

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 3358 of 2015 (O&M)
Date of decision : October 29, 2015

Jatinder Kapoor

..... Appellant

Versus

Kirti Kapoor and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Harish Sharma, Advocate
for the appellant.

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?

Amit Rawal, J (oral).

The challenge in the present appeal is to the impugned order dated 8.1.2013 whereby the suit for partition of the property has been decreed.

Learned counsel for the appellant-defendant No.2 submits that both the courts below have committed illegality and perversity in not accepting the Will dated 22.6.2006 Ex.DW1/D executed by Bimla Kapoor, owner of the suit property inasmuch as, before the Will, parties to the *lis* i.e.including the plaintiff have been given share and therefore claim of the respondent-plaintiff on the basis of ancestral succession was not maintainable.

He further submits that the suit was bad for non-joinder of proper parties. Inasmuch as Hitesh Kapoor had not been

impleaded as party whereas Bimla Kapoor bequeathed part of share in his favour also. He further submits that the Will has been proved through the testimony of the scribe. Therefore, there is illegality and perversity in the impugned order.

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

During the course of the hearing, I have seen that the Will has not been produced before the court below. On going through the contents, ex facie the provisions of Section 63 (C) of the Indian Succession Act, 1925 have not been taken care of.

Section 63 in The Indian Succession Act, 1925 is reproduced as under:-

63 Execution of unprivileged Wills. —Every testator, not being a soldier employed in an expedition or engaged in actual warfare, ¹² [or an airman so employed or engaged,] or a mariner at sea, shall execute his Will according to the following rules:—

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or the signature of such other

person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

It does not even mention that the witness has signed in the presence of the testator. It is only the testator who has signed. Thus, there is no compliance of provisions of Section 63 (c) of the Indian Succession Act, 1925.

In view of the above, all the parties to the *lis* were heirs of Bimla Kapoor and thus are entitled to their share by way of natural succession. Even the suit cannot be said to be maintainable for want of non-joinder of parties as the Will has not been proved. Only the parties who were natural heirs of Bimla Kapoor have been arrayed.

I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgment and decree of the appellate court.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

October 29 , 2015
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