

**THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No. 4542 of 2015 (O&M)

Date of decision: September 4, 2015

Gursharan Singh and others

...Appellants

Versus

Mewa Singh and others

...Respondents

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?

Present: Mr. Agam Jund Mullanpur, Advocate,
for the appellants.

K. KANNAN, J. (Oral)

CM No. 10892 C of 2015

For the reasons stated in the application, the delay in filing the appeal is condoned.

Main case

1. The appeal is by the defendants who failed to establish a Will propounded by them. The dispute was amongst the Class-II heirs of Prem Singh, who died bachelor and the contest was between the sons of two brothers. The plaintiffs were the descendants of one Nasib Singh one brother and the defendants, who propounded the Will, were descendants of another brother Gurcharan Singh. In a declaratory suit by the descendants of Nasib Singh the contest entered by the defendants was on the basis of a Will alleged to have been executed by Prem Singh on 28.10.2003, who died on 4.1.2004. The trial court had dismissed the suit holding the Will to

be true and it was set aside in appeal brought by the plaintiffs.

2. The lower Appellate Court has considered the following to record its finding as to how and why the Will cannot be true. One, in a bequest which is made in favour of the defendants, there had been no particular enmity or ill-will shown by Prem Singh and why he was making preference only to the person in whose names the bequest was made. The Court observed that one of the witnesses Amrik Singh came up with the version that Prem Singh was in litigation with Nasib Singh and he had also having dispute with his sister. The Court observed that if there had been such litigation, it should have been definitely stated in the Will itself as a justification for preference of one brother or his descendants to the other brother. Two, the Court found that the brother Prem Singh as well as Nasib Singh were government employees and were in the Health Department. The admitted signatures from the employer had been brought to Court and an expert had brought about a comparison of the signatures found on both the documents and gave a report that the signatures as found in the Will was a forgery. The Court also undertook a personal comparison of the document which was certainly competent under Section 76 of the Evidence Act and held that even by a naked eye the signatures found under the Will propounded by the defendants seem to be wholly dissimilar to the admitted signatures and a forgery. Three, the Will which ought to take effect only on the death of the testator and by its very nature it has to be disposition in *futuro* contained however a strange recital that the property had been granted immediately to the beneficiaries under the Will. A disposition in presentee through an unregistered document was also, therefore, incompetent. Four, the Court also observed that the document had been

written by a person who was not a professional scribe and though not necessary that it should have been so written. The Court observed the element of authenticity that would be possible of proof by examining whether the scribe's register had contained any document as having been made on that date was still not available. Five, it also made comments about the non-registration the Will that no one spoke about how the document itself did not require registration.

3. There are substantial grounds which have been found at the Appellate Court for reversing the finding of fact to hold that the Will was not true and the Appellate Court had brought about the weighty reasons which I have delineated against its genuineness. I find that the appreciation which was necessary at the Appellate Court of fact has been adequate and there is no error in the decree for intervention in the second appeal.

4. Learned counsel only argues peripheral points of the plaintiff not having filed rejoinder to the defendants' contention and that further the Appellate Court had committed an error in not noting the correct name or number of children which Raunak Singh, the father of Prem Singh had. I would find these arguments only to be wholly irrelevant to confront the points which have been brought out against the appellants in the judgment of the appellate Court. The signature of the deceased in the Will could not be compared to a document some 20 years before the Will. Truly so, but that was not the only ground on which the courts below held against the defendants. There were substantial grounds to take a view against it.

5. The appeal is meritless and is dismissed.

September 4, 2015

prem

PREM SINGH
2015.09.07 16:56
I attest to the accuracy and
integrity of this document

(K.KANNAN)
JUDGE

