

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: December 23rd, 2015

1. R.S.A.No.710 of 2012 (O&M)

Rajender Kumar & another

...Appellants

Versus

Smt.Ishwar Devi & others

...Respondents

2. R.S.A.No.732 of 2012 (O&M)

Rajender Kumar & another

...Appellants

Versus

Smt.Ishwar Devi & others

...Respondents

3. R.S.A.No.757 of 2012 (O&M)

Rajender Kumar & another

...Appellants

Versus

Smt.Satya Devi & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.C.B.Goel, Advocate,
for the appellants in all the three appeals.

Mr.Shailendra Jain, Senior Advocate with
Mr.Bhagender, Advocate,
for respondent Nos.1 to 3 (in RSA Nos.710 & 732 of 2012) &
for respondent Nos.1 to 4 (in RSA No.757 of 2012).

AMIT RAWAL, J. (Oral)

C.M.No.4983-C of 2014 in RSA No.710 of 2012
C.M.No.4982-C of 2014 in RSA No.732 of 2012 &
C.M.No.4566-C of 2014 in RSA No.757 of 2012

appellant No.2 in all the three appeals. The same are supported by affidavits.

Allowed subject to all just exceptions. Registry is directed to carry out the necessary correction in the memo of parties.

RSA Nos.710, 732 & 757 of 2012

By this order, I intend to dispose of three Regular Second Appeals No.710 of 2012, 732 of 2012 and 757 of 2012 filed at the instance of sons of Ram Piari, namely Rajender Kumar and Bhim Sain, as the common questions of facts and law involved in all the three appeals are the same. The facts are being taken from Regular Second Appeal No.710 of 2012.

The controversy revolves around the execution of the Will dated 17.6.1997 executed by Ram Piari, who is none else but the mother of the parties to the lis. Daughters of Ram Piari, namely, Satya Devi, Ishwar Devi and Gian Devi instituted Civil Suit No.150 of 2009 for declaration and permanent injunction that they have become owners of the suit property by virtue of the Will to the extent of 1/3rd share each, whereas sons Rajender Kumar and Bhim Sain filed Civil Suit No.152 of 2009 seeking declaration and permanent injunction on the ground that all the siblings have acquired the right/interest in the estate of Ram Piari by way of natural succession, i.e., to the extent of 1/5th share.

Mr.C.B.Goel, learned counsel appearing on behalf of the appellants in all the three appeals has raised manifold arguments, which are summarised as under:-

- a) Ram Piari was residing at Palwal, whereas the Will has been registered in Bhiwani. No reasons have been assigned for

getting the Will registered at Bhiwani;

b) One of the attesting witnesses to the Will is Prabhu Dayal, son-in-law, and beneficiary is none else but his wife, namely, Gian Devi;

c) The attesting witnesses to the Will have not deposed in terms of the provisions of Section 63-C of the Indian Succession Act (for short “the Act”), but the trial Court, on the basis of the oral and documentary evidence, decreed the suit of the sons and dismissed the suit of the daughters, whereas the Lower Appellate Court reversed the findings, thus, the Lower Appellate Court, being the last Court of fact and law, has misread and mis-appreciated the facts, inasmuch it has come on record that Ram Piari, till her date, was staying with her sons;

d) The Will does not disclose valid reasons of disinheriting the sons from her estate;

e) One of the attesting witnesses of the Will, after appending his signatures before the Sub Registrar, went away. There is no compliance of the provisions of Section 68 of the Indian Evidence Act and, thus, substantial questions of law arises for determination by this Court. In support of his contentions, relies upon **Benga Behera & Anr. Versus Braja Kishore Nanda & Ors., 2007(3) RCR (Civil) 240, Nimbo & ors. Versus Satyabir Singh, 1995(1) Civil Court Cases 224 (P&H)** to contend that the Will wanting reasons of disinheriting the legal heirs surrounded by suspicious circumstances. He has also cited the judgment rendered in **Shri**

Chhaju Ram and another Versus The Union of India and others, 1993 PLJ 202 to contend that only scribe and one of the marginal witnesses were produced and both the witnesses did not specifically say that the Will was signed in the presence of testator and the testator has also signed in their presence. On similar lines, he has placed reliance on the judgment of the Hon'ble Supreme Court in **Pentakota Satyanarayana & Ors. Versus Pentakota Seetharatnam & Ors., 2005(4) RCR (Civil) 615.**

Mr.Shailendra Jain, learned Senior Counsel assisted by Mr.Bhagender Advocate, appearing on behalf of respondent Nos.1 to 3 (in RSA Nos.710 & 732 of 2012) and respondent Nos.1 to 4 (in RSA No.757 of 2012), submits that the sons were not showing any respect and regard to their mother, i.e., Ram Piari and had been extending beatings to her. This fact has been admitted by Rajender Kumar in the cross-examination. The aforementioned admission in the cross-examination is corroborated by the reasons assigned in the Will while disinheriting them. The ratio card (Ex.P2) proved on record to show that Ram Piari was staying with the mother-in-law of Ishwar Devi. Since the sons had treated their mother Ram Piari badly, it was a valid reason of disinheriting them from her estate. He has also drawn the attention of this Court to the cross-examination of Rajender Kumar. He further submits that the attesting witnesses to the Will have deposed in terms of the provisions of Section 63-C of the Act and, therefore, the Will having not been attested in terms of the provisions of the Act, is not sustainable, much less no substantial question of law arises for determination by this Court.

I have heard the learned counsel for the parties and appraised the paper book.

The parents are to be treated like God. In case the sons extend threat and beat the mother, it is not disrespect of the parents but to God also. Rajender Kumar, in his cross-examination, candidly admitted extending of beatings, in essence when Ram Piari gave a slap to him, he also slapped her. This act on the part of the son is not appreciable.

I have gone through the statements of the witnesses. Attesting witnesses of the Will have deposed in terms of the provisions of Section 63-C of the Act, in essence they stated that the testator had put thumb impressions in their presence and both of them appended their thumb impressions in his presence and on her directions. Even in the cross-examination, this fact has been reiterated, but only thing, which has been strongly relied upon, is that Chandan Singh, after appending the signatures before the Sub Registrar, left the place. Leaving of the place of Sub Registrar after appending signatures is not a valid ground for holding the Will to be not in conformity with the provisions of the Indian Succession Act. Scribe Mahender Chaudhary has also been examined, who unequivocally stated that he had made the entry at Sr.No.175 vis-a-vis scribe of the Will. He had also been subjected to lengthy cross-examination, but the sons have not been able to ascertain anything in the cross-examination. The trial Court, though observed that the statutory ingredients of Section 63 of the Act are required to be fulfilled, but in my view, there is no valid reason assigned that the aforementioned provisions have not been complied with, whereas on the contrary the Lower Appellate Court has actually appreciated the aforementioned fact by noticing the contents of the

Will and as well as the statements of the attesting witnesses, much less that of the scribe.

Keeping in view of the aforementioned facts, I do not intend to differ with the findings rendered by the Lower Appellate Court in dismissing the suit of the sons and decreeing the suit of the daughters. Accordingly, there is no merit in the appeals, much less no substantial question of law arises for determination by this Court.

The appeals are accordingly dismissed.

December 23, 2015
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(AMIT RAWAL)
JUDGE