

Surinder Pal Vs. Harish Kumar

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Court : Punjab and Haryana

Decided On : Nov-21-2002

Reported in : (2003)133PLR567

Judge : V.M. Jain, J.

Acts : [Registration Act, 1908](#) - Sections 42, 43 and 44; ;[Indian Succession Act, 1925](#) - Sections 2

Appeal No. : R.S.A. Nos. 1913 of 1999, 2430 of 2000 and C.O.C.P. No. 265 of 1998

Appellant : Surinder Pal

Respondent : Harish Kumar

Advocate for Def. : Amar Vivek, Adv. for added respondent Pushpa Devi, Adv.,; D.R. Mahajan, Adv. for Respondent Nos. 1, 3

Advocate for Pet/Ap. : R.C. Setia, Senior Adv. and; Anish Setia, Adv.

Disposition : Appeal dismissed

Judgement :

V.M. Jain, J.

1. This judgment shall dispose of three cases, namely RSA No. 1913/1990, Surinder Pal v. Harish Kumar and others; RSA No. 2430 of 2000, Pushpa Devi v. Surinder Pal; and COCP No. 265 of 1998, Pushpa Devi v. Surinder Pal, as all the three cases are inter-connected. In fact, counsel for the parties submitted before me at the Bar that decision of RSA No. 1913 of 1990 would decide RSA No. 2430/2000 and COCP No. 265/1998. Thus, the facts of RSA No. 1913/1990 may be noticed.

2. This regular second appeal, bearing RSA No. 1913/1990, has been filed by Surinder Pal, plaintiff against the judgments and decrees of the courts below, whereby the suit filed by Surinder Pal was dismissed by the trial Court and the appeal filed by him was also dismissed by the learned District Judge.

3. Facts in brief are that Surinder Pal, plaintiff filed a suit for declaration that the plaintiff was owner of the shops, shown as ABCD in the file plan attached on the basis of the Will dated 3.10.1983 executed by Nathu Ram, father of the plaintiff, in his favour. Plaintiff also sought decree for permanent injunction restraining defendants 1 and 2 from realising rent of the shops in dispute from defendants 6 and 7 and also restraining defendants 6 and 7 from paying rent of the said shops to defendants 1 and 2. Plaintiff also sought decree for the recovery of Rs. 295/-, which defendants 1 and 2 had collected as rent of the said shops occupied by defendant No. 6 and for the recovery of Rs. 365/- which had been collected by defendants 1 and 2 from defendant No. 7. It was alleged that Nathu Ram, deceased, father of the plaintiff, was owner of the shops in question and that he died on 19.1.1984. It was alleged that as per his last will dated 3.10.1983, Nathu Ram deceased had bequeathed the property to the plaintiff and defendants 1 to 5, as detailed in para 2 of the plaint. It was alleged that the said Will was the last Will executed by Nathu Ram and that said Will was executed by him of his free will and that by virtue of the said Will, he had cancelled his all previous Wills. It was alleged that defendants 1 and 2 filed ejectment petitions against defendants 6 and 7 for their ejectment before the Rent Controller and had realised Rs. 295/- from defendant No. 6 and Rs. 365/- from defendant No. 7. It was alleged that in fact, plaintiff was owner of these shops, as per the said Will and that defendants 1 and 2 had no right or title in the said shops and they were not competent to realise rent

from defendants 6 and 7.

4. Said suit was contested by the defendants 1 to 5. It was denied that Nathu Ram had executed any will in favour of the plaintiff. On the other hand, it was pleaded that in fact, Nathu Ram had executed Will dated 21.9.1982 in favour of plaintiff and defendants 1 to 5 and that it was the last Will of Nathu Ram and that he had not executed any subsequent Will. It was alleged that the plaintiff had no concern with the shops nor these shops were given to the plaintiff by Nathu Ram deceased by virtue of any Will. It was alleged that defendants 1 to 5, being owners of the said shops were entitled to recover the rent from the deceased. Defendants 6 to 7 (tenants of the shops) in their separate written statement took up the plea that they will make the payment of the rent to the person declared as owner by the court.

5. On the pleadings of the parties, various issues were framed. After hearing both sides, learned trial Court dismissed the suit of the plaintiff, holding that Nathu Ram deceased had validly executed Will dated 21.9.1982 and that the alleged Will dated 3.10.1983 was shrouded with suspicious circumstances and was not validly proved. Resultantly, suit of the plaintiff was dismissed by the trial Court. Appeal filed by the plaintiff was also dismissed by the learned District Judge, upholding the findings of the trial Court. Aggrieved against the same, Surinder Pal, plaintiff filed the present regular second appeal, bearing RSA No. 1913/1990, in the court.

6. I have heard the learned counsel for the parties and have gone through the record carefully.

7. It was submitted before me by the learned counsel for the plaintiff appellant that the courts below had erred in law in rejecting the second Will dated 3.10.1983 executed by Nathu Ram, deceased. It was submitted that the execution of the second Will dated 3.10.1983 was proved on the record, on the statement of attesting witnesses and that at the time of execution of the said Will, Nathu Ram deceased was found to be in sound disposing mind. It was submitted that the grounds given by the courts below while ignoring the second Will were not relevant and would not be sufficient to ignore the second Will dated 3.10.1983. It was submitted that second Will talked of cancelling all previous Wills and was reasonable, inasmuch as by virtue of the second Will, something or the other was

given to all the natural heirs. It was submitted that in fact, courts below had not doubted the execution of the second Will.

8. On the other hand, learned counsel for the defendants submitted before me that while accepting the first Will dated 21.9.1982 and ignoring the second Will dated 3.10.1983, courts below had given various reasons/grounds and that those reasons/grounds were relevant and legal and were sufficient to ignore the second Will dated 3.10.1983. It was submitted that the trial Court found that the first Will was deposited with the Sub Registrar and that in the first Will, reasons were given while excluding the plaintiff, while no reasons were given for executing the second Will. It was also found that the second Will was not scribed by any Document Writer. It was further submitted that while dismissing the appeal, it was found by the learned District Judge that no reasons have been given as to why the Will was not withdrawn from the Sub Registrar nor it was mentioned in the second Will that the relations had become cordial. It was submitted that in fact, with regard to the first Will, plaintiff himself had filed an application dated 30.1.1985 for a copy of the Will on the ground that the same was necessary for distributing the property. It was submitted that if the second Will dated 3.10.1983 had been executed by Nathu Ram, there was no occasion for the plaintiff for moving the application for a copy of the first Will. It was further submitted that in the first Will, reasons were given for ignoring the plaintiff and there was no evidence to show change of heart, which may have necessitated the execution of the second Will.

9. After hearing the learned counsel for the parties and after perusing the record, I find no merit in this appeal, bearing RSA No. 1913/1990 and the same is liable to be dismissed.

10. In the present case, suit was filed by Surinder Pal, plaintiff, on the basis of Will dated 3.10.1983, allegedly executed by Nathu Ram. In the written statement filed by defendants 1 to 5, reliance was placed on the earlier Will dated 21.9.1982, In respect of the subsequent Will dated 3.10.1983, it was alleged by defendants 1 to 5 that Nathu Ram had not executed any such Will. When Surinder Pal, plaintiff filed replication to the written statement of defendants 1 to 5, execution of the earlier Will dated 21.9.1982 was not disputed and it was specifically alleged by the

plaintiff that he was not challenging the Will dated 21.9.1982, but it was not the last Will of the testator and that Will dated 3.10.1983 executed by Nathu Ram was the last Will. Thus from the pleadings of the parties, the due execution of the Will dated 21.9.1982 by Nathu Ram stands fully proved on the record. It is not disputed before me that the Will dated 21.9.1982, Ex.D10 along with site plan Ex.D5 was deposited by Nathu Ram, deceased with the Sub Registrar, as required under Section 42 of the [Registration Act, 1908](#). By virtue of the said Will, Nathu Ram, deceased had bequeathed his property to his legal heirs in different proportions, giving reasons for giving property to each of his legal heirs. In the said Will, Nathu Ram deceased had also given reasons for giving lesser property to Surinder Pal, plaintiff, namely that he had married against his wishes and that his wife often insults him and they used to harass him. After the Will Ex.D10 was deposited with the Sub Registrar, as required under Section 42 of the [Registration Act, 1908](#), Nathu Ram, deceased himself filed a 'Codicil', Ex. D9/I dated 6.2.1993, in respect of Amit Lal, one of the beneficiaries, who had died issueless and in the said 'Codicil', it was mentioned that share of Amrit Lal shall go to Harish Kumar and Sunit Kumar. This document was proved by DW9 Vijay Kumar, who stated that the said document was scribed by his father, Nathu Ram deceased in his presence and in the presence of his other brother Mu-rari Lal. DW2 Om Parkash, Senior Clerk in the D.C. Office, deposed that from 1982 to July 1985 he was working as Head Registration Clerk. He state that application mark 'A' was made by one Surinder Pal Saini, to the Registrar, Gurdaspur for obtaining certified copy of the Will. He further deposed that endorsement Ex. D1 on the application mark 'A' was in his hand and that on the basis of the said application, Surinder Pal obtained a copy of the Will. He further deposed that application mark 'B' was presented by Murari Lal for opening of the Will executed by Nathu Ram and that the endorsement on the said application Ex.D2 and that the statements of Murari Lal and Mittar Man Singh, Ex.D2 and D3 respectively were recorded by him and that the Registrar had passed order Ex.D4 and that the sealed Will was opened at the instance of Murari Lal on 17.2.1984. Mark A is the application allegedly made by Surinder Pal, Plaintiff for obtaining certified copy of the Will of his father Nathu Ram. It was alleged therein that the copy of Will was necessary for distribution of the property between the legal heirs. It was also mentioned therein that the Will

was opened on 23.2.1984. Exhibit D1 is the endorsement of the Registrar and the Head Registration Clerk, bearing the dates 30.1.1985 and 12.2.1985. Mark 'B' it the copy of the application moved by Murari Lal, that the Will was deposited on 29.9.1982 by his father Nathu Ram and that he had expired on 19.1.1984 and that the said Will may be opened and a copy of the same be given to him. Exhibits D2 and D3 are the statements of Murari Lal and Mittar Man Singh in this regard and Ex.D4 is the order passed by the Registrar, Gurdaspur for opening the Will and supply a copy thereof. Exhibit D5 is the site plan. DW4 Mittar Man Singh deposed that he knew Nathu Ram deceased and that a Will was deposited by Nathu Ram with the Registrar Gurdaspur and stated that he had identified Nathu Ram before the Registrar at the time when the Will was deposited. He stated that on the application dated 22.9.1982, the identification of Nathu Ram was made by him in the form of Ex.D6 on that application. He further stated that Murari son of Nathu Ram had made application to the Registrar for the opening of the Will and even at that time his (Mittar Man Singh) statement was recorded and the same was Ex.D3. Exhibit D6 is the endorsement made by Mittar Man Singh on the application moved by Nathu Ram deceased dated 22.9.1982 for depositing the Will in safe custody. Exhibit D11 is the order dated 29.9.1982 passed by the Registrar for the deposit of the said Will. Exhibits D9 and D10 are the two sets of the Will dated 21.9.1982, out of which one was deposited with the Registrar and was later on opened in the presence of Murari Lal, who was identified by Mittar Man Singh. As referred to above, Ex.DW9/A (Exhibit 9/1) is the 'Codicil' dated 6.2.1983 submitted by Nathu Ram, deceased.

11. Section 42 of the [Registration Act, 1908](#) provides for the deposit of the Will with the Registrar in a sealed cover. Section 43 of the said Act provides for the procedure. The Registrar after satisfying himself is required to place and retain the sealed cover with him. Section 44 of the said Act provides that the testator who had deposited the Will in a sealed cover, if he wishes to withdraw it, is competent to apply to the Registrar and after satisfying himself, Registrar shall deliver the sealed confer to him. Section 45 of the said Act provides that if on the death of testator, who had deposited the Will in sealed cover under Section 42, an application is made to the Registrar to open the same, on being satisfied that the testator is dead, the Registrar shall in the presence of the applicant open the

sealed cover and cause the contents thereof to be kept in his book No. 3 and thereafter the Registrar shall redeposit the original Will. Section 2 of the [Indian Succession Act, 1925](#) defines 'Codicil', to mean an instrument made in relation to a Will and explaining, altering or adding to its dispositions, and shall be deemed to form part of the Will.

12. While considering the question regarding legality of the subsequent Will dated 3.10.1983, Ex.D1, it was found by the learned trial Court that in the Will Ex.D10, Nathu Ram deceased had given his properties to his all legal heirs and had deposited the same with the Registrar. It was also found that in the said Will Nathu Ram deceased had given detailed reasoning for giving property to each of his legal heirs, including the reasons for giving lesser property to Surinder Pal. It was found that Nathu Ram had stated in the said Will that Surinder Kumar had married against his wishes and that his wife often insults him and they were trying their to harass him. It was found that inspite of that Nathu Ram had given certain portion of his property to Surinder Pal, plaintiff. It was found that since the execution of the earlier Will dated 21.9.1982 was admitted by the plaintiff, there should have been some reasons for Nathu Ram deceased which compelled him to cancel the earlier Will and to execute the subsequent Will dated 3.10.1983, Ex.P1. It was found that nothing had been mentioned in the said Will as to what was the necessity to execute this document. It was also found that the fact that this is a suspicious circumstances becomes evident when the scribe and Attesting witnesses are from other village. It was found that Sant Singh, PW1 is a resident of Village Bakathpura, at a distance of 12 Kilometers from Gurdaspur and he admitted that Nathu Ram, deceased had never come to his village during his life time. He had stated two days before the execution of this Will, a message was sent to him by Nathu Ram to come to Gurdaspur, but he did not know the particulars of the person who brought that message and he also did not know the other attesting witness namely Puran Chand. He had neither attended the last rites of Nathu Ram, deceased nor had attended marriages of children of Nathu Ram. It was found that PW1 Sant Singh, was a stranger to Nathu Ram and under these circumstances, it was not known as to how Nathu Ram had selected him as an attesting witness. It was further found by the trial Court that similarly, Puran Chand, the other attesting witness, had admitted that the other witness had

already attested the Will before his arrival at the scene and he also did not know his relations with Nathu Ram on the basis of which he selected him as one of the attesting witnesses. It was found that in fact he was also a stranger to the family of Nathu Ram. It was also found by the trial court that PW2 Sukhwant Singh, alleged scribe of the Will, was not a Deed Writer and had not written any paper before writing the Will Ex.P1. It was found that all the witness had admitted that the Will was written at Gurdaspur but no explanation had come forward as to why it was not scribed by a regular Deed Writer. It was also found that Sukhwant Singh, Scribe had given the name of Sain Dass, one of the attesting witnesses, but no person of the name of Sain Dass was a witness to the said document. It was held that all this showed that document Ex.P1 was not a genuine Will of Nathu Ram deceased and was scribed after his death. Trial Court found that Will Ex.P1 was shrouded with suspicious circumstances and the plaintiff and witnesses had failed to dispel these suspicious circumstances from the mind of the court. It was also found that DW9 Vijay Kumar, defendant had given a convincing statement about the execution of the Will Ex.D10 by his father Nathu Ram deceased. After considering entire evidence, trial Court found that Nathu Ram had not executed Will Ex.P1 dated 3.10.1983, whereas he had executed the Will dated 21.9.1982.

13. Learned District Judge in appeal also found that the plaintiff had failed to prove the execution of the Will dated 3.10.1983. It was found by the learned District Judge that Nathu Ram deceased had executed Will Ex.D9 and had deposited the same with the Registrar in a sealed cover, as required under Section 42 of the Registration Act and was never withdrawn by the testator and it was opened and registered only on 17.10.1984, after the death of testator on 19.1.1984. It was found that a reading of the Will Ex.D9 dated 21.9.1982 would show that the testator was not happy with the plaintiff and had expressed his unhappiness over his behaviour and conduct and that he never wanted to give anything to him out of his property but taking pity to his children, he had given some property for residential purposes only. The shops in question were not given to plaintiff but the same were given to defendants 1 and 2. It was found that the plaintiff was required to dispel the suspicious circumstances as to why the testator had not thought of withdrawing the earlier Will from the office of Registrar (as required under Section 44 of the Registration Act). It was found that the testator was fully aware of the

consequences, of depositing the Will with the Registrar, which was not so common with the people in this part of the country. It was found that the testator got the Will Ex.D9 scribed from a regular Deed Writer namely Darshan Singh and deposited the same with the Registrar in a sealed cover, It was found that if the testator had changed his mind and wanted to execute a fresh Will, he could go to the Deed Writer (for scribing fresh Will) and to the Registrar (for withdrawing the earlier. Will and depositing the later Will). It was found that if the testator had changed his mind, he was required to withdraw the sealed cover containing earlier Will from the office of Registrar. It was also found by the learned District Judge that in the earlier Will (execution of which is not challenged), it was mentioned by the testator that he was not happy with the plaintiff and if the testator had changed his mind and wanted to give something more to the plaintiff some reason should have been mentioned in the later Will. However, in the disputed Will, there was no mention of this fact that the relations between the testator and plaintiff had become cordial after the execution of the earlier Will which had necessitated the execution of a fresh Will. It was found that the plaintiff was required to dispel all the suspicious circumstances surrounding the later Will and in the present case, plaintiff had miserably failed to do so.

14. After hearing the counsel for the parties and perusing the entire evidence and keeping in view the findings recorded by the courts below, in my opinion, there is absolutely no occasion to take a different view, with regard to the subsequent Will dated 3.10.1983, different from the view taken by the courts below. In addition to the points taken by the courts below, for ignoring Will Ex.PI dated 3.10.1983, it may also be mentioned here that how Vijay Kumar, defendant appeared in the witness box as DW9 and stated that Surinder plaintiff had also applied to the Joint Registrar for obtaining copy of the Will deposited by his father, this witness was not cross examined in this regard on behalf of the plaintiff. This testimony of DW9 defendant that the plaintiff had applied to the Joint Registrar for obtaining copy of the Will deposited by his father has gone un rebutted. In the light of the statement of DW9 Vijay Kumar, defendant, testimony of DW2 Om Parkash, Senior Clerk in the office of D.C. Gurdaspur, assumes importance when he stated that Surinder Pal, plaintiff had moved application Mark 'A' to the Registrar, Gurdaspur for getting certified copy of the will and that he (Om Parkash, DW) had made endorsement

Ex.D1 on the application mark 'A' and he stated that Surinder Pal, plaintiff and obtained copy of the will on the basis of said application. Merely because DW2, Om Parkash, Senior Clerk did not know Surinder Pal (who had applied for the copy) personally, in my opinion, would be of no consequence, in view of the fact that specific statement made by DW9 Vijay Kumar, defendant that Surinder, plaintiff had also applied to the Joint Registrar for obtaining copy of the Will deposited by his father, had gone unrebutted and was not challenged during cross examination. As referred to above, from a perusal of the application mark 'A' moved by Surinder pal, plaintiff to the Registrar for obtaining copy of the Will of his father, Nathu Ram, it would be clear that the said copy of the Will was required for the purpose of distribution of property between the legal heirs. That being so, it would be clear that by the time Surinder Pal plaintiff moved said application on 30.1.1985 before the Registrar, the Will Ex.P1 dated 3.10.1983 had not seen light of the day and apparently said Will was created subsequent thereto, when it was found by Surinder Pal, plaintiff that except a small portion he had not been given anything by his father Nathu Ram deceased. In my opinion, this would also create a doubt, with regard to the genuineness of the Will dated 3.10.1983, Ex.P1, propounded by the plaintiff, to claim his ownership in respect of two shops. It may also be mentioned here that in the grounds of appeal, before the District Judge, it was alleged on behalf of Surinder Pal, Plaintiff that one of the grounds on which the trial Court had held the Will Ex.PI as suspicious was that the plaintiff appellant had made an application on 12.2.1985 (wrongly typed as 12.2.1988) to obtain a copy of the earlier Will executed by Nathu ,Ram deceased. It was alleged that in no way this application or the act of the plaintiff can be termed as suspicious. It my opinion, this would show that plaintiff appellant had impliedly admitted having moved the application dated 12.2.1985 before the Registrar for obtaining a copy of the said Will by moving the application mark 'A'. As referred to above, as per the said application, the plaintiff wanted a copy of the said Will for the purpose of distribution of property between the legal heirs. If Nathu Ram deceased had executed subsequent Will, there was no occasion for the plaintiff to have applied for a copy of the earlier Will for the purpose of distribution of property. Even in the grounds of appeal filed on behalf of the plaintiff appellant, in the present regular second appeal, it has nowhere been alleged that in fact plaintiff appellant had not

moved application mark 'A' before the Registrar for obtaining a copy of the earlier Will dated 21.9.1982. Under these circumstances, in my opinion, it stands proved on the record that the plaintiff had moved application mark 'A' before the Registrar.

15. In view of my detailed discussion above, it could not be said that the disputed will dated 3.10.1983 was a reasonable Will giving something or the other to all the legal heirs or that it was a valid will. It also could not be said that the execution of the will dated 3.10.1983, allegedly executed by Nathu ram deceased was proved on the record. In my opinion, courts below had rightly ignored will dated 3.10.1983 and had rightly placed reliance on the Will dated 21.9.1982, Exhibits D9 and D10. Accordingly, I uphold the findings of the courts below on issues No. 1 and 2.

16. So far as RSA No. 2430 of 2000 is concerned, it arises out of a suit filed by Smt. Pushpa Devi against Surinder Pal, defendant. In the said suit Smt. Pushpa Devi sought injunction restraining Surinder Pal from interfering in any manner in the physical possession of Pushpa Devi in respect to property in dispute. It was alleged by Pushpa Devi that she had purchased the suit property from Harish Kumar, vide sale deed dated 8.5.1991. Said suit was contested by Surinder Pal, alleging therein that dispute was already pending with Harish Kumar etc., in respect of property in dispute and that the said suit was hit by principle of lis pendens. After hearing both sides, trial Court dismissed suit of the plaintiff Smt. Pushpa Devi and the appeal filed by her was also dismissed by the learned Additional District Judge, upholding the findings of the trial Court holding that the same was hit by principle of lis pendens. At the time when this appeal bearing RSA No. 2430/2000 came up for motion hearing, initially notice of motion was issued and later on it was admitted on 27.2.2001 with the direction that this appeal shall be tagged with RSA No. 1913 of 1990, being connected appeal. As referred to above, counsel for the parties had submitted before me during the course of arguments that decision of present appeal, bearing RSA No. 2430/2000, shall depend on the decision in , RSA No. 1913/1990. In my opinion, since the appeal bearing RSA No. 1913/1990 filed by Surinder Pal against Harish Kumar etc. is liable to be dismissed, in my opinion, present appeal bearing RSA No. 2430/2000 has to be allowed, considering the substantial question involved in this appeal being as to whether the plaintiff appellant Smt. Pushpa Devi could be non-suited

merely because she had purchased the property from Harish Kumar during the pendency of the earlier litigation between Surinder Pal and Harish Kumar. In my opinion, earlier litigation having ended against Surinder Pal, suit filed by Pushpa Devi could not be dismissed only on the ground that the sale transaction between Harish Kumar and Pushpa Devi was hit by lis pendens. Hence the appeal filed by Pushpa Devi is liable to be allowed.

17. With regard to COCP No. 265 of 1998, the said petition had been filed by Smt. Pushpa Devi against Surinder Pal for initiating contempt proceedings against him for having flouted order dated 6.8.1997 passed by this court, in CM No. 373-C of 1997 in RSA No. 1913/1990. Allegations made by the petitioner Smt. Pushpa Devi have been denied by the respondent namely Surinder Pal in the written statement filed by him. After hearing the counsel for the parties and after pursuing the record, I do not deem it proper to proceed with the contempt proceedings against Surinder Pal, respondent, on the facts and circumstances of the present case. In my opinion, contempt petition is liable to be dismissed.

For the reasons recorded above, the appeal bearing RSA No. 1913/1990 is dismissed with no order as to costs. Contempt petition bearing COCP No. 265/1998 is also dismissed. However, the appeal bearing SA No. 2430/2000 is allowed and the judgments and decrees of the plaintiff appellant Smt. Pushpa Devi is decreed with no order as to costs.