

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

RSA No.2007 of 2015 (O&M)
Date of Decision.22.12.2015

Hukam Singh son of Faura Singh

.....Appellant

Vs.

Gurnam Singh and others

.....Respondents

Present: Mr. Amandeep Soni, 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?

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K. KANNAN J. (ORAL)

1. The second appeal is at the instance of the defendant who claimed as a purchaser of the property of Gurdev Singh. The suit was filed by the brothers of Gurdev Singh on a contention that Gurdev Singh was not known to be alive for more than 7 years and they were entitled to presumption of civilly dead and that they were entitled to the property of Gurdev Singh. The defendant's contention was that Gurdev Singh had executed a power of attorney in favour of his brother, the 5th respondent herein on 01.08.2005 and he had sold the property on 10.08.2005 to him. The Court examined the assertion made by the plaintiff that Gurdev Singh was not known to be alive for more than 20 years prior to the institution of the suit. It was, therefore, looking for some proof that Gurdev Singh was known to be alive within a period of 30 years to displace the presumption which was sought to be raised by the plaintiff. The defendant who claimed that he had purchased the

property only offered witnesses found in the sale deed and brought no witnesses found in the power of attorney to vouch for the actual presence of Gurdev Singh and he was alleged to have executed the power of attorney on 01.08.2005. Even the original power of attorney had not been filed. The Court, therefore, observed that the defendants were deliberately keeping original document out of Court to avoid being prosecuted for a criminal act of forging a document and making impersonation. The burden of proof on the plaintiff was light in the sense that a negative proof of person not being known to be alive within a period of 7 years can be easily thwarted by person who makes an assertion that he was known to be alive within a period of 30 years. The only document which is said to have been executed within a period of 30 years was the power of attorney and there were good reason for rejection of the power of attorney for non-production of the original and no-examination of the witnesses connected with the document.

2. The reasonings of the Courts below are in full accord with sound judicial reasoning and I will find no interference with the decisions rendered by the Courts below. The second appeal is without merit and it is dismissed.

(K. KANNAN)
JUDGE

December 22, 2015
Pankaj*