

## **Bhagwan Kaur vs Kartar Kaur on 28 April, 1994**

**Equivalent citations: 1994 SCC (5) 135, AIRONLINE 1994 SC 629**

**Author: M.M. Punchhi**

**Bench: M.M. Punchhi, S.C. Agrawal, B.P. Jeevan Reddy**

PETITIONER:

BHAGWAN KAUR

Vs.

RESPONDENT:

KARTAR KAUR

DATE OF JUDGMENT 28/04/1994

BENCH:

PUNCHHI, M.M.

BENCH:

PUNCHHI, M.M.

AGRAWAL, S.C. (J)

JEEVAN REDDY, B.P. (J)

CITATION:

1994 SCC (5) 135

ACT:

HEADNOTE:

JUDGMENT:

### **ORDER**

1. This appeal by special leave is directed against the judgment and decree passed by the Punjab and Haryana High Court in Regular Second Appeal No. 1956 of 1985.

2. The dispute relates to a registered will dated 30-3-1977. The contestants are the appellant (now dead and represented by legal representatives) named Kartar Kaur, the widow of Bachan Singh testator on the one side and on the other Bhagwan Kaur, the second widow of Bachan Singh and Ranjit Singh the legatee of the will who is the brother's son of Bhagwan Kaur. On the death of

Bachan Singh the appellant filed a suit for declaration and in the alternative a suit for joint possession in relation to the suit properties on the plea that she was an heir of Bachan Singh and entitled to succeed to his estate to the extent of one-half. This is insofar as Bachan Singh's properties were concerned. Declaration was also sought to a smaller extent relating to those properties in which she was joint owner with the co-

widow. This part, though has been involved in the suit, is conceded by learned counsel for the respondents to be outside the scope of the decree of the High Court. The concession is recorded.

3.The suit was resisted by the co-widow, Bhagwan Kaur and the legatee by projecting a registered will dated 30-3-1977 pleading that the entire estate of Bachan Singh vested in the legatee Ranjit Singh. The trial court went into the matter and decided against the due execution of the will, and gave the declaration to the appellant. The first appellate court confirmed the finding of the trial court. The High Court, however, on re- examining the evidence came to the conclusion that due execution of the will was proved and since there was nothing suggested as to the validity of the will, it came to the conclusion that the estate of Bachan Singh lawfully passed to Ranjit Singh, the legatee. It is against this judgment and decree that the present appeal has been filed.

4.Decision on due execution of will, strictly speaking, is not primarily arriving at a finding of fact, as it has an admixture of law due to the specific requirements of Section 63 of the Indian Succession Act, 1925 towards due execution. A method is proceeded (sic provided) in which a will shall be duly executed. It inter alia provides that 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. In the matter of proof of a will Section 68 of the Indian Evidence Act, 1872 enjoins that if a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence. Proviso thereto states that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908, unless its execution by the person by whom it purports to have been executed is specifically denied.

5.It is required to be seen as to whether the requirements of Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act had been satisfied when the High Court took the exercise of examining the evidence and interfered in the finding. The approach of the High Court one may say, may not be wholly unjustified, but regrettably we have to say that the result achieved was wholly undesirable. This is evident from the judgment itself where extracts of evidence have been reproduced. In the first instance, Nachhattar Singh (DW 1) one of the attesting witnesses when examined in court stated in his examination-in-chief to the effect :

"The contents of the will were read over to Bachan Singh and he after admitting the same to be correct, put his signature in the presence of Jagtar Singh and me. I and Jagtar Singh put our signatures thereon in his presence."

While in cross-examination he went back on that plea and stated "The will, Exh. D-1 was scribed before my arrival and I put my signatures thereon at the instance of the defendant (the legatee). Neither Bachan Singh nor the defendant and any other witness had put his signature on Exh. D-1. I had also not put my signature on Exh. D-1 in the presence of Bachan Singh."

6.As is apparent he contradicted himself towards due execution of the will. The other witness Jagtar Singh, Lambardar (DW 2) stated in his examination-in-chief to the effect :

"The contents of the will were read over to Bachan Singh and who after admitting the same to be correct put his signatures in the presence of Nachhattar Singh and me and I and Nachhattar Singh had put our signatures in his presence."

In cross-examination, however, he turned turtle and said "The will was already got scribed before my arrival. Bachan Singh and other witness had already put their signatures on Exh. D/1 before my arrival. I had put my signatures on reaching there."

7.This witness too contradicted his earlier statement. Should the evidence of these two witnesses be discarded, as it is capable of being discarded, then due execution of the will cannot be said to have been proved. The endorsement Ex. D-1/A made by the Sub-Registrar, Gyan Chand Jain, DW 3 to the effect that the endorsement D-1/A was made in his presence and in the presence of the witnesses and that the witnesses signed the said endorsement in the presence of Bachan Singh does not satisfy the requirements of Section 63 of the Indian Succession Act and does not reach up to the level of proof as required under Section 68 of the Indian Evidence Act. Therefore, the mere registration of will said to have been executed by Bachan Singh is of no consequence.

8.The High Court took support for its view from the fact that the testator was a clerk of a lawyer, presumably knowing the intricacies of law, and that since he died about 4 years later that left no room for suspicion to the due execution of the will. The High Court, however, ignored two important suspicious circumstances those being-

(i) the legatee took active part in the execution of the will; and

(ii) no provision was made in the will for the two widows of the testator, when one of whom, the appellant, was not even related to the legatee.

The pious wish expressed by the High Court that it was expected of the legatee to look after the welfare of the appellant was, according to us, of no consequence. Had these two suspicious circumstances been kept in mind by the High Court, we have no doubt that the finding of fact disturbed by the High Court would not have occasioned in the totality of circumstances. Thus, we have no option, but to upset the decision of the High Court.

9. For the foregoing reasons, this appeal is allowed, the judgment and decree of the High Court is set aside and that of the trial court as affirmed by the first appellate court would stand restored with costs.