

**Yashpal Vs. Smt. Roshani Devi and ors.**

**Yashpal Vs. Smt. Roshani Devi and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/918413](http://sooperkanoon.com/918413)

**Court :** Himachal Pradesh

**Decided On :** Apr-27-2011

**Judge :** Sanjay Karol, J.

**Acts :** The Indian Succession Act - Section 63

**Appeal No. :** R.S.A. No. 182 of 2001

**Appellant :** Yashpal

**Respondent :** Smt. Roshani Devi and ors.

**Advocate for Def. :** Mr. Shrawan Dogra, Adv.

**Advocate for Pet/Ap. :** Mr.Kulbhushan Khajuria, Adv.

**Judgement :**

1. This Regular Second Appeal was admitted against the current findings of fact recorded by the Courts below, on the following Substantial question of law:-

1. Whether the Courts below have misread and misinterpreted the oral and documentary evidence on record to hold the Will in question shrouded by suspicious circumstances, though it is proved to be executed under Section 63 of the Indian Succession Act and is a registered Will.

2.Yash Pal (plaintiff) on the basis of registered Will Ext.PW-2/A filed suit for possession and declaration with respect to suit property against Smt. Roshani

Devi, Smt. Byasan Devi, Miss Veena Devi and Smt. Rattni Devi, defendants No.1 to 4, respectively. During the pendency of suit, Smt. Byasan Devi conceded to the case of the plaintiff and accordingly suit was partly decreed to the extent of 1/3rd share in the suit property. The remaining defendants contested the suit, inter alia, on the ground that the Will propounded by the plaintiff was fictitious, not validly executed in accordance with the provisions of Indian Succession Act and shrouded by suspicious circumstances.

3. Based on the pleadings of the parties, the trial Court framed the following issues:-

1. Whether Sh. Prabhu alias Mangtu has executed a legal and valid will in favour of plaintiff as alleged? OPP
  2. Whether the suit is not maintainable? OPD
  3. Whether the suit is bad for mis-joinder and non-joinder of necessary parties as alleged? OPD.
  4. Whether the suit is not properly valued as alleged? OPD.
  5. Whether the plaintiff is estopped to file the suit as alleged? OPD.
  6. Whether the suit is barred by limitation as alleged? OPD.
  7. Whether the defendant No.3 executed gift deed dated 2.12.1991 in favour of defendant No.4. If so, to what effect? OPD.
4. Except to the extent of the claim conceded by one of the defendants the suit stands dismissed in terms of judgment and decree dated 2.2.1993 passed by Sub Judge, Ist Class, Ghumarwin, District Bilaspur, H.P., in Case No.193-1 of 1987, titled as Yashpal vs. Smt. Roshani Devi and others.
5. Aggrieved of the same, Yashpal preferred an appeal before the District Judge, Bilaspur, which also stand dismissed in terms of judgment and decree dated 2.12.2000 passed in Civil Appeal No.37 of 1993, titled as Yashpal vs. Smt. Roshani Devi and others.

6. Learned counsel for the appellant submits that he has no instructions from his client. Be that as it may be, the fact of the matter is that I find no infirmity in the impugned judgment, which otherwise is well reasoned and based on the material produced by the parties on record. There is neither any perversity nor any irregularity/illegality. The material on record has been considered in its entirety and properly appreciated. While upholding the findings in the judgment passed by the trial Court, the first Appellate Court has assigned the following reasons:-

**“11. Adverting to the evidence aforesaid on record, which has been led by the plaintiff in support of the execution of the will, in question, it may be stated that the said evidence does not satisfy the requirements aforesaid of Section 63 of the Indian Succession Act because there is no specific and clear cut evidence on record which may go to show that the testator had thumb marked the will in the presence of the marginal witnesses and the marginal witnesses had signed the will in presence of the testator. Further there is no endorsement on the will which may go to show that the same had been read over to the testator and he had thumb marked the same in the presence of the witnesses and the witnesses had signed in the presence of the testator. No doubt, the will is a registered one, but, registration of will cannot be taken to mean the will is a valid one. Apart from this, the will, in question, is shrouded by suspicious circumstances. The first suspicious circumstance is that the will, in question, contains wrong recitals. It is mentioned in the will that all the three daughters of the testator Shri Prabhu Ram had been married.**

**However, the evidence on record would go to show that at the time of execution of the will, in question, only one daughter, namely, Smt. Roshani Devi, respondent No.1 had been married and the remaining two daughters were unmarked. Therefore, the said recital with respect to the marriage**

of the daughters of the testator is wrong. The second circumstance is with respect to the rendering of services by the plaintiff. The evidence on record would go to show that the plaintiff is son of the nephew of the testator and the plaintiff was about six years old at the time of execution of the said will. Evidently, it cannot be believed that a boy of six years of age could have rendered services to the testator. The third circumstance is that the will, in question, is unnatural one. Admittedly, on the date of execution of the will, in question, the testator had three daughters out of which one was married and remaining two were unmarried and the youngest daughter was about 9 years old. The evidence on record would go to show that the wife of the testator had died before the date of execution of the will, in question. Therefore, under these circumstances, it cannot be believed that the testator would have executed the will, in question, in favour of the plaintiff in the presence of his minor daughters; especially, without making any provision for their maintenance in the will, in question.”

7. Having perused the entire record, I find that the findings recorded by the District Judge are totally borne out from the record and no ground for interference is made out. I am of the considered view that no question of law much less a substantial question of law arises for consideration at all. The appeal is accordingly dismissed. There shall be no order as to costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**