

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

RSA No.2530 of 2013 (O&M)
Date of Decision.04.09.2015

Harchand Singh and another

.....Appellants

Versus

Harmander Singh and others

.....Respondents

Present: Mr. Amit Dhawan, 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 appeal is against the concurrent judgments of the two Courts below that held that the Will propounded by the defendants alleged to have been executed by their aunt Vasant Kaur on 6.10.1970 was not established. The suit had been filed by the plaintiffs as sons of Vasant Kaur as natural heirs and they were contending that the Will propounded by the defendants who were but the brother's sons was forged and fabricated. The issue that fell for consideration, therefore, was whether a Will was true and it had been proved as per law. Vasant Kaur was said to have been a resident at Malaysia, lived her life right through and visited India but few times only. The property had been in India and was stated to be under the enjoyment of her husband. Later the husband died and the defendants were setting up a Will on the basis of a mutation alleged to have taken place on 17.02.2004. At the proceedings before the Revenue Authorities, the attestors of the Will

were said to have been examined and it was contested by the plaintiffs but the mutation was made on the basis of a finding that the Will was true. After the proceedings went against the plaintiffs, the instant suit was filed.

2. The Court below has taken five instances as not establishing the Will. One, the Will was said to have been executed in the year 1970 and Vasant Kaur had died on 09.04.1989 and there had been no publicity to the Will for all along upto the time when an application for mutation was filed in the year 2004. Two, the Will was said to have been executed by Vasant Kaur when she was still residing for most part of her life in Malaysia and there was no proof that she had arrived in India at that time to make the Will. Three, one of the attesting witnesses who spoke about the Will admitted that he was not present at the time when the Will was signed or when it was drawn up or when the executant signed but he signed as an attestor only at the asking of the scribe. There was complete lack of proof of attestation. The other witness was said to have died and the scribe had also reported to have died. Four, the bequest had been made in favour of the brother's sons in preference to the plaintiffs who are the sons, which was taken as artificial. Five, the Court found also that the thumb impression expert who had been examined for bringing a comparison of the thumb impression found that the thumb impression in the admitted documents do not tally. Thumb impression science itself is perfect and the finding that the thumb impression found in the Will was not that of Vasant Kaur was taken to be a strong point against the defendant.

3. The Court had also observed that mere registration of the

document cannot obtain any benefit. The trial Court decreed the suit of the plaintiffs granting a right to the property to the sons and the Appellate Court also affirmed the same.

4. Learned counsel appearing for the defendants states that of the two plaintiffs, the power of attorney had been proved only with reference to one person and yet another person was not even shown to have been duly represented. The further argument is that the delayed publicity was on account of the fact that the defendants themselves were in possession of the property and they did not find any need for pressing for an immediate publicity to the Will. I find both these arguments are peripheral and do not address the substantial lines of reasoning adopted by the Courts below.

5. The judgments passed by the Courts below are in accordance with law and evidence and I find no scope for interference in the second appeal, for, the case involves no substantial question of law. The second appeal is dismissed.

(K. KANNAN)
JUDGE

September 04, 2015
Pankaj*