

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

RSA No.539 of 2012 (O&M)
Date of Decision.29.09.2015

Mehar Kaur and others

.....Appellants

Versus

Harpreet Kaur and others

.....Respondents

Present: Mr. Vijay Lath, Advocate
for the appellants.

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 at the instance of the legal representatives of the 7th defendant. The suit was a claim to the estate of Niranjana Singh.

2. Niranjana Singh had a brother by name Kartar Singh. He had three sons of whom the 7th defendant was one and Sewa Singh was another. Sewa Singh's sons were Harbans Singh (D1), Harpal Singh (D2) and Balwant Singh, whose representatives were defendants No.3 to 6. The plaintiff was the daughter of Raj Singh. It is not clear from the judgment how Raj Singh was related to the deceased Niranjana Singh.

3. The trial saw a three cornered fight. The plaintiff set up a Will alleged to have been executed by the deceased on 03/04/1999. The 7th defendant set up a Will said to have been executed on 18/10/1989. The defendants No.1 to 6 set up a Will said to have been executed on 08/05/1997. There was unanimity at the trial that Niranjana Singh had

actually executed the first Will. However, it was the contention that the first Will was revoked by a document on 2.12.1992 and a fresh Will was executed on 09/12/1992. The bequest was in favour of the defendants No.1 and 2 and their deceased brother whose representatives are defendant Nos.3 to 6, whereunder 1 ½ acres of land along with tube well and motor had been given to them and the house property at the *Abadi* had been given to the 1st defendant only. This revocation deed dated 08/05/1997 had been registered on the same day but the Will executed on the same day had been registered subsequently on 13/05/1997. The Will propounded by the defendants No.1 to 6, therefore, purported to cancel the earlier Will executed on 9.12.1992 which itself was in revocation of the still earlier Will relied on by the 7th defendant and said to have been executed on 18/10/1989. The witnesses to the revocation were also examined.

4. While dealing with the first Will said to have been executed by Niranjan Singh, the Court held that it had been proved to be cancelled by the witnesses and that further when the will executed on 8.5.97 was proved, it automatically meant that the earlier Wills had all been cancelled. As proof for the Will dated 08/05/1997, the Court examined the objection set up by the plaintiff and the 7th the defendant. The Court found that there was nothing artificial about the Will having been registered on a subsequent date on 13/05/1997 while another document executed on the same day namely on 08/05/1997 purporting to cancel the earlier Will executed by him on 09/12/1992 was registered on the same day. It found very cogent reasons for why Niranjan Singh was cancelling the earlier instruments and was executing a new one. A

photograph of the executant had been affixed to the instrument and an expert witness was also examined to identify the signature and thumb impression of Niranjana Singh with the admitted signatures on thumb impression of Niranjana Singh from earlier documents.

5. The Will propounded by defendants No.1 and 2 could have been defeated only by the plaintiff since it was later in point of time to the Will executed in favour of the defendants No.1 to 6. However, the Will propounded by the plaintiffs was taken to be afflicted with several serious suspicious circumstances. The Court did not find the versions of the scribe and the witnesses to be reliable. A person who had reasonably large extent of the properties and who had also executed previously Wills and had them registered would not have kept the last Will unregistered. The court also found an unusual aspect of the Will having been thumb Marked by the right index finger. The Court made reference to a judgment of the Supreme Court that dealt with the usual practice of thumb marking with the left index finger and if it had been done with any other finger, there must be a proper explanation therefor. The Supreme Court was holding that an unusual practice introduced by using some other thumb mark would make comparisons with any other instrument which was executed by the same party difficult and therefore such practice must be discouraged and if there was any document containing a thumb mark made differently, there must be a proper explanation. The court below therefore had sufficient reasons why it was rejecting the document as propounded by the plaintiff.

6. I must observe that the plaintiff is not even before this court by means of an appeal. It is therefore not even necessary to examine

whether the Will propounded by the plaintiff was true or not. The appeal is brought only at the instance of the legal representative of the 7th defendant. The matter must remain with the findings recorded by the Courts below already that the Will executed in the year 1989 came to be revoked first in the year 1992, through an earlier Will brought in the same year and subsequently revoked through a specific instrument of revocation as well as by a fresh execution on 08/05/1997. I do not find any error as having been committed in the judgments of the courts below for interference.

7. The second appeal is dismissed as involving no substantial question of law.

(K. KANNAN)
JUDGE

September 29, 2015
Pankaj*