

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

RSA No.4291 of 2015 (O&M)

Date of Decision.09.10.2015

Karam Kaur and others

.....Appellants

Versus

Skattar Raj and others

.....Respondents

Present: Mr. Vikram Jeet Singh, 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. Delay of 16 days in filing the appeal is condoned.
2. The defendants who contested the Will propounded by the plaintiff are the appellants before this Court. The disposition through the Will was with reference to the estate of Chura Ram. He had five daughters who are defendants No.1 to 5. The plaintiff is the son of the 2nd defendant. The Will was said to have been executed on 30.08.1983 and according to the plaintiff, the Will took effect on death of Chura Ram on 10.08.2001. The Will had been registered and a Nambardar of the village who had been a witness was examined to speak about the valid execution and registration. The scribe had died and his son had been examined along with the register to show that there had been a entry relating to execution of the Will on that day.
3. The plaintiff gave evidence to the effect that his father Karam Singh had thrown away his mother and him out of the house and ever since then he had been living at village Ajmer along with his

maternal grand father. He was educated at village Ajmer and his marriage was also conducted at the residence of the maternal grand father. These aspects relating to the plaintiff as living with the maternal grand father was admitted in the cross-examination of Karam Kaur-3rd defendant and Mohinder Kaur. The suspicious circumstance pointed out was that in the register produced by the scribe's son, there was a cutting in the entry and the reference to the Will had been written over the said cutting. The witness was not able to explain why there was a cutting but the Court found that there was nothing unusual about it. Yet another circumstance which was pointed out as suspicious was that there was no reference about why he was excluding the other daughters. The Court stated that a Will was after all to take away a disposition from the normal line of succession and if there was an evidence with reference to the conduct and the special relationship which he held to be in favour of beneficiary, that ought to be taken as sufficient. The fact that the plaintiff was living with the maternal grand father and was being looked after by him and in turn obtained the benefit of services from his mother and himself when he lived upto ripe old age of 80 years at the time of execution of Will and lived further to a long period of another 18 years before his death, the Court found that there was nothing artificial about it. The Will had been drawn up in the presence of witnesses and registered and it ought to be given effect to.

4. There was yet another aspect that was brought out at the trial that one of the witnesses spoke about the executant as having subscribed a signature when the document bore only a thumb impression.

This again the Court observed as too insignificant a discrepancy, for he

was speaking from his memory of an incident which had taken place more than 30 years prior to the evidence. The suspicious circumstances which had been referred to had been duly explained and the Courts below have considered the same and have entered a favourable decision in favour of the plaintiff. I do not think that there is any error in the adjudication made by the Courts below.

5. Learned counsel appearing on behalf of the appellant has also an additional point to make that the plaintiff had himself not come to Court with clean hands. The suit had been filed for injunction but at the time of trial it was brought out that the properties were in possession of the defendants. It was only thereafter that the plaintiff had opted for amending the prayer for declaration and for recovery of possession. This according to him would disqualify the plaintiff from taking the benefit under the Will. When the issue was with reference to the validity of the Will and there were witnesses who had spoken the genuineness of the Will and the Courts below were convinced about the quality of evidence, the case cannot be thrown off only by the fact that the plaintiff had not properly made his prayer for recovery of possession even initially and that he had sought for relief for injunction. I will not take this to be as serious a flaw to interfere with the findings already entered by the Courts below.

6. The decisions of the Courts below are confirmed and the second appeal is dismissed as involving no substantial question of law.

(K. KANNAN)
JUDGE

October 09, 2015
Pankaj*