120 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-3951-2016 (O&M)
Reserved on 18.08.2025
Pronounced on : 10.11.2025
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Vinod Gupta & ors. ….Appellants

Versus

Saroj Gupta & ors. ….Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

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Present:- Mr. Amit Jain, Senior Advocate with
Mr. Anupam Mathur, Advocate and
Mr. Aryaman Thakur, Advocate
for the appellants.

Mr. Mohit Chaudhary, Advocate
for the respondents.
(Through V.C.).

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PANKAJ JAIN, J.

1 Plaintiffs are in second appeal. For convenience, parties hereinafter are referred to by their original position in the suit, i.e. the appellants as plaintiffs and respondents as defendants.

2 Plaintiffs filed suit seeking decree of declaration claiming 1/4th share in the suit property challenging WILL dated 27.02.2001 executed by Shanti Devi. As per plaintiffs, their father namely Gobind Ram predeceased his mother, Shanti Devi. Shanti Devi wife of Siri Ram died on 11.06.2003 leaving behind three sons and three daughters. She was owner of the properties as mentioned in the plaint (hereinafter referred to as 'the suit

property'). Plaintiffs being grandchildren of Shanti Devi are entitled to succeed to the estate of Shanti Devi and after her death are co-owners in joint possession of the same. The WILL propounded by the defendants dated 27.02.2001 alleged to have been executed by Shanti Devi is a forged and fabricated document.

3 Suit filed by the plaintiffs was contested by the defendants. As per defendants Siri Ram and Shanti Devi had four sons and three daughters. One of their sons namely Gobind Ram, father of the plaintiffs died in 1989. Shanti Devi was residing with defendant No.4-Subhash Gupta and his family and was being looked after by defendant No.1 and 4 and their family members. Out of love and affection Shanti Devi executed WILL dated 27.02.2001 in favour of defendant No.1 *qua* suit property. Suit properties No.2 & 3 have been bequeathed in favour of defendants No.2 & 3. Shanti Devi executed WILL 27.02.2001 in a perfect state of mind and health. The WILL is a validly executed and a registered document. Plaintiffs have no right, title or interest in the estate left by Shanti Devi.

4 The suit filed by the plaintiffs was put to trial by the Court of First Instance by framing the following issues :-

> *"1. Whether the plaintiffs are entitled to a decree for declaration as prayed for? OPP*
>
> *2. Whether the present suit is bad for non-joinder of necessary parties? OPD*
>
> *3. Whether the plaintiffs have no locus-standi and no cause of action in the present suit? OPD*
>
> *4. Whether the plaintiffs are estopped by their own acts, conduct acquiescence, admission, omissions and latches in the present suit? OPD*

5 Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD

6. Whether the suit is barred by limitation? OPD

7. Whether the suit is bad for non-joinder of necessary party? OPD

8. Whether the plaintiffs have not come to the court with clean hands and has suppressed the material facts? OPD

9. Relief."

5 Trial Court while answering issue No.1 held that the defendants successfully proved execution of WILL by Shanti Devi. There is no circumstance that can be held to be suspicious to dislodge the WILL. Plaintiffs though challenged the WILL on the ground of the same being forged and fabricated, however, failed to lead any evidence to prove any forgery or fabrication. The Court of the First Instance accordingly dismissed the suit filed by the plaintiffs.

6 The unsuccessful plaintiffs filed appeal. The Lower Appellate Court has affirmed the findings recorded by the Court of the First Instance.

7 Learned Senior Counsel appearing for the appellants has assailed the findings recorded by the Courts below. He submits that the execution of the WILL in terms of Section 63 of the Indian Succession Act, 1925 (for short 'the 1925 Act') has not been proved. The attesting witnesses DW-6 Sunder Lal, DW-7 Jagdish Prasad and DW-8 Rajbir Singh, Advocate could not withstand the test of cross examination. Their testimonies raised serious contradictions which have gone unanswered. From the conjoint reading of the statement of DW-6 and DW-8, it is evident that their presence at the time of execution of the WILL is not established. Thus, the necessary ingredients of Section 63 of the 1925 Act are missing.

8 Mr. Amit Jain, Senior Advocate further submits that admittedly there was cordial relationship between the family. Thus, there is no reason for Shanti Devi to exclude the plaintiffs from her estate. He submits that exclusion of the natural heirs without any reason itself amounts to suspicion. Defendants, the propounders of the WILL having failed to dispel the same, findings recorded by the Courts below cannot be sustained. Reliance is being placed upon ***Dhani Ram (died) through LRs. & others Vs. Shiv Singh 2023 (4) RCR (Civil) 603, Bharpur Singh & ors. Vs. Shamsher Singh 2009 (1) RCR (Civil) 826*** and ***Joseph Antony Lazarus (Dead) By LRs. Vs. A.J.Francis 2006 (2) RCR (Civil) 570.***

9 *Per contra* counsel for the respondents submits that pure funding of fact has been recorded by the Courts below after appreciating the evidence on record. It stands proved that the WILL was validly executed by Shanti Devi in terms of Section 63 (c) of the 1925 Act. The same has been proved in terms of Section 68 of the Indian Evidence Act, 1872. All the three attesting witnesses to the WILL entered witness box and have successfully proved execution of the WILL. There are no contradictions in the versions spelled out by the three witnesses. Minor infractions are bound to occur in testimony being recorded after 17 years as the witnesses are not required to repeat the incident verbatim.

10 I have heard learned counsel for the parties and have gone through the records of the case.

11 The two issues that have been raised by the learned senior counsel for the appellants in the present *lis* are :-

i. Whether the valid execution of the Will dated 27.02.2001, in terms of Section 63(c) of the 1925 Act, has been proved?

ii. Whether there is any circumstance surrounding the WILL which can be held to be suspicious to dislodge the WILL in question?

12 Section 63 of the 1925 Act reads as under :-

"Section 63. Execution of unprivileged wills.

Every testator, not being a soldier employed in an expedition or engaged in actual warfare, 1[or an airman so employed or engaged,] or a mariner at sea, shall execute his will according to the following rules:--

(a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary."

13 The same has been interpreted by Supreme Court in ***Gopal Krishan Vs. Daulat Ram (2025) 2 SCC 804*** observing as under:-

This extract is taken from Gopal Krishan v. Daulat Ram, (2025) 2 SCC 804 : 2025 SCC OnLine SC 4 at page 810

"14. As seen above, Section 63(c) enumerates five distinct situations:

A is the testator of the will in question. B and C have signed the will. For Band C to qualify as attestors;

Situation 1

Each of them has to have seen A sign the will or put his mark on it;

'OR'

Situation 2

They should have seen some other person, let's say D sign the will in the presence of and on the direction of A;

'OR'

Situation 3

They ought to have received a personal acknowledgment from A to the effect that A had signed the will or has affixed his mark thereon;

With the use of the conjunctive, "and" one further stipulation has been provided:

B, C, D or any other witness is required to sign the will in the presence of A however it is not necessitated that more than one witness be present at the same time.

The statutory language also clarifies that B and C, the attestors, are not required to follow any particular prescribed format.

15. The requisites for proving of a will are well established. They were recently reiterated in a judgment of this Court in Meena Pradhan v. Kamla Pradhan [Meena Pradhan v. Kamla Pradhan, (2023) 9 SCC 734 : (2023) 4 SCC (Civ) 449] . See also Shivakumar v. Sharanabasappa [Shivakumar v. Sharanabasappa, (2021) 11 SCC 277] . The principles as summarised by the former are reproduced as below : (Meena Pradhan case [Meena Pradhan v. Kamla Pradhan, (2023) 9 SCC 734 : (2023) 4 SCC (Civ) 449] , SCC pp. 737-38, para 10)

> *"10. … 10.1. The court has to consider two aspects : firstly, that the will is executed by the testator, and secondly, that it was the last will executed by him;*

10.2. It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.

10.3. A will is required to fulfil all the formalities required under Section 63 of the Succession Act, that is to say:

(a) The testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and the said signature or affixation shall show that it was intended to give effect to the writing as a will;

(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;

(c) Each of the attesting witnesses must have seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of such signatures;

(d) Each of the attesting witnesses shall sign the will in the presence of the testator, however, the presence of all witnesses at the same time is not required;

10.4. For the purpose of proving the execution of the will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;

10.5. The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;

10.6. If one attesting witness can prove the execution of the will, the examination of other attesting witnesses can be dispensed with;

10.7. Where one attesting witness examined to prove the will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;

10.8. Whenever there exists any suspicion as to the execution of the will, it is the responsibility of the propounder to remove all legitimate suspicions

before it can be accepted as the testator's last will. In such cases, the initial onus on the propounder becomes heavier;

10.9. The test of judicial conscience has been evolved for dealing with those cases where the execution of the will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the will while acting on his own free will;

10.10. One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation;

10.11. Suspicious circumstances must be "real, germane and valid" and not merely "the fantasy of the doubting mind [Shivakumar v. Sharanabasappa [Shivakumar v. Sharanabasappa, (2021) 11 SCC 277]]". Whether a particular feature would qualify as "suspicious" would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance, for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit, etc."

xxx xxx xxx xxx xxx xxx

20. The language of Section 63(c) of the Act uses the word 'OR'. It states that each will shall be attested by two or more witnesses who have seen the testator sign or affix his mark on the will 'OR' has seen some other persons sign the will in the presence and by the direction of the testator 'OR' has received a personal acknowledgment from the testator of his signature or mark, etc. What flows therefrom is that the witnesses who have attested the will ought to have seen the testator sign or attest his mark 'OR' have seen some other persons sign the will in the presence of and on the direction of the testator. The judgment relied on by the learned Single Judge in the impugned judgment [Daulat Ram v. Gopal Krishan, 2018 SCC OnLine P&H 8352] i.e. Kanwaljeet Kaur [Kanwaljeet Kaur v. Joginder Singh Badwal, 2016 SCC OnLine P&H 19877] holds that the deposition of the

attesting witness in the said case had not deposed in accordance with Section 63(c) of the Act, where two persons had undoubtedly attested the will, but the aspect of the "direction of the testator" was absent from such deposition.

21. In the considered view of this Court, the learned Single Judge fell in error in arriving at such a finding for the words used in the section, which already stands extracted earlier, read — "or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a…". That being the case, there is no reason why the "or" employed therein, should be read as "and". After all, it is well-settled that one should not read "and" as "or" or vice-versa unless one is obliged to do so by discernible legislative intent. Justice G.P. Singh's treatise, Principles of Statutory Interpretation tells us that the word "or" is normally disjunctive while the word "and" is normally conjunctive. Further, it is equally well-settled as a proposition of law that the ordinary, grammatical meaning displayed by the words of the statute should be given effect to unless the same leads to ambiguity, uncertainty or absurdity. None of these requirements, to read a word is which is normally disjunctive, as conjunctive herein, are present.

22. In the present case the testimony of DW 1 is clear that he had seen the deceased affix his mark on the will. That alone would ensure compliance of Section 63(c). The part of the section that employs the term "direction" would come into play only when the attestor to the will would have to see some other person signing the will. Such signing would explicitly have to be in the presence and upon the direction of the testator.

23. The requirement of law while undoubtedly present, was not of concern in the instant dispute. On that count, we find the High Court to have erred in law. As such the impugned judgment [Daulat Ram v. Gopal Krishan, 2018 SCC OnLine P&H 8352] of the High Court with the particulars as described in para 1 is set aside. The judgment of the first appellate court stands restored. Consequently, the will of Sanjhi Ram is valid and so are the subsequent sale deeds executed by Gopal Krishan."

14 Applying the aforesaid test to the present case the three attesting witnesses namely Sunder Lal, Jagdish Prasad and Rajbir Singh, Advocate appeared as DW-6, DW-7 and DW-8 respectively. DW-6 Sunder Lal testified

that Shanti Devi thumb marked the WILL admitting and acknowledging the same to be correct in his presence and in the presence of other attesting witnesses. She again thumb marked the same before the Sub Registrar. Same is the testimony of DW-7 Jagdish Prasad.

15 Learned senior counsel for the appellants wants the Court to read testimony of Rajbir Singh, Advocate regarding his absence at the time of drafting of the WILL to infer that the requirement of Section 63 (c) of the 1925 Act has not been satisfied. The argument *sans* merit. Even if it is assumed for the sake of argument that when the WILL was brought to Rajbir Singh, Advocate, the same had already been drafted and signed by executant Shanti Devi, the testimony of two other witnesses namely Sunder Lal and Jagdish Prasad satisfies the requirement of Section 63 (c) of the 1925 Act. Not only this, even before the Sub Registrar, Shanti Devi thumb marked the WILL in presence of the three witnesses. They also signed the same as attesting witnesses.

16 Coming on to the question of *"suspicious circumstance*" merely for the reason that the relations between the family members were cordial, it cannot be held that exclusion of appellants is a suspicious circumstance. Executant in her WILL specifically mentioned that she is being looked after by her sons namely Ashok Gupta and Rajender Gupta. For last 20 years she has spent majority of her time with her son Subhash Gupta and his family. Wife of Subhash Gupta, Saroj Gupta has served her the most and has given her regard more than her own mother. Trite it is that the Court cannot go behind the reason recorded by executant. Moreover, execution of WILL is always a departure from the natural succession**.** Once reasons have been assigned to

execute a WILL in favour of a beneficiary, mere exclusion of some of the legal heirs cannot be taken to be abnormal circumstance which can be termed as suspicious to dislodge the WILL. Taking lead from the guiding principles as laid down by Supreme Court in ***Shivakumar and others vs. Sharanabasppa and others, (2021) 11 SCC 277*** and reiterated in ***Kavita Kanwar vs. Mrs. Pamela Mehta and others, 2020 AIR Supreme Court 2614***., it can be held that circumstance is 'suspicious' when it is not normal or is not normally expected in a normal situation or is not expected from a normal person. The law presumes testator to be a man of ordinary prudence. He is believed to have acted as a normal person.

17 In view of above, finding no merits in the present appeal the same is ordered to be dismissed.

(PANKAJ JAIN)
JUDGE

10.11.2025
Pooja Sharma-I

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No