

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

RSA No.666 of 2011 (O&M)
Date of decision : 13.02.2015

Mangat Singh

...Appellant

Versus

Balbir Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. M.S. Dhami, Advocate for the appellant.

Mr. Ankur Soni, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

This is a Regular Second Appeal at the instance of the appellant-plaintiff against the judgment dated 11.01.2007, whereby the suit for declaration claiming 1/8th share in the estate of Daulat Singh has been declined and appeal filed therein has also been dismissed.

This appeal when came up for hearing before this Hon'ble Court on 26.03.2012, this Hon'ble Court passed the following order:-

“Suit of the plaintiff-appellant for declaration that he has got 1/8th share in the property left by his father along with defendants-respondents, stands dismissed by the Courts below inter alia on the ground that Daulat Singh had executed a valid will dated 30.8.2000 in favour of defendant No.1 Balbir Singh, the real brother of plaintiff.

Without expression of any opinion on merits, at this stage, taking into consideration the fact that the proceedings are between real brothers and provisions of

Order 32-A Rule 3 CPC, it is deemed appropriate, in the interest of justice, to make an endeavour to settle the matter between the real brothers.

*Notice of motion to defendant-respondent No.1
Balbir Singh for 10.5.2012.*

March 26, 2012

Sd/- (M.M.S. Bedi)

Judge.”

It has been almost three years, no effort has been made by the appellant to settle the matter between the real brothers.

Learned counsel appearing on behalf of the appellant submits that Will dated 30.08.2000 was shrouded by suspicious circumstances as the name of the daughter in the Will has wrongly mentioned as Bhinder Kaur instead of Jaswinder Kaur and this sole circumstance was enough for the Court to belie the plea of the defendants. Daulat Singh had died intestate and had not left any testamentary document. The execution of the Will which is registered one has not been proved through the testimony of attesting witnesses Amrik Singh and Deed Writer.

Learned counsel appearing on behalf of the appellant in support of his aforementioned submissions relied upon the judgment of Hon'ble Supreme Court of India rendered in *Kartar Kaur and another Vs. Milkho & ors. 1997 Volume 1 Civil Court Cases Page 153* to contend that where the testator do not mention the name of his children correctly, the Will has been held to be shrouded by suspicious circumstances.

I am afraid the aforementioned arguments of learned counsel appearing on behalf of the appellant-plaintiff is devoid of merit for the reasons that the aforementioned judgment of Hon'ble the Supreme Court of

India discarded the Will by noticing the various other suspicious circumstances though one of which was qua mentioning of the name.

The appellant-plaintiff is also not permitted to raise plea for the reasons that in examination-in-chief, submitted in the shape of affidavit no such plea has been raised. Had this plea has been raised, the defendant would have an opportunity to rebut by showing that Bhinder Kaur nick name was Jaswinder Kaur. In the absence of any evidence led by the appellant-plaintiff, there was no occasion for the trial Court to decree the suit.

Both the Courts below have rendered a finding of fact and law after appreciation both oral and documentary evidence.

There is no illegality and perversity in the aforementioned findings.

No substantial question of law arises for adjudication of the present appeal.

Accordingly, the present appeal is dismissed.

13.02.2015

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**(AMIT RAWAL)
JUDGE**