APPELLATE CIVIL

Before H. R. Khanna, J.

BURMITU ALIAS BALO AND ANOTHER,—*Appellants.*

versus

UJAGAR SINGH AND OTHERS,—*Respondents.*

Regular Second Appeal No. 63 of 1957.

1962

May, 18th.

Indian Succession Act (XXXIX of 1925)—S. 63(c)—Duly attested—Meaning of—Will executed and attested in foreign country—Signatures of Consul-General appearing not at the proper place in printed form of Will but at its back with a note that Consul-General accepts no responsibility for its contents—Whether amounts to attestation by Consul-General and sufficient compliance with law.

Held, that it is enough compliance with the provisions of section 63(c) of the Indian Succession Act, 1925, if the will is attested by two or more witnesses each of whom has seen the testator signing and if each of them signs the Will in the presence of the testator.

Held, that the fact that Consul-General appended his signatures not at the place in the printed form meant for the signatures of the attesting witnesses but on the back of the Will cannot lead to the inference that the Will was not attested by him. No form of attestation has been prescribed by the statute and the fact that the attestation is at the back of the Will and not on its front would not detract from its value. The words "For the contents of this document, this Consulate-General accepts no responsibility" above the attestation would also not affect the value of attestation. An attesting witness is not responsible for the contents of a document and the fact that Mr. Ahuja, because of his official position, expressly stated above his signatures that the Consul-General accepted no responsibility for the contents of the Will would not, lead to the conclusion that the Will was not attested by him.

(*Note*.—L.P.A. against this judgment was dismissed in limine. Editor.)

Regular Second Appeal from the decree of Shri Gulal Chand Jain, Additional District Judge, Jullundur, dated 7th November, 1956, affirming that of Shri Om Parkash, Sub-Judge, 1st Class, Nakodar at Phillaur, dated 10th August, 1956, granting the plaintiffs a decree for possession of the property in suit and leaving the parties to bear their own costs.

Y. P. GANDHI AND DALJIT SINGH, ADVOCATES, for the Appellant.

D. N. AGGARWAL, ADVOCATE, for the Respondents.

JUDGMENT

Khanna, J. KHANNA, J.—The only question arising for determination in the present appeal is whether the Will, Exhibit D.1., of Jowala Singh, has been duly attested.

The facts giving rise to the present appeal are that Jowala Singh, a Jat of village Litran, Tehsil Nakodar, district Jullundur, died in San Francisco (U.S.A.) in the year 1952. Jowala Singh owned land measuring 93 *Kanals* 19 *marlas* and some vacant sites in the area of village Litran. The land after the death of Jowala Singh, was mutated in favour of the defendant-appellants on the basis of a Will, dated 24th April, 1950 alleged to have been executed by Jowala Singh in their favour. The plaintiff-respondents claiming to be collaterals within fifth degree of Jowala Singh brought the present suit for possession of the above-mentioned land and vacant sites on the allegation that Jowala Singh was governed by Customary Law and the property in dispute was ancestral in the hands of Jowala Singh *qua* the plaintiffs. The plaintiffs challenged the factum and validity of Will, dated 24th April, 1950. They claimed their right to succeed to the estate of Jowala Singh on the ground of being his nearest heirs.

The suit was resisted by the defendants. They relied on the aforesaid Will and claimed that it had been duly executed and was valid. The claim of the plaintiffs about their being collaterals within fifth degree and about the property in dispute being ancestral was denied. The trial Court found that the plaintiffs were fifth degree collaterals of Jowala Singh and that only part of the property in dispute was proved to be ancestral of Jowala Singh, *qua* the plaintiffs. It was further held that the Will, dated 24th April, 1950, which has been marked Exhibit D. 1., was not attested by two witnesses. As such, the due execution of the Will was held not to be proved and the plaintiffs' suit was decreed. The defendants went up in appeal before the learned Additional District Judge. The finding of the trial Court with respect to the ancestral nature of the property was not questioned. Two points were urged on behalf of the appellants, namely, that the Will had been duly executed and even if the execution of the Will was not proved the defendants were better heirs of Jowala Singh, deceased compared to the plaintiffs as the defendants were the sister's sons of Jowala Singh. The learned Additional District Judge did not allow the appellants to take the plea that they were better heirs of Jowala Singh on the ground of being his sister's sons because no such plea had been taken in the trial Court. Regarding Will, Exhibit D.1., he held that the Will had not been attested by two witnesses as required by section 63 of the Indian Succession Act. The appeal was accordingly dismissed.

In second Appeal it has been argued by the learned counsel for the appellants that Will, Exhibit D.1., was duly attested by two witnesses and the findings of Courts below in this respect are not correct. The Will in question has been typed

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on a printed form and purports to have been executed by Jowala Singh on 24th April, 1950 at the Consulate General of India, San Francisco, California, U.S.A. It was attested by Har Bhajan Singh. On the back of the Will is the seal of Consul-General of India containing the words "Seen at the Consulate General of India, San Francisco, on this the Twenty Fourth day of April, Nineteen Hundred and Fifty". The Will also purports to be signed by the Consul-General of India. Above the seal the following words have been typed:—

> "For the contents of this document, this Consulate-General accepts no responsibility."

Har Bhajan Singh, the attesting witness of the Will, has been examined as a witness in the present case on behalf of the defendant-appellants. His statement goes to show that before the execution of the Will Jowala Singh, deceased asked the witness to help him in getting the Will executed. The witness along with Jowala Singh then went to the Consulate office and the person incharge, who was the Personal Secretary of the Consul-General, told them to purchase a printed form and get it filled up and bring it back to the office. Accordingly, Jowala Singh and the witness purchased printed form of the Will, got it typed and brought it to the Consulate office. The statement further shows that the typing was done at the instance of Jowala Singh, who was of sound disposing mind at that time. It is further deposed by the witness that the Will was signed by Jowala Singh in the presence of the witness and Mr. Ahuja, Consul-General at the Consulate Office. After Jowala Singh had signed the Will, Har Bhajan Singh signed it and thereafter

Mr. Ahuja signed it. Har Bhajan Singh has also stated that the Will was read over to Jowala Singh. He understood the contents, accepted the same and then signed it. The learned Additional District Judge found that the statement of Har Bhajan Singh was unrebutted and apparently he did not question the veracity of the statement of Har Bhajan Singh. There is also no particular reason why the above statement of Har Bhajan Singh be not accepted. The learned Additional District Judge, however, held that the signatures of the Consul-General on the Will did not amount to attestation of the Will and as the Will had not been attested by a second witness in addition to Har Bhajan Singh, it was not a duly attested Will. After giving the matter my earnest consideration, I am of the opinion that the view of the Courts below in this respect is not correct. As observed above, the evidence on record shows that Jowala Singh signed the Will in the presence of Har Bhajan Singh and Mr. Ahuja, Consul-General in the Consulate office at San Francisco and immediately after Jowala Singh had signed the Will, Har Bhajan Singh and Mr. Ahuja signed it. Clause (c) of section 63 of the Indian Succession Act, which deals with the attestation of a Will, reads as under:—

> "(c) 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,

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no particular form of attestation shall be necessary."

Perusal of the above clause goes to show that it is enough compliance if the Will is attested by two or more witnesses each of whom has seen the testator signing and if each of them signs the Will in the presence of the testator. All these requirements were complied with in the present case. The fact that Mr. Ahuja, Consul-General, appended his signatures not at the place in the printed form meant for the signatures of the attesting witnesses but on the back of the Will would not lead to the inference that the Will was not attested by him. No form of attestation has been prescribed by the statute and the fact that the attestation is at the back of the Will and not on its front would not, in my opinion, detract from its value. The words "For the contents of this document, this Consulate-General accepts no responsibility" above the attestation would also not affect the value of attestation. An attesting witness is not responsible for the contents of a document and the fact that Mr. Ahuja, because of his official position, expressly stated above his signatures that the Consul-General accepted no responsibility for the contents of the Will would not, in my opinion, lead to the conclusion that the Will was not attested by him. I may now refer to some of the authorities which have been cited by the learned counsel for the parties and which have a bearing on the point in issue. In case *Pt. Parshotam Ram* v. *L. Kesho Das and another* (1), the relevant head note, based on the observations in the body of the judgment, read as under:—

> "Inasmuch as S. 63 merely requires that the Will should be attested by two or more witnesses each of whom has either seen

(1) A.I.R. 1945 Lah. 3.

> the testator sign or affix his mark to the Will or has received a personal acknowledgment of his signature from the testator and each of the witnesses should sign the Will in the presence of the testator—no matter when, as long as it was before the Will had come into operation such signatures should be regarded to be enough. Consequently where the Will bore the signature of only one attesting witness when it was presented for registration, the signatures of the sub-registrar and of another person, who are proved to have signed the Will in the presence of the testator though as registering authority or an identifying witness after its execution had been admitted before them by the testator must be regarded as sufficient compliance with S. 63."

The above case was followed in *Gian Chand, etc.*, v. *Surrindar Kumar, etc.*, reported in (2), the relevant head note of which reads as under:—

> "The Registering Officer and the identifying witness before him can be treated as attesting witnesses to the Will if it is proved that they signed the Will in the presence of the testator after receiving from him an acknowledgment of his signature on the Will."

If a registering officer and an identifying witness before a Sub-registrar can be treated as attesting witnesses of a Will, there is no reason as to why a Consul General, in whose presence the Will has been executed, cannot be treated as an attesting witness.

(2) 1951 P.L.R. 251.

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On behalf of the respondents, reliance has been placed on case *Timmavva Dundappa Budihal* v. *Channaya Appaya Kunasgeri* (3), wherein a contrary view was taken. It was held in that case that the signatures of a Sub-registrar and the signatures of the witness identifying the testator before the sub-registrar cannot be regarded as signatures of attesting witnesses. In arriving at that conclusion, Gajendragadkar, J. (as he then was), who gave the judgment of the Court, observed that a document presented for registration must be complete before it is presented. It was further observed that the attestation of document must be made before it was persented for registration and to hold otherwise might lead to the result that the document would be presented for registration before it was completed. Although this Court is bound to follow the dictum laid down by the earlier Division Bench of this Court, in preference to the view taken by the Bombay High Court, I am of the opinion that even if the view taken by the Bombay High Court were accepted as the correct one, it would not materially affect the conclusion at which I have arrived. As observed above, the Bombay High Court came to the view that the Sub-registrar could not be an attesting witness because, according to it, the document should be complete in all respects before it is presented for registration. There is, however, no such requirement, at least none has been referred to me, in the case of a document signed and sealed by a Consul General. As such, it was not essential that the Will Exhibit D. 1., should have been complete in all respects before it was signed by Mr. Ahuja, Consul General. Another case relied upon by the learned counsel for the respondents is *In the Goods of Goculchand Gandhi;*

(3) A.I.R. 1948 Bom, 322,

Chandratan Gandhi v. *Sm. Jamuna Bai* (4). In this case, it was held that the signatures on a Will by one Madan Swarup, in whose presence the testator had signed the Will, could not amount to attestation in view of the note made by Madan Swarup on the Will as under:—

> "Explained by me to Gandhi (testator), who is a person known to me."

It was held that the intention of Madan Swarup when he put the signatures on the Will was to place on record that the Will had been explained to the testator and he did not sign it *animo attestandi*. There is nothing on the record of the present case to indicate that Mr. Ahuja signed the Will for some limited purpose as did Madan Swarup in the cited case. Perusal of the judgment in the cited case also goes to show that the learned Judge did not agree with those authorities wherein it has been held that a Registrar, when he registers a document, can be treated as an attesting witness. I have already observed above that a Division Bench of this Court has held that a Registering Officer can be treated as an attesting witness and this Court is bound to follow the view taken by the Division Bench. Reference has also been made to a case *Girja Datt Singh* v. *Gangotri Datt Singh* (5). The observations in that case go to show that the signatures of the witnesses, who identify the testator before the Sub-registrar at the time of the registration of the Will on the endorsement of the Sub-registrar, can amount to attestation only if it is proved that those persons had appended their signatures at the foot of the registration endorsement *animo attestandi*. There was no evidence to that effect in that case because none of those witnesses was produced at the trial. In the present case, I find that evidence of Har Bhajan Singh,

(4) A.I.R. 1946 Cal. 168
(5) A.I.R. 1955 S.C. 346

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goes to show that after Jowala Singh, had expressed his intention to make a Will in the Consulate Office he was advised by the authorities of the Consulate to bring the printed form of the Will. Jowala Singh, then got the Will typed. He, thereafter signed the Will in the presence of Har Bhajan Singh and Mr. Ahuja, Consul General. Jowala Singh and Mr. Ahuja then signed the Will. These facts, in my opinion, go to show that Mr. Ahuja signed the Will in token of his bearing witness to the execution of the Will by Jowala Singh. As such, Mr. Ahuja should be deemed to be an attesting witness of the Will.

I accordingly hold that the Will in question was duly executed by Jowala Singh, and there was substantial compliance with the provisions about the attestation of the Will.

The learned counsel for the parties have frankly stated that in case the Will in question is held to have been duly executed by Jowala Singh, the plaintiff-respondents would be entitled to get a decree for possession of that part of the property in dispute as has been held to be ancestral of Jowala Singh, *qua* the plaintiffs and that the suit of the plaintiffs with respect to the non-ancestral property would be liable to be dismissed. The trial Court held that land comprised in khasra Nos. 2117, 2118, 2232, 524, 916, 1018, 3408/1814 and 2138 had been proved to be ancestral and that the other property had not been proved to be ancestral. This finding was not challenged before the lower appellate Court. I accordingly partially accept the appeal and instead of the decree awarded by the lower Courts, I award a decree for possession of land comprised in Khasra Nos. 2117, 2118, 2232, 524, 916, 1018, 3408/1814 and 2138 in favour of the plaintiff-respondents against the defendant-appellants. The suit of the plaintiff-respondents for

possession of the remaining property is dismised. Considering all circumstances I leave the parties to bear their own costs throughout.

At the time of the pronouncement of the judgment, the learned counsel for the respondents requests for leave to file letters Patent Appeal. Considering the circumstances of the case, I grant the leave sought for.

R.S.

REVISIONAL CIVIL

Before S. S. Dulat and D. K. Mahajan, JJ.

SUKH LAL SINGH AND ANOTHER,—*Petitioners*

versus

JOGINDER SINGH AND ANOTHER,—*Respondents*

Civil Revision No. 338 of 1961

1962

July, 17th.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 4—Determination of fair rent—Whether can be made in a case where fair rent has already been determined under the Pepsu Ordinance—The Punjab Laws (Extension No. 4) Act (XVIII of 1958)—S. 6—Effect of.

Held, that the effect of the provisions of section 6 of the Punjab Laws (Extension No. 4) Act, 1958, whereby the East Punjab Urban Rent Restriction Act, 1949, was extended to the erstwhile Pepsu territory, is that previous decisions made between the parties under the previous law are not to be disturbed merely because of the extension of a new enactment to the Pepsu territory. There is no indication in the statute that previous decisions could be ignored. It, therefore, follows that the rent of the disputed shop having been fixed under a valid law in 1953, the same matter cannot be reopened, under the new enactment, that is, the Punjab Act, after its extension to the erstwhile Pepsu territory.

Case referred by Hon'ble Mr. Justice Dulat, on 24th November, 1961, to a larger Bench for decision of the legal