was a big land owner owning agricultural land in various villages and various residential houses (Havelies). It is admitted case of the plaintiff that he was given 10 to 12 acres of land and a Haveli. Sodhi Kuldeep Singh died in the year 1976. He had left behind a bequest with regard to the property in dispute i.e a residential house in favour of his wife Surinder Kaur dated 08.03.1976. On the basis of the aforesaid registered bequest, the property was mutated in favour of the widow Surinder Kaur, who thereafter executed 3 documents giving the property to her grand sons, one is gift deed dated 19.07.2001, Second Will, which of course has not been proved dated 05.06.1996 and a lease deed dated 24.07.1995. The gift deed is in favour of Tikka Amarjit Singh, her son and grand daughters from Tikka Amarjit Singh. Whereas the Will is in favour of Tikka Amarjit Singh and the lease deed is also in favour of Tikka Amarjit Singh.

(4) Plaintiff as noticed above, filed a suit after a period of 25 years claiming that the Will executed by late Sh. Kuldeep Singh, his father, is not binding on his rights.

(5) Both the courts after examining the evidence have dismissed the suit filed by the plaintiff.

(6) This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below and the record.

(7) Learned counsel appearing for the appellant has basically raised two arguments; (1) that the ancestral nature of the property in dispute is admitted by the witnesses which have been examined by the defendants. He while building his argument thereon has submitted that the admission of the plaintiff with regard to receipt of 10-12 acres of land from Sodhi Kuldeep Singh and a Haveli does not result in severance of status of the plaintiff and Joint Hindu Family Coparcenary continues; (2) He while drawing attention of the court to the statement of the attesting witness Tarlochan Singh, DW5 has stated that Tarlochan Singh as well as other witnesses had signed the Will before the executant Kuldeep Singh had signed the Will. Hence, he submitted that the Will has not been attested in accordance with Section 63 (c) of the Succession Act, 1925. While elaborating, he submitted that the signatures of the testator are required to be attested by the attesting witnesses and once admittedly they had signed before the signatures were affixed by the testator, therefore, the Will is not proved to have been executed in accordance with Section 63(c) of the Succession Act, 1925. He has further submitted that there is a semi-colon which

divides/separates two parts of Section 63(c) and as per the Major Law of Lexicon by P Ramanatha Aiyar, 4th Edition 2010, semi-colon is a grammatical rule which is used to separate two parts of a sentence more distinctly than a comma.Hence, he submitted that Section 63(c) of the Succession Act, 1925 makes its obligatory for the beneficiary to prove that the Will was executed and signed by the testator and the witnesses had attested the Will thereafter.

(8) On the other hand, learned senior counsel appearing for the respondents has pointed out that the plaintiff while appearing in evidence has admitted that Sodhi Kuldeep Singh was a big land owners owning the property in various villages. He submitted that the plaintiff has filed a suit only with regard to the residential property whereas alienations made by Sodhi Kuldeep Singh in his own favour are not being disputed. He further submitted that the suit was filed after a period of 25 years from the date of death of Kuldeep Singh. He further drew attention of the Court to last part of Section 63(c) of the Succession Act, 1925 which provides that no particular form of attestation shall be necessary. He submitted that the act of execution of the Will cannot be reduced to a mathematical/mechanical process with precision. He submitted that while proving the execution of the document, it is substance which has to be seen and not the process which resulted into execution thereof.

(9) This court has analysed the arguments of learned counsels for the parties and proceed to give answer.

(10) As regards first argument of learned counsel for the appellant, it may be noted that once it is not disputed that Sodhi Kuldeep Singh was a big land owner owning various properties in various villages i.e. agricultural land as well as residential constructed properties, it was obligatory on the part of the plaintiff to disclose and give details of all the properties which according to him form part of Joint Hindu Family Coparcenary property. A party cannot be selective in alleging that oneproperty is Joint Hindu Family Coparcenary property whereas the remaining are not. Still further, there is a significant admission of the plaintiff admitting that he was given 10-12 acres of land apart from a residential property. Obvious inference from the aforesaid admission is that Sodhi Kuldeep Singh during his life time divided the property amongst his heirs. It is in that process that he executed the Will in favour of Surinder Kaur dated 08.03.1976. The aforesaid Will is registered. Plaintiff does not challenge the correctness of the Will even after it has been implemented in the

revenue record 25 years ago.Plaintiff has woken up only when Smt. Surinder Kaur had transferred the property in favour of one of his son or his legal heirs. No doubt, some of the witnesses examined by the defendants have admitted that the property is ancestral, however, such admission would not help the plaintiff particularly in view of the facts which have been noticed above.

(11) Accordingly, question No.(i) is answered against the plaintiff-appellant.

(12) As regards question No.(ii), although, in first blush the arguments of learned counsel for the appellant is attractive, however, on close scrutiny, this court finds no substance therein.

(13) It was way back in the year 1925, the procedure for execution of unprivileged Wills was laid down which continues even after country has become independent. The framers of the Act had a vision that how the unprivileged Will is to be executed. The last line as rightly pointed out by learned counsel for the respondents specifies that no particular form of attestation shall be necessary. The requirement of the Act is that the Will must be attested by two witnesses and the attestation must be in the form as provided in the Act. The execution of the Will cannot be a mechanical act through which a particular step has to be taken in that order. The requirement of the Act is that the Will should be attested by the two attesting witnesses who have seen the testator, signed the Will orhave received acknowledgment of the testator to this effect. The statute further envisages a situation when both the attesting witnesses are not present at the same time. Still the Will can be validly executed and attested. It is not necessary that both the attesting witnesses must be present at one point of time. In these circumstances, the argument of learned counsel for the appellant that since the attesting witness Tarlochan Singh has admitted that he has signed first of all and thereafter the second attesting witness signed and in the last the testator signed, in the considered view of this court, is a valid attestation of the Will.

(14) Still further, it may be noticed for the record that in the examination in chief, Tarlochan Singh has stated that the Will was scribed by the deed writer at Anandpur Sahib at the instance of Sodhi Kuldeep Singh (Sodhi Kuldeep Singh signed the same after going through and admitting the contents of the same to be correct in the presence of the attesting witnesses including the deponent). Thereafter, the deponent and Jagdish Raj also signed the said Will being the attesting witnesses of the same and the deed writer also signed the

same. It may be noted that in cross-examination, the aforesaid witness ,no doubt, has reversed the seriatim the attesting witnesses and the testator signed, however it need to be kept in mind that the aforesaid attesting witness was being examined after a period of 34 years. It is too much to expect from Human memory to remember everything with mathematical precision after such a long gap. Still further the Will is a registered Will.

(15) Learned counsel appearing for the appellant has relied upon a Division Bench judgment passed by the High Court of Madhya Pradesh in the case of ***Virendra Singh Pal*** versus ***Kashibai*** [1] in support of his submission that if the attesting witnesses had signed before the executor, the testament shall not be validly attested and therefore, such testament cannot be upheld. This court has gone through the aforesaid Division Bench judgment.

(16) No doubt, the aforesaid Division Bench judgment do hold that if the testament was signed by the attesting witnesses before the testator had signed such attestation of the Will is not proper. The Division Bench relies upon a judgment passed by the Honble Supreme Court in the case of ***Santlal*** versus ***Kamla Prasad***[2]**.** On reading of the judgment passed by the SC in the case of ***Santlal*** (supra) it is apparent that the Hon'ble Supreme Court was dealing with the situation when attestation of a bond was in issue. It had come in evidence that bond was executed in the village on 08.04.1927 and attesting witnesses had signed at the time of execution, however, the bond was registered at Katihar on 12.04.1927 and the witnesses did not travel to Katihar, whereas it has come in evidence that the bond was signed by the executor at Katihar. In such circumstances the court held that the attestation of the bond by the attesting witness was not proper. In the present case, position is different.

(17) As noticed above, all the three i.e. the testator and the attesting witnesses were present at one place at the same time and have put their thumb impressions/signatures on the testament. With greatest respect, the judgment passed by the Division Bench of Madhya Pradesh High Court, while placing reliance on the judgment passed by the Hon'ble Supreme Court to hold that the testator must sign before the attesting witnesses had put their thumb impressions/signatures for

[1] 1998 (4) RCR(Civil), 236
[2] AIR 1951, Supreme Court 477

validity of the Will is not correct interpretation of the provisions of Section 63(c) of the Succession Act, 1925.

(18) In view thereof, this court does not find any ground to interfere with the concurrent findings of fact arrived at by both the courts below.

(19) The regular second appeal is dismissed.

Ritambhra Rishi