

SUKHWINDER KAUR v. GURNEET KAUR , (2022-1)205 PLR 436

PUNJAB AND HARYHANA HIGH COURT

Before: Mr. Justice Fateh Deep Singh.

SUKHWINDER KAUR – Petitioner,

Versus

GURNEET KAUR and others – Respondents.

CR-2060-2019

(i) Will - Will deposited in the office of the Deputy Commissioner under Section 42 of the Registration Act, 1908 - Not clear as to the nature of the Will and if it was registered or unregistered - The deposit of such Wills under Section 42 of the Registration Act, 1908 comes under Part IX of this Act - Section 43 prescribes with the procedure for deposit of Wills and furthermore is the manner of withdrawal of sealed cover deposited under Section 42 and proceedings on death of depositors, however, such an act does not in any manner, affects the legality and validity of the Will in dispute and which is subject to comprehensive adjudication by the Civil Court and not by such summary proceedings before a Tribunal - Registration Act, 1908 (16 of 1908), Section 42.

[Para 4]

(ii) Will - Deposited under Section 42 of the Registration Act, 1908 - The relevance of deposit of the Wills under the Registration Act has nothing to do with the outcome of the Will in terms of either Section 32/35 of the Evidence Act and at the most can be a relevant fact under the law - Requires that in terms of Section 64 of the Evidence Act, such documents need to be proved by primary evidence and in terms of Section 67 necessitates that the signature or handwriting has to be proved and Section 68 of the Evidence Act necessitates examination of the witness who attested the document for proving execution of such a document - No doubt, the relevant entry in register book though may be public documents and of which certified copies can be furnished in terms of Section 76 of the Evidence Act but no presumption can be drawn in terms of Section 79 of the Evidence Act of such a document purported to be a certified copy of the document - Registration Act, 1908 (16 of 1908), Section 42. [Para 4]

(iii) Land Acquisition - Compensation - Distribution to LRs. - Compensation assessed by the Collector - Order by a Tribunal apportioning the shares of the claimants (legal heirs) is subject to the final outcome of a Civil Court on the legality, validity of the Will, under dispute - National Highways Act, 1956 (48 of 1956).

Mr. Akshay Kumar Goel, for the petitioner. Mr. Chetan Bansal, for the respondents.

Fateh Deep Singh, J. - (25th October, 2021) - Due to outbreak of pandemic COVID-19, the instant case is being taken up for hearing through video conferencing.

2. The brief background of the present litigation as has been highlighted during the course of arguments of the two sides as well as the records are that one-Kirpal Singh s/o Narain Singh, is an erstwhile MLA of PEPSU State was a big landlord and owned land in villages of Loh Simbly, Dharamgarh Dakhli Loh Simbly, Jameetgarh and Naraingarh and after his death on 19.01.1989, surplus land of the deceased was distributed to the peasants. Kirpal Singh had left behind three children from his previous wife, namely, Bachan Kaur, comprising of one son, Paramjeet Singh and two daughters, namely, Amarjit Kaur and Paramjit Kaur. It is not disputed that Bachan Kaur died prior to 1945 and upon her death, Kirpal Singh entered into a wedlock with one, Sukhwinder Kaur out of which, two sons, namely, Karamvir Singh and Karanvir Singh, were born. Kirpal Singh during his lifetime had given his land in shares to his progenies, namely, Paramjit Singh, Karamvir Singh, Karanvir Singh and kept certain lands for himself which was bequeathed in favour of his second wife, Sukhwinder Kaur through Will dated 18.06.1972. The State acquired lands under the National Highways Act, 1956 and regarding which compensation amount totalling to Rs.2,21,88,526/-, was the compensation so assessed by the Collector. Sukhwinder Kaur, second wife of deceased-Kirpal Singh claiming to be his successor on the basis of Will dated 18.06.1972 lay claim to one half share of this acquired property and, thus, in the compensation so awarded. The Will is claimed to be scribed by one, Joginder Singh, deed writer, and witnessed by Raghbir Singh, Munsa Singh, Nambardar which was got deposited in the office of Deputy Registrar, Patiala/Registrar, Patiala, under Section 42 of the Registration Act. Upon death of Kirpal Singh, Sukhwinder Kaur applied for copy of the said Will and upon due process of law, copy of the Will was taken out and after due entry in the records, its copy was given to Sukhwinder Kaur. The dispute is over the claim and counter-claim by the two sides which led to the reference made by the Collector and the matter was entrusted to the Court of learned Additional District Judge exercising the powers of Tribunal.

3. During the course of leading evidence, the Tribunal had passed impugned orders dated 13.03.2019 which are reproduced as below to lay emphasis and which is precisely the subject matter of the present civil revision.

“No additional evidence on behalf of the petitioner is present. Perusal of the record reveals that vide order dated 27.02.2019, this Court has allowed the application for additional evidence filed by the petitioner Sukhwinder Kaur and granted only one opportunity to her to lead her evidence as per her prayer made in the application for additional evidence. However, today no evidence of the petitioner is present. Learned counsel for the petitioner find an application for allowing the applicant to examine Badri Parsad, Junior Assistant (Retd.), attached with Dr. B.C. Gupta, IAS, Retd. However, this Court is of the view that the applicant/petitioner has failed to produce her additional evidence which was allowed to her by this Court as per her prayer, as such no ground is made out to examine said Badri

Parsad, Junior Assistant (Retd), Attached with Dr. B.C. Gupta, IAS, Retd. Rather it appears that petitioner has filed the present application in order to delay the proceedings of the present case and even no plausible explanation has been submitted by the applicant/petitioner for non examination of the witnesses already allowed to be examined by this Court vide order dated 27.02.2019. As such, the instant application stands dismissed and evidence of the petitioner is closed by order of the Court.

Learned counsel for the respondent Guneet Kaur also filed an application for adjournment on the ground that he has filed the revision petition in the Hon'ble High Court whereby challenged the order dated 27.02.2019 passed by this Court and stated that the matter is pending in the Hon'ble High Court for 26.03.2019. Both the parties requested for granting reasonable time to address the arguments as they want to go through the file in question. At their request, adjourned to 27.03.2019 for arguments."

4. Appreciating the submissions, the Court below had earlier vide orders dated 27.02.2019 allowed the prayer of the then applicant, Sukhwinder Kaur (which was subject matter of challenge in connected civil revision bearing No.CR-1763-2019, which has been rendered infructuous and disposed off as such) to enable her to adduce additional evidence and which was subject to the rider that only one opportunity was afforded to her being objector in the land acquisition proceedings to adduce additional evidence which she failed, leading to the passing of the present impugned order. It needs to be highlighted that the reference pertains to the year 2017 and realizing that the proceedings were much delayed by the parties and the conclusion drawn by the Court below was of the opinion that the application was purely to delay the proceedings and there was no sufficient bonafide explanation coming forth as to why the party has failed to lead and complete its additional evidence. Moreover, the only point of estrangement between the parties is over the very factum of Will alleged to have been executed by deceased-Kirpal Singh and which is claimed to be the last Will of the deceased who died on 19.01.1989 and was deposited in the office of the Deputy Commissioner, Patiala under Section 42 of the Registration Act, 1908. It is not clear as to the nature of the Will and if it was registered or unregistered. The deposit of such Wills under Section 42 of the Registration Act, 1908 comes under Part IX of this Act and Section 43 prescribes with the procedure for deposit of Wills and furthermore is the manner of withdrawal of sealed cover deposited under Section 42 and proceedings on death of depositors, however, such an act does not in any manner, affects the legality and validity of the Will in dispute and which is subject to comprehensive adjudication by the Civil Court and not by such summary proceedings before a Tribunal. The relevance of deposit of the Wills under the Registration Act has nothing to do with the outcome of the Will in terms of either Section 32/35 of the Evidence Act and at the most can be a relevant fact under the law. The requirement of law ensures that in terms of Section 64 of the Evidence Act, such documents need to be proved by primary evidence and in terms of Section 67 necessitates that the signature or handwriting has to be proved and Section 68 of the Evidence Act necessitates examination of the witness who attested the document for proving execution of such a document. No doubt, the relevant entry in register book No.3 and 5 though may be public documents and of which certified copies can be furnished in terms of Section 76 of the Evidence Act but no presumption can be drawn in terms of Section 79 of the Evidence Act of such a document purported to be a certified copy of the document. Thus,

what appears to this Court that the parties are trying to battle over a mirage, totally in oblivion to the demands of the law and any such order by a Tribunal apportioning the shares of the claimants is subject to the final outcome of a Civil Court on the legality, validity of the Will, under dispute. Since, adequate opportunity has been granted to the revisionist to lead additional evidence which she failed to do fully aware of the rider put forth by the Court by allowing such application and there being no illegality or perversity brought to the notice of the Court by the petitioner, necessitates that there is no merit in the instant petition which stands dismissed.

R.M.S.

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Petition dismissed.