

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

RSA No.4658 of 2012 (O&M)
Date of Decision.13.08.2015

Sada Ram

.....Appellant

Versus

Rajesh and others

.....Respondents

Present: Mr. Ashwani Talwar, 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?

-.-

K. KANNAN J. (ORAL)

1. The suit for declaration was filed at the instance of the plaintiff who is the appellant to contend that the Will alleged to have been executed by the father Ram Swarup on 25.09.1997 was not true and valid. This Will was said to be in respect of properties in two villages which he died possessed of. The plaintiff himself admitted that there was property in yet another village where the plaintiff was in possession. It appears that during the life time of the father Ram Swarup two sons Rajesh and Rajbir had filed the suit where they wanted to set up a case of family arrangement of the properties in two villages other than the property which was in the hands of the plaintiff as having been granted to them. The father filed a written statement conceding to the character of the property as ancestral property and filed a statement admitting to the family arrangement. The plaintiff has filed an application to implead himself as party but before the impleadment

could be made, the father had died and the plaintiffs in that suit namely Rajesh and Rajbir had withdrawn the suit. The contention now is that if the father had himself admitted to the character of properties as ancestral then the father did not have the right to execute the Will. It must be noticed immediately that both the Courts below have considered that the Will propounded by the defendant was true and the father had executed the Will on 25.09.1997 disinheriting the plaintiff and making a bequest only in respect of the properties in two villages other than the property which was in the hands of the plaintiff. The counsel wants to contend that the Will even if true cannot be valid since the father did not have a right to execute the Will since the properties were admitted to be ancestral property and even if it had been self-acquired, the father had impressed the character of joint family properties by admission that was available at the previous pleadings.

2. If the Will is true and the plaintiff had filed a suit contending that the Will executed by the father was not true, there is nothing further to be discussed now to consider whether the father could have executed the Will in respect of ancestral property or not. A bequest in relation to ancestral property is not invalid or void but it operates to create the transmission of interest with reference to share in the property which a joint family member has, by virtue of Section 30 of the Hindu Succession Act. Section 30 brought for the first time an exception to the old Hindu law rule of a property for undivided joint family member as incapable of being granted in bequest or gift. While there has been no change of law with reference to transfer of joint family property by means of gift so that it continues to be void, there is now an

important legislative interference made in the year 1956 through the specific provision allowing for a right of joint family member to make a bequest in respect of undivided Hindu property. I cannot, therefore, hold the Will to be invalid in law and it will operate to create a transfer of such interest which the testator had at the time when he executed the gift. The suit itself is not for partition bringing all the properties together in the hotchpot and seeking for partition on the basis that he had still a right to the property but the claim had been rested only on a plea that the Will was not true. The concurrent findings of the Courts below admit of no fallibility and I decline to make any intervention in the judgments. I find nothing substantial for consideration on the point of law and the only legal issue that arises is well taken care by the legislative provision itself and it requires no judicial interpretation now.

3. The second appeal is dismissed.

(K. KANNAN)
JUDGE

August 13, 2015
Pankaj*