

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2880 of 2012 (O&M)

Date of Decision.25.08.2015

Sukhjeet Singh

.....Appellant

Versus

Kuldip Kuar and others

.....Respondents

Present: Mr. Veneet Sharma, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. The second appeal is brought by the plaintiff, who filed a suit for 1/5th share in the property of the father Gurcharan Singh. The plaintiff was born through the first wife Puran Kaur and Gurcharan Singh had taken a second wife after the death of first wife. Daughters born through the second wife were defendants and the plaintiff's claim to partition of the father's properties was resisted by the defendants setting up a Will said to have been executed by the father on 8.1.2000 and duly registered it two days later. The father died on 19.2.2002. The defendants who propounded the Will sought to prove the same by calling one witness to the Will who spoke about attestation of himself and another and the defendants were also trying to explain the reason why the plaintiff had been disinherited. There was a reference to the fact that the son had been engaging in litigation against him even at the time when the Will was executed and there was no love lost between

the father and the son. The Court found that the Will had been duly proved and upheld the contention of the defendants and non-suited the plaintiff. In appeal, the judgment of the trial Court was upheld. It had also reasoned that the defendants had sought for a succession certificate with reference to some of the outstandings and the succession certificate has been granted to the defendants on the basis of a Will and therefore, the plaintiff cannot have the share and the findings in the succession certificate would be material. I would hold that such an observation giving primacy of consideration to the validity of Will on the basis of proceedings under Section 387 of the Indian Succession Act was not well founded because the Succession Act itself states that the proceedings under Part X of the Indian Succession Act in so far as succession certificate is concerned will not constitute res judicata. It shall be only for the purpose of proving a valid discharge of persons who have made the payments to the holder of a succession certificate and the rights of parties cannot be lost by the findings in succession certificate. Even, we must, therefore, discard the reasoning about the effect of succession certificate on the basis of a Will as having been given emphasis by the Court below, I will find that the Will is a valid disposition and there had been adequate reasons given as to why the plaintiff was being disinherited. The learned counsel appearing for the appellant states that apart from reiterating the point already discussed that the Will had been referred to as the basis for succession certificate and therefore, the Court below was upholding the Will which was on wrong premise, the counsel would contend that in these parts of Punjab, the son is never disinherited. I will find that the proposition

made by the counsel is too wide for acceptance and it is not merely a particular characteristic of person in Punjab but that is the same characteristic prevalent throughout India. A patriarchal mindset is the norm which it is hoped will change with woman empowerment through various legislations and recognizing women to be at par with men in all educational fields and public employments. If there was an exclusion of son in this case, there was good reason given by father who was aggrieved by the fact that the son had engaged him in a litigious duel in Courts. There was stout reason why the father was, therefore, disinheriting the son and the matter has been considered duly by the Courts below in upholding the Will propounded by the plaintiff. The non-examination of one of the witnesses was stated by the counsel as an important feature to sprout a grain of suspicion but I will not take it as relevant, for, all that Section 68 of the Indian Evidence Act requires is that at least one attesting witness must be brought to prove the attestation. The only legal requirement, however, is that the attestation shall not be merely of the person who is called as witness but he shall also speak of the attestation of the other person. The Court found that there are sufficient evidence coming through the witnesses for upholding the validity of execution and attestation of the Will. I will not find that there is anything suspicious about the same.

2. There is also further argument that the Will had been registered two days after the execution. I do not see this to be of any significance, for, the issue of whether a Will is registered or not is not at all relevant, for, there are as many registered Wills which are found in Courts to be not true as unregistered Wills which are found to be

true. Registration or non-registration of the Will will make no difference. By the fact that there is a Will which is registered after two days, I will not find to be a matter of suspicion. That concludes the argument of what was made before me by the learned counsel and I find no scope for interference in the judgments already passed by the Courts below.

3. The second appeal is without merit and it is dismissed.

(K. KANNAN)
JUDGE

August 25, 2015
Pankaj*