

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.2613 of 1989 (O&M)

Date of decision : 06.10.2015

Sada Kaur

...Appellant

Versus

Kartar Kaur and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Sukhdip Singh Brar, Advocate for the appellant.

AMIT RAWAL, J. (Oral)

As per office report, notice sent to respondent Nos.1 and 2 have been received back with report that they refused to accept notice as affixation had already been made, respondent Nos.3 to 5 are married daughters and are residing with their in-laws and respondent No.6 has been served. There is no representation on behalf of respondents.

The appellant-defendants is in Regular Second Appeal against the judgment and decree of the Lower Appellate Court, whereby suit filed by the respondent-plaintiff has been decreed and the plaintiff-defendant have been held to succeed to the estate of Bachittar Singh by way of natural succession.

Mr. S.S. Brar, learned counsel appearing on behalf of appellant-defendant submits that Will dated 31.12.1982 had been proved through the examination of Krishan Lal, Scribe-DW1, Naib Singh-DW2 and Darbara Singh-DW3, thus, requirement of Section 68 of Indian Evidence Act had been complied with. The trial Court on the basis of the evidence found that Will was not surrounded by suspicious circumstances but dismissed the suit. However, Lower Appellate Court reversed the findings on issue No.6 by holding that Will was surrounded by suspicious circumstances, thus, submits that there is illegality and perversity in the impugned judgment and decree, much less, following substantial questions of law arises for determination:-

- a) Whether the judgment and decree of the Lower Appellate Court suffers from perversity?
- b) Whether the Will dated 31.12.1982 Ex.D1 was surrounded by suspicious circumstances or not?
- c) Whether Will is in conformity with the provision of Section 63(c) of Indian Succession Act?

The aforementioned appeal stood admitted. However, when it came up for motion hearing, notice was sent to respondent Nos.1 to 6. As noticed above, they refused to receive the same, neither they are being represented through any counsel. Respondent Nos.3, 4 and 5 are married daughters and are residing in their in-laws, therefore, I proceed to decide the appeal on merits.

I have heard learned counsel for appellant and appraised the paper book.

In order to lend support to the grounds, the appellant-defendants have strongly relied upon the findings rendered by the trial Court, which after detailed deliberations found that Will was not surrounded by suspicious circumstances. The Lower Appellate Court found that Will was surrounded by suspicious circumstances. I am in agreement with the findings rendered by the lower Appellate Court for the reasons as follows :-

- 1) Admittedly, Bachittar Singh is not son of Gian Singh, but adopted son of Harnam Singh as per the jamabandi, but in the Will Bachittar Singh has given parentage as one of Gian Singh.
- 2) It has also come in the evidence that Bachittar Singh has signed in Urdu, but, however from the Will, thumb impression has been appended.
- 3) The ingredients of Section 63(c) of the Indian Succession Act were conspicuously wanting. The Will does not mention as to whether witness has signed the Will on the direction of the testator, nor testator has signed in their presence.
- 4) Will also was not signed by the Testator in the presence of witness.
- 5) Sada Kaur admittedly is second wife of Bachittar Singh and respondents-plaintiffs are the children from the lions of Kartar Kaur (first wife) and Bachittar Singh.

No doubt the Testator can alter the line of succession while bequeathing the property but the fact remains that there has to be reasons for act. Reasons assigned in the Will are that they are other heirs i.e. children born from the lions of Kartar Kaur and Bachittar Singh.

In the Will, there has been mention of previous Will alleged to have been executed in the year 1981. The said Will has not seen the light of

the day. Had this been brought on record, the Courts below would have an occasion to compare the same. The onus to prove the Will was/is on the appellants-defendants. Since the parties were at variance that appellants-defendants are enjoined upon obligation to discharge the onus by proving thumb impression of testator. Had that exercise being done, the respondent-plaintiff could have rebutted the same at stage of rebuttal evidence. Since appellant has failed to prove the thumb impression of Bachittar Singh on the Will, I am of the view that onus as enshrined under Section 101 of Indian Evidence Act, has not been discharged.

The aforementioned reasons in my view is sufficient to hold that Will dated 31.12.1982 was surrounded by suspicious circumstances.

I do not find any illegality and perversity in the judgment and decree rendered by the Lower Appellate Court.

In view of what has been observed above, questions of law as noticed above are answered in favour of respondents-plaintiff and against the appellants-defendants.

Accordingly, appeal is dismissed.

06.10.2015

pawan

**(AMIT RAWAL)
JUDGE**