

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: September 04, 2015

1. R.S.A.No.2947 of 2009 (O&M)

Krishan Kumar alias Kishan Chand

...Appellant

Versus

Nand Kishore & others

...Respondents

2. R.S.A.No.2948 of 2009 (O&M)

Krishan Kumar alias Kishan Chand

...Appellant

Versus

Nand Kishore & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.Ajay Jain, Advocate,
for the appellant in both the appeals.

Mr.Sandeep Punchhi, Advocate,
for respondent No.1 in both the appeals.

AMIT RAWAL, J. (Oral)

By this order, I intend to dispose of Regular Second Appeal Nos.2947 and 2948 of 2009 as the same have been filed against the impugned judgments and decrees of the Courts below, whereby the Civil Suit bearing No.278-C of 1998 titled as “Nand Kishore Versus Madan Lal

& others” for permanent injunction has been decreed and Civil Suit bearing No.562-C of 1998 titled as “Krishan Kumar alias Kishan Chand & others Versus Nand Kishore & another” for declaration has been dismissed.

Mr.Ajay Jain, learned counsel appearing for the appellant, who is defendant in Civil Suit No.278-C of 1998 and plaintiff in Civil Suit No.562-C of 1998, submits that Tulsi Ram had three sons, namely, Bhoj Raj, Tek Chand and Prem Chand, who were owning various properties to the extent of 1/2 share as Bhoj Raj died issueless. Tek Chand had four sons, namely, Madan Lal, Nand Kishore, Krishan Kumar @ Kishan Chand and Kalu Ram and a wife, named, Rukmani Devi. Madan Lal and Krishan Kumar @ Kishan Chand plaintiffs had already sold the land of their share vide sale deed dated 24.4.1978 (Ex.PW7/B) and decree dated 5.6.1987 (Ex.PW7/C) in favour of Nand Kishore plaintiff in injunction and declaratory suit. The dispute is with regard to 1/3rd share of estate of Prem Chand, which is alleged to have been devolved upon on the basis of the Will allegedly set up by Nand Kishore, which has not seen the light of the day. In the suit for declaration, the Will dated 2.3.1984 executed by Rukmani Devi in favour of Nand Kishore was also challenged. He further submits that the Will allegedly executed by Prem Chand, which had not seen the light of the day, cannot be admitted into evidence by taking the aid of provisions of Section 90 of the Indian Evidence Act and even the sale deed and the decree, aforementioned, cannot be said to have accorded sanction to the execution of the Will by Prem Chand in favour of Rukmani Devi. He, thus, submits that both the Courts below have committed an illegality and perversity in not appreciating the aforementioned contentions

and, thus, submits that the following substantial questions of law arise for determination by this Court:-

- 1) Whether on the facts and circumstances of case Rukmani Devi could execute a valid Will regarding properties of Prem Chand in favour of respondent No.1.
- 2) Whether withholding a document viz. alleged Will executed by Prem Chand in favour of Rukmani Devi by respondent No.1 creates a suspicious circumstance in execution of the Will dated 02.03.1984.
- 3) Whether the judgments and decree passed by the Courts below are legally sustainable.

Mr.Sandeep Punchhi, learned counsel appearing for respondent Nand Kishore submits that the registered Will dated 2.3.1984 has been proved in accordance with the provisions of Section 68 of the Indian Evidence Act and as well as Section 63 of the Indian Succession Act and, thus, Krishan Kumar @ Kishan Chand and Madan Lal should not have any dispute with regard to the share of Rukmani Devi. He further submits that in the sale deed and decree, aforementioned, both Madan Lal and Krishan Kumar @ Kishan Chand have, while selling their share, which they have derived from Tek Chand, admitted the shareholding of Rukmani Devi to the extent of 5/8th share instead of 1/10th share. In essence, they have admitted the share of Rukmani Devi on the basis of the Will. The aforementioned admission on behalf of the plaintiffs in Civil Suit No.587 of 1987 is sufficient to belie their claim and, thus, there is no illegality and perversity in the impugned judgments and decrees of both the courts below.

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

There is no dispute to the ratio decidendi culled out by the Hon'ble Supreme Court in **L.I.C. of India & Anr. Versus Ram Pal Singh Bisen, 2010 (2) Civil Court Cases 315 (S.C.)** that admission of a document amounts to admission of contents and not its truth. Mere exhibition of the document does not dispense with its proof. The aforementioned sale deed, much less, decree have never been disputed.

Madan Lal and Krishan Kumar @ Kishan Chand, aforementioned, are the persons who have signed the documents on their own volition, without any pressure and coercion. There is an independent admission in the aforementioned documents, vis-a-vis 5/8th share of Rukmani Devi. Rukmani Devi would not have got 5/8th share had she not acquired the share of Prem Chand. Moreover, the share of Prem Chand, which was the share in the property of the estate of Tek Chand, her husband, was 1/10th share. The aforementioned admission with regard to the execution of the documents and admitting the shareholding of Rukmani Devi leaves no manner of doubt that both the plaintiffs in the suit for declaration, i.e., Madan Lal and Krishan Kumar @ Kishan Chand devolved upon the estate of Prem Chand in favour of Rukmani Devi vis-a-vis bequeathing the share of Prem Chand, which she devolved from the estate of Tek Chand in favour of Nand Kishore vide registered Will dated 2.3.1984. Both the Courts below have found that the said Will has been proved in accordance with law. In essence, the requirement of Section 63 of the Indian Succession Act has been complied with.

I do not find any illegality and perversity in the impugned judgments and decrees, much less, no substantial questions of law arises for determination by this Court. Both the Courts have rendered a findings of fact and law, based on appreciation of oral and documentary evidence, which do not call for any interference by this Court.

In view of what has been observed above, the appeals are accordingly dismissed.

September 04, 2015
ramesh

(AMIT RAWAL)
JUDGE