

IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

RSA-108 OF 1989

Decided on: 07.08.2015

Smt. Puro

.....Appellant

vs.

Samitran and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: None for the parties.

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G.S.SANDHAWALIA, J

The present appeal is directed against the concurrent findings of Courts below, in favour of the plaintiff/respondents no.1 and 2, whereby the suit for joint possession regarding 2/3 share in land measuring 32 kanals 9 marlas and 15 marlas was decreed on account of being the daughters of Sukha.

The suit was filed on the strength that her sister Smt. Puro, the present appellant and brother-in-law Santokh Singh defendant no.1/respondent no.3, herein, have taken illegal possession of the suit land and they are claiming ownership rights by virtue of sale deed dated 23.02.1982 and 30.03.1982. The suit was contested on the strength of said sale deeds and in the alternative on the basis of the registered will dated 04.01.1977.

3. The following issues were framed by the trial Court:

1. Whether the sale deeds dated 23.02.1982 and 30.03.1982 were executed by Sukha Singh validly and legally in favour of defendant no.1?OPD
2. Whether Sukha Singh deceased had left a valid will dated 04.01.1977 in favour of defendant no.2?OPD
3. Whether defendant no.2 is estopped from pleading the will by her act and conduct?OPD

4. Whether the sale deeds dated 23.02.1982 and 30.03.1982 are without consideration and fictitious documents?OPP

5. Relief.

4. In the absence of any sale deed being produced, the issues no.1 and 4 were decided against the defendants/present appellant whereas the registered will set up was rejected on the ground that the onus in every case of will lies upon the party propounding a will and he must satisfy conscience of the Court. It was noticed that out of attesting witnesses, Rattan Singh had not been produced whereas Balwant Singh who had been produced was a Sarpanch of different village and did not even know the name of the daughters of the testator and only knew that Santokh Singh was son-in-law of Sukha Singh. Finding was recorded that there were Lumberdar's and Member Panchayat's of village Nanowal where land was situated where the testator resided who could have attested the will. In a previous litigation, the sale deeds had been relied upon and the will had not been propounded.

It was further recorded that the same will was surrounded by suspicious circumstances as nothing could be shown that the beneficiary/defendant no.2 was leading a more poor and miserable life as compared to the two other sisters to be entitled to the full property of Sukha Singh. It was also noticed that son of Sukha Singh namely Puran Singh was murdered by Santokh Singh defendant no.1 and, therefore, the will though registered was executed in suspicious circumstances, accordingly, the suit was decreed. The lower Appellate Court upheld the view by noticing that there is thumb impression on the will and accordingly inspite of registration

of the will, the same was not accepted. It was also noticed that it was not registered on the day it was allegedly executed and that Rattan Singh had not appeared at the time of registration. The factum that Balwant Singh, the sole attesting witness examined did not know the names of the three daughters and that the son of the testator had been murdered, his testimony was accordingly discarded. The factum that even the will, which was thumb marked by Sukha Singh, also had not been proved by examining the expert, was also one relevant factor which persuaded the lower Appellate Court to hold that the finding that execution of the will set up had not been proved. The factum of the earlier suit having been filed with liberty to file afresh was also taken into consideration by dismissing the appeal.

Thus, it is apparent that the Courts below have passed judgments which are well reasoned and no substantial question of law arises for consideration by this Court. The judgments do not suffer from any infirmity or patent illegality which would warrant interference. The factum that the son of the testator had been done to death by the son-in-law is factor which is to be kept in mind. In such circumstances, the finding that the will was executed under suspicious circumstances is well justified.

Accordingly, the present regular second appeal is dismissed.

07.08.2015
mamta

(G.S.SANDHAWALIA)
JUDGE