A STATE OF HARYANA

v.

HARNAM SINGH (DEAD) THR. LRS. & ORS.

(Civil Appeal No. 6825 of 2008)

B NOVEMBER 25, 2021

[L. NAGESWARA RAO AND ANIRUDDHA BOSE, JJ.]

Succession Act, 1925: s.63 – Exection of unpriveleged Wills – Proving of Will u/s.63 – Held: Requirement of s. 63 cannot be C *fulfilled by mechanical compliance of the stipulations therein – Evidence of meeting the requirement of the said provision must be reliable – On facts, person claiming to be scribe of the Will as well as the two attesting witnesses deposed to support the case of the original plaintiff, but both the trial court and the first appellate court disbelieved their testimony – Thumb impression of testator* D *was not matched – Contradiction in the evidences of attesting witnesses as regards the place of execution – Fact finding courts did not find such evidence to be reliable – Thus, the High Court erred in formulating the question of law on the basis that the Will was proved in terms of s.63 – In fact, both the fact finding courts* E *found that the Will was not proved – High Court formulated the question of law on question of fact only – It went into a detailed factual enquiry to come to its finding, though such enquiry was not permissible while hearing an appeal u/s.100 CPC – Thus, there is no perversity in the judgment passed by the trial court and the first appellate court – Judgment passed by the High Court is set aside.*

F **Allowing the appeal, the Court**

HELD: 1.1 The opinion of the High Court was that the Will was proved in terms of Section 63 of the Succession Act, 1925 and while coming to such finding the High Court went deep into factual inquiry. It is evident from the judgment under appeal that G **the formulation of the question of law was on question of fact only. Moreover, in formulating the question on the basis of which the Appeal was admitted, the High Court proceeded on the basis that the Will was proved in terms of Section 63 of the Act. The person claiming to be scribe of the Will as well as the two attesting**

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witnesses deposed to support the case of the original plaintiff, but both the Trial Court and the First Appellate Court disbelieved their testimony. The thumb impression of testator was not matched. There was contradiction in the evidences of attesting witnesses as regards the place of execution. The requirement of Section 63 of the Act cannot be said to have been fulfilled by mechanical compliance of the stipulations therein. Evidence of meeting the requirement of the said provision must be reliable. The fact finding courts did not find such evidence to be reliable. [Para 7][525-F-H; 526-A-B]

1.2 The High Court erred in formulating the question of law on the basis that the Will was proved in terms of Section 63 of the Act. In fact, both the fact finding Courts-the trial court and the first appellate court, had found that the Will was not proved. The evidences of the witnesses were disbelieved as they failed to inspire the confidence of fact finding courts. The High Court, however, went into a detailed factual enquiry to come to its finding. An enquiry of such nature was impermissible while hearing an appeal under Section 100 CPC. The finding of the trial court and the first appellate court ought not to have been interfered with by the High Court. There is no perversity in the judgment of the first two courts of facts. [Paras 7, 8][526-G-H; 527-A-B]

1.3 The question of inter-se dispute between the State of Haryana and the defendant nos. 2 to 4-legal heirs of the testator cannot be resolved in this appeal as fresh evidence would have to be led to adjudicate that question and this would create a new dispute altogether that was not addressed previously in the suit from which the present appeal arises. There is no clear evidence as to whether the original defendant nos. 2 to 4 had been served summons or notice of the proceeding at the stage of trial. It would be open to the individuals claiming to be the legal representatives of late testator to question the claim of the State of Haryana over the subject-land under the doctrine of escheat. [Para 9][527-D-E]

CIVIL APPELLATE JURISDICTION: Civil Appeal No.6825 of 2008.

A From the Judgment and Order dated 05.05.2008 of the High Court of Judicature at Punjab and Haryana at Chandigarh in R.S.A. No.1820 of 1982.

Dr. Monika Gusain, Adv. for the Appellant.

B Abhaya K. Behera, Sr. Adv., Saurabh Tewari, Ashok K. Mahajan, J. P. Singh, Amit Sahni, Bano Deswal, Ms. Reema Chauhan, R. C. Kaushik, Advs. for the Respondents.

The Judgment of the Court was delivered by

ANIRUDDHA BOSE, J.

C 1. The appellant before us is the State of Haryana assailing the legality of a judgment delivered by the High Court for the State of Punjab and Haryana at Chandigarh on 5th May, 2008. In the judgment under appeal, the High Court set aside the concurrent finding of the Trial Court and the First Appellate Court on the point of genuinity of a Will of one D Kishan Singh by which agricultural land comprising of 52 kanals and 3 marlas in the district of Kurukshetra in Haryana stood bequeathed to one Harnam Singh (since deceased). The Will [the English translation of which has been annexed to the counter-affidavit of one Naseeb Singh, filed as and on behalf of the legal heirs of Harnam Singh (deceased)] does not specify the area or description of the land. The disposition in E the said instrument is of "all the land which is my self-acquired and other movable and immovable properties located at Patti Dogran Kaithal".

2. On the death of Kishan Singh on 15th January, 1975 (the date as reflected in the High Court judgment), dispute arose over mutation of the subject-land as the original plaintiff Harnam Singh (deceased) claimed F the right over the subject-land on the basis of the Will of late Kishan Singh, executed on 10th December, 1974 (the date as reflected in the High Court judgment). He claimed to be the legatee under the said Will. Admittedly, Harnam Singh (deceased) was not related to late Kishan Singh by blood. The former was tilling the land of late Kishan Singh, as it has transpired in evidence before the Trial Court. In the Will, the G genuinity of which is contested by the State of Haryana, it is recorded that Harnam Singh (deceased) was looking after late Kishan Singh. The authority of the first instance, on the basis of the said Will, had mutated the land in favour of Harnam Singh (deceased). But the Assistant Collector had turned down the plea of mutation as he did not accept the existence H of the Will. Applying the doctrine of escheat, the land was mutated in

favour of the State. Thereafter, the suit was instituted on 29th May, 1978 by said Harnam Singh (deceased) seeking the following reliefs:-

> "It is therefore prayed that a decree for declaration to the effect that the mutation sanctioned in favour of the Haryana State is wrong and does not confer any right on the State of Haryana and that the plaintiff is owner in possession of the suit property as mentioned in para no. 1 of the plaint and in the copy of jamabandi for the year 1972-73 with consequential relief of permanent injunction restraining the defendants from auctioning or alienating in any way the suit property may kindly be passed in favour of the plaintiff and against the defendant alongwith the costs of the suit. Any other relief to which the plaintiff is deemed entitled to may also be granted."
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> **(quoted verbatim from the copy of the plaint as annexed to the paperbook)**

3. In the suit, Diwan Singh (since deceased), Sohan Singh (since deceased) and Kehar Singh (since deceased) were impleaded as defendant nos. 2 to 4. They appear to be nephews of late Kishan Singh (sons of his paternal cousin brothers). They were made defendants following the subsisting rule of succession. It has not come in evidence that Kishan Singh was survived by his spouse or any child. The defendant no. 2 also passed away but his legal representatives have been brought on records. The endorsement made on the cause title of the petition reveals that the defendant nos. 3 and 4 have also passed away and their interest is being represented by the legal representatives of the defendant no. 2 in this appeal.

4. The Trial Court dismissed the suit on 22nd October, 1981, which was contested by the first defendant only (State of Haryana). In the judgment of the Trial Court, it was inter-alia, held :-

> "7(d) In view of the perfunctory and casual manner in which the will is alleged to have been scribed all of a sudden inasmuch as now kurushetra No. of the land sought to be bequeathed by the will have been mentioned in the will nor has it been scribed or attested by people who could claim them selves to be intimated with the deceased (since the present with eases as per their own statement were neither related to nor intimated with the deceased and happen to be chance with eases. If I may say so), I am unable

A to be accept the averments of these with eases that the deceased ever executed the will Ex.A.1 on the summoned file copy of which is Ex.P.4 at all in favour of the plaintiff. In view of the shove appraisal of the testimony of PWs 1,2,3 and 4. Ian of the opinion that no will was executed by the deceased kishan Singh in favour of the plaintiff as alleged accordingly issue Nos 1 is deceased against the plaintiff and in favour the defendant."

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(quoted verbatim from the copy of the judgment as annexed to the paperbook)

5. The First Appellate Court affirmed the said judgment on 20th July, 1982, holding:-

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"14. The learned unseal for the appellant contended before me that when statements of witnesses are consistent with each other then they should be held to prove execution of the will. I am of the view that in the instant case, though statements of witnesses are consistent but these does not inspire confidence and are not sufficient to prove execution of will because thumb impressions on the will because thumb impressions on the will are not proved to be of the deceased. Will is not scribed by licensed petition writer. Scribe does not belong to the village attesting witnesses of the will are chance witnesses having no special connection with the deceased. All these facts shows that due execution of will is not proved. So finding of trial court on issue No.1 is liable to be confirmed and is confirmed."

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(quoted verbatim from the copy of the judgment as annexed to the paperbook)

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6. The following question of law was formulated by the High Court for admitting the Second Appeal of Harnam Singh (deceased) :-

"Whether the will alleged to have been executed by Kishan Singh is genuine or it could be disbelieved by both the Courts below, which has been proved as per the provisions of section 63 of the Indian Succession Act."

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(quoted verbatim from the copy of the judgment as annexed to the paperbook)

The High Court took a view different from that of the fact finding Courts and held:-

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"Learned counsel for the respondent state further argued that the will is not a registered document. The argument cannot be accepted as there is no requirement of law that will has to be registered. Of course, if a will is registered it would certainly be a circumstance to prove its genuineness but the mere fact that a will is not registered would not by itself be sufficient to discard the other cogent evidence to prove the will. In the present case the witnesses produced by the plaintiff-appellant have been successfully able to establish the due execution of the will by the testator while he was in a sound disposing state of mind by examining two independent attesting witnesses, one of whom is a Municipal Councilor, and the scribe, who had written the will. All the witnesses have vouched about the sound state of mind of the testator at the time of execution of will. There is nothing on record to show that any of the witnesses has some relationship with the propounded of the will namely Harnam singh, in order to demonstrate that their testimony is false and unacceptable.

No other point has been urged by the learned stated counsel.

Resultantly, this appeal is allowed, the judgments and decrees of both the courts below are set aside and the suit of the plaintiff is decreed quashing the mutation sanctioned in favour of the state. The plaintiff-appellant is declared to be the owner in possession of the suit property as mentioned in para No.1 of the plaint. The defendant-state is further restrained from auctioning or alienating the suit property."

(quoted verbatim from the copy of the judgment as annexed to the paperbook)

7. The opinion of the High Court was that the Will was proved in terms of Section 63 of the Indian Succession Act, 1925 and while coming to such finding the High Court went deep into factual inquiry. It is evident from the judgment under appeal that the formulation of the question of law was on question of fact only. Moreover, in formulating the question on the basis of which the Appeal was admitted, the High Court proceeded on the basis that the Will was proved in terms of Section 63 of the Indian Succession Act, 1925. The person claiming to be scribe of the Will as well as the two attesting witnesses deposed to support the case of the original plaintiff, but both the Trial Court and the First Appellate Court

A disbelieved their testimony. The thumb impression of Kishan Singh was not matched. There was contradiction in the evidences of attesting witnesses as regards the place of execution. The requirement of Section 63 of the Indian Succession Act, 1925 cannot be said to have been fulfilled by mechanical compliance of the stipulations therein. Evidence of meeting the requirement of the said provision must be reliable. The
B fact finding Courts did not find such evidence to be reliable. The provision of Section 63 of the 1925 Act reads:-

> "**63. Execution of unprivileged Wills**.—Every testator, not being a soldier employed in an expedition or engaged in actual warfare, [or an airman so employed or engaged,] or a mariner at
C sea, shall execute his Will according to the following rules:—
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> (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.
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> (b) The signature or mark of the testator, or the signature of
D 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.
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> (c) The Will shall be attested by two or more witnesses, each
E 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
F 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."

Thus, the High Court erred in formulating the question of law on the basis that the Will was proved in terms of Section 63 of the Indian
G Succession Act, 1925. In fact, both the fact-finding Courts-the Trial Court and the First Appellate Court, had found that the Will was not proved. The evidences of the witnesses were disbelieved as they failed to inspire the confidence of fact finding Courts. The High Court, however, went into a detailed factual enquiry to come to its finding. We are of the

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opinion that an enquiry of such nature was impermissible while hearing an appeal under Section 100 of the Code of Civil Procedure, 1908. A

8. In our opinion the finding of the Trial Court and the First Appellate Court ought not to have been interfered with by the High Court. We do not find any perversity in the judgment of the first two Courts of facts.

9. The legal heirs of late Kishan Singh have also contested the appeal before this Court and a counter-affidavit to that effect has been filed by one Sukhwinder Singh. In the said counter-affidavit, he has taken a plea that the defendant Nos. 2 to 4 were not informed about the said suit. Defendant nos. 2 to 4 were struck off from the array of parties in the First Appellate Court on the ground that no relief was claimed against them as per submission of the appellant's counsel before the said Court. The defendant nos. 2 to 4 have raised their claim in course of this proceeding over their right on the subject-land under Sections 47 and 48 of the Indian Succession Act, 1925. But that question cannot be adjudicated in this proceeding. The question of inter-se dispute between the State of Haryana and the defendant nos. 2 to 4 cannot be resolved in this appeal as fresh evidence would have to be led to adjudicate that question and this would create a new dispute altogether that was not addressed previously in the suit from which the present appeal arises. We do not have clear evidence as to whether the original defendant nos. 2 to 4 had been served summons or notice of the proceeding at the stage of trial. It would be open to the individuals claiming to be the legal representatives of late Kishan Singh to question the claim of the State of Haryana over the subject-land under the doctrine of escheat. We do not close that option in this judgment. B C D E

10. In such circumstances we allow the appeal and set aside the judgment of the High Court. The judgments of the Trial Court and the First Appellate Court are restored. But on the question of claim of the legal representatives of original defendant nos. 2 to 4 over the suit land, it would be open to them to bring appropriate action as may be permissible under the law. F

11. There shall be no order as to costs. G

Nidhi Jain Appeal allowed.