

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

RSA No.1857 of 2014 (O&M)

Date of Decision.01.10.2015

Hardev Singh alias Devoo

.....Appellant

Versus

Jagjit Singh and another

.....Respondents

Present: Mr. S.S. Swaich, 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 appeal is with reference to claim to the estate of one Labh Singh. The plaintiff and the defendants are the sons of two brothers. Labh Singh was the son of Bhan Singh born through his first wife Kishan Kaur. Bhan Singh had a second wife Bishan Kuar and through her were seven sons and one daughter born. One of the sons was Ujjagar Singh and the plaintiff was son of Ujjagar Singh. The defendants are the sons of Ujjagar Singh's brother. In the claim to the estate of Labh Singh, defendants propounded a Will said to have been executed on 09.08.1983. The Will purported to revoke an earlier Will and made bequest in favour of the defendants. The defendant examined the scribe to the Will and out of the two witnesses, one witness was examined. The trial Court found that the evidence of the scribe and the witness apart from the evidence of the defendants were sufficient to prove the Will and dismissed the plaintiff's suit and the Appellate Court

set aside the judgment and upheld the Will.

2. The point urged before me is that out of the two witnesses, yet another witness Numberdar was not even cited as witness. According to him, the legal requirement under Section 68 of the Indian Evidence Act that at least one witness must be examined ought not to be understood as one witness being sufficient in all cases. The defendant who was propounding the Will ought to have proved the cause for the non-examination of the other witness. The further contention also is that the scribe himself had no personal knowledge of the Will and therefore, the Will could not be taken as having been established.

3. At the previous time when the case was argued, I asked the counsel to produce the copy of the Will and the evidence of the Witnesses and the scribe. The case was adjourned for more than four weeks from 28.08.2015 to this date. The counsel is unable to produce either the copy of the Will or despositions and would still ask for time. I do not think there is any justification for the appellant coming to this Court seeking for time to produce what was basic for a person to contend before this Court if ever his contention were to be that evidence appreciated by the lower Appellate Court was perverse. The second appeals are admitted only on the substantial questions of law and the argument that the examination of one witness only is not sufficient to uphold the Will cannot be sustained unless the appellant is able to point out to a perversity of appreciation. I find no scope for intervention is possible.

4. The dismissal of the suit itself was on a very fragile ground that the date of death of Labh Singh was not established. At the

Appellate Court, the defendant produced the death certificate with an application under Order 41 Rule 27 CPC. The Court relied on what was contained in the death certificate and found the evidence of the witness to be sufficient to uphold the Will. The counsel argues also that death certificate could not have been relied on by the Appellate Court. A death certificate issued by the authority competent is a public document and unless there was a clear objection bringing about the fact that there was any other date of death which was even before the time of execution of the Will itself, that can excite a suspicion of the validity of the Will. I cannot find the reception of a certified copy of a public document to constitute any error. So long as Labh Singh's death itself is an admitted fact and the date of death became relevant only to ensure that the Will took effect after the death and the death certificate was produced, that would conclude the issue regarding the death as well as the date of death of the person who had executed the Will.

5. I find that no scope for intervention is possible. The judgment of the Appellate Court is upheld and the second appeal is dismissed.

(K. KANNAN)
JUDGE

October 01, 2015
Pankaj*