

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 3065 of 2012
Date of decision : September 3, 2015

Dayal Singh (deceased) through L.Rs

Versus **..... Appellant**

Jagtar Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Arun Jain, Senior Advocate with
Mr. Deepak Basatia, Advocate
for the appellant.

Mr. Sharan Sethi, Advocate
for respondent Nos. 9 to 12.

Mr. Rajender Goyal, Advocate
for respondent Nos. 1 to 7.

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?

Amit Rawal, J (oral).

The challenge in the present appeal is to the impugned judgment and decree of the lower appellate court dated 22.3.2012 whereby the suit for declaration filed by the respondent-plaintiff Jagtar Singh that plaintiff and defendant Nos. 5 to 8 are legal

heirs to the estate of Sunder Singh by way of natural succession has been allowed.

Mr. Arun Jain, Senior Advocate assisted by Mr. Deepak Basatia, Advocate for appellant-L.Rs of defendant No.1-Dayal Singh submits that the civil suit aforementioned filed by respondent-plaintiff Jagtar Singh claiming the estate of Sunder Singh by way of natural succession was dismissed by the trial court in as much as, that the appellant-defendant No.1-Dayal Singh had set up a registered Will dated 6.1.1997 executed by Sunder Singh in his favour. The aforementioned Will was proved through the testimony of Amarjeet Singh-DW-2, Suresh Kumar, the concerned Assistant from the office of Registrar-DW-4 as well as deed writer-Prahlad Singh-DW-3. However, no dent to their statement could be caused in the cross-examination. The trial court believing the Will to be genuine proved in accordance with law dismissed the suit. The aforementioned judgment and decree was assailed by Jagtar Singh and defendant Nos. 5 to 8.

He further submits that the written statement filed by defendant Nos. 5 to 8 was in line with, the aforementioned averments made in the suit. Both the respondent-plaintiff-Jagtar Singh and defendant Nos. 5 to 8 claimed the estate of Sunder Singh by way of natural succession. The lower appellate court has set aside the well reasoned judgment and decree of the trial court and decreed the suit which is against oral and documentary evidence, in as much as, that no suspicious circumstances arose which enabled the lower appellate court to form such an opinion. He further submits that

Dayal Singh-defendant No.1 was residing with Sunder Singh since long, Sunder Singh bequeathed the property owned by him in favour of Dayal Singh. In the Will there is no mention of other siblings of Dayal Singh and there is nothing wrong in the alteration of line of succession as the testator may have a love and affection for a particular son or daughter in respect of his self acquired property.

He further submits that since the lower appellate court has committed illegality and perversity and therefore following substantial questions of law arise for determination by this Court:-

“i) Whether in the facts and circumstances of the instant case the approach of the learned First Appellate court in accepting the appeal and reversing the well considered and well reasoned judgment of the trial court is not perverse?

“ii) Whether in the facts and circumstances of the instant case the appellant having proved the due execution and validity of the Will under Section 63 of the Indian Succession Act read with Section 68 of the Indian Evidence Act, the approach of the learned First Appellate Court in discarding the registered Will is not illegal and perverse?

lii) Whether in the facts and circumstances of the instant case the approach of the learned First Appellate Court in discarding a registered will while accepting the appeal by ignoring the overwhelming evidence on record showing that the appellant had

been serving his parents althrough and no other heir took any care of their parents, is not illegal and unsustainable?.

iv) Whether the approach of the learned First Appellate Court in discarding the registered will on conjectures and surmises is not illegal and unsustainable in law?

Mr. Rajender Goyal, learned counsel appearing on behalf of respondent Nos. 1 to 7 submits that the lower appellate court formed an opinion that beneficiary of Dayal Singh had actually participated in execution and registration of Will inasmuch as, the witness DW-2-Amarjeet Singh did not know Sunder Singh and he had only known Dayal Singh as he used to purchase shoes etc.from Amarjeet Singh.

He further submits that Sunder Singh was admitted in hospital. The suspicious circumstances noticed by the appellate court have surfaced from examination of oral and documentary evidence and rightly so the judgment and decree of the trial court has been set aside and the suit has been decreed. He further submits that no substantial question of law arise. Even there is no land situated near Guru Nanak Pura which has been mentioned in suit, and is with regard to some other area.

I have heard learned counsel for the parties, appraised the paper book as well as record of the court below.

It is now a settled law that the testator in respect of

his self acquired property can always alter the line of succession. One of the witnesses to the Will, much less scribe have unequivocally made deposition in line with the provisions of Section 63 of the Indian Succession Act, 1925. In essence, the contents of Will were read over and explained to the testator and testator signed in their presence and witness also signed in his presence. In case, the aforementioned ingredients of law have been proved, the testator even had reason to alter the line of natural succession. Since Sunder Singh was residing with Dayal Singh, which fact is evident from the contents of the Will and the fact that Jagtar Singh-plaintiff, in his cross examination, admitted that he was residing, much less carrying on business in Ludhiana since long. It was Dayal Singh and who was taking care of Sunder Singh whereas other children of Sunder Singh were also settled at far away places. The factum of residence of Dayal Singh with Sunder Singh having common mess has not been disputed. Rather, Jagtar Singh in his cross-examination admitted such fact. Even the registration of Will had been proved through the testimony of DW-4. There is no bar in altering the natural succession in case the successor bequeath the property in favour of other persons, I intend to rely on the ratio decidendi culled out in various judgments of this Court in **RSA No. 4200 of 2012 decided on 30.1.2015 titled as Harpal Kaur and another Vs. Ranjit Kaur and others and RSA No. 4147 of 2012 decided on 12.2.2015 titled as Jaswant Singh Vs. Jaspal Kaur @ Rani and others.**

The lower appellate court has not examined the

aforementioned position of law while discarding the Will holding to be suffering from suspicious circumstances. In my view, the said finding is totally alien to the oral and documentary evidence, much less to the settled proposition of law.

In view of the aforesaid observations, the question of law is thus, answered in favour of the appellant-defendant No.1 and against the respondent-plaintiff and as well as defendant Nos. 5 to 8. The trial Court has given a finding of fact and law based upon affirmation of oral and documentary evidence. Accordingly, the impugned judgment of the appellate court is set aside and that of the trial court is restored.

The appeal is therefore, allowed.

(AMIT RAWAL)
JUDGE

September 3 , 2015
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