

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

RSA No.1874 of 2011 (O&M)

Date of decision : 17.11.2015

Dev Raj Singh

...Appellant

Versus

Gurmukh Singh 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. Kanwaljit Singh, Sr. Advocate with
Mr. Jaswant Singh, Advocate for the appellant.

Mr. K.S. Rekhi, Advocate for respondent Nos.1 to 4.

AMIT RAWAL, J. (Oral)

The appellant-defendant No.7 is in Regular Second Appeal against the concurrent findings of fact, whereby the suit for possession at the behest of the respondents-plaintiffs claiming 1/5th share in the estate of Hira Singh, has been decreed.

Mr. Kanwaljit Singh, learned Senior Counsel assisted by Mr. Jaswant Singh, Advocate for the appellant submits, that the respondents-plaintiffs filed the suit in the year 1998, whereas Hira Singh died in 1981. On the basis of the Will dated 15.04.1977 executed by him, the property was mutated in favour of the other two sons namely Santa Singh and Surjit Singh and grandson Devraj son of Surjit Singh as both the daughters Balwant Kaur and Gurcharan Kaur, have been given sufficient dowry at the time of their marriage. The mutation in this regard was also effected in the

year 1981. There was no explanation of approaching the Court in the year 1998 and, therefore, the suit claiming declaration ex facie was time barred. The Will has been proved through the testimony of Harbhajan Singh and Inderjit Singh who had deposed in terms of provision of Section 63(c) of the Indian Succession Act and even, the compliance of provision of Section 68 of the Indian Evidence Act has also been complied with.

Both the Courts below have committed illegality and perversity in rendering findings that Will was surrounded by the suspicious circumstances, while ignoring the testimony of the aforementioned witness who had withstood the wrath of the cross-examination and thus prays that substantial question of law arises for adjudication of the present appeal.

Mr. K.S. Rekhi, learned counsel appearing on behalf of respondents-plaintiffs submits, that the Will was entered into in register of the Scribe but the same has not seen the light of the day. In the Will, Hira Singh is alleged to have mentioned Hari Singh as alive whereas he admittedly died on 22.07.1972. No sane person, much less, father would not know about the death of his son. The concurrent findings of fact while exercising the power under Section 100 of the Code of Civil Procedure cannot be interfered until and unless there is substantial question of law and thus prays for dismissal of the appeal.

I have heard learned counsel for the parties and appraised the paper book as well as the records of the Courts below.

On going through the contents of the Will, it reveals that Hira Singh has mentioned the name of his three sons as Hari Singh, Santa Singh and Surjit Singh. The manner and mode reflects that Hari Singh at the time

of execution of the Will dated 15.04.1977 was alive, whereas admittedly he died on 22.07.1972. It is strange that Hira Singh, being father of Hari Singh, did not mention about the death of his son. Assuming for the arguments sake that Hari Singh had left the village whereas his siblings were living with Hira Singh but the factum of death was also known to his brothers and as well as to his father.

Harbhajan Singh, attesting witnesses of the Will while having put a specific question, in cross-examination, mentioned that Hari Singh was alive at the time of the execution of the Will. It would be apt to reproduce the relevant portion of the statement, which reads thus:-

“He got mentioned the name of his sons namely Hari Singh, Santa Singh and Surjit Singh and his daughters who were alive at the time of execution of will.”

I am of the view that the Courts below have not committed illegality and perversity in forming an opinion that Will was surrounded by suspicious circumstances. Once Hari Singh son of Hira Singh had died in 1972, there was no occasion for Hira Singh for mentioning in the year 1977 that his son was alive.

I do not intend to differ with the findings arrived at by the Courts below which is based on the appreciation of the oral and documentary evidence, much less, no substantial question of law arises for determination.

Accordingly appeal is dismissed.

17.11.2015

pawan

**(AMIT RAWAL)
JUDGE**