

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**RSA No.749 of 2015 (O&M)
Date of decision:30.11.2015**

Ashok Kumar (deceased) through LR ... Appellant

Vs.

Devi Rani and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Amit Jhanji, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.2538-C of 2015

The application is allowed, subject to all just exceptions.

Document, Anneuxre A-4 is taken on record.

RSA No.749 of 2015 (O&M)

Appellant-defendants are in Regular Second Appeal against the concurrent findings of facts and law, whereby, the suit for permanent and mandatory injunction filed by plaintiff/respondent No.1 seeking possession of the property in dispute has been decreed and the appeal filed against the same, has also been dismissed.

Mr. Amit Jhanji, learned counsel appearing on behalf of the appellant-defendants submits that the entire dispute revolves

around the disputed property and, as well as, registered Will dated 31.05.2000 executed by Mohinder Kaur widow of Sh. Uttam Chand. In fact, it has come in evidence that Uttam Chand had purchased the property and raised construction with his own hands. Mohinder Kaur was only a name lender. The factum of raising construction had been admitted by the respondent-plaintiffs, thus, in essence, it was a benami property which is not permissible in law and as per the provisions of Sections 3 and 4 of the Benami Transaction Act, 1988 as both husband and wife were in fiduciary relationship. He further submits that Will in question has not been proved. Only one attesting witness Mukesh Kumar has been examined and other witnesses have been given up and even the grandson of Bhagwant Rai, Deed Writer has appeared in the witness box, thus, Will has not been proved. Once the Will is not taken into consideration, the property left by the deceased Mohinder Kaur would devolve upon all other legal heirs, i.e., sons and daughters of Uttam Chand and Mohinder Kaur, as per natural succession.

During the course of arguments, he has drawn the attention of this Court towards cross examination of attesting witness- Mukesh Kumar, who, to a specific question admitted that he did not know Mohinder Kaur personally and as well as the grand son of Bhagwant Rai, thus, submits that the aforementioned facts have not been noticed by the Courts below, therefore, there is illegality and perversity in the findings, much less, substantial question of law

arises to be adjudicated by this Court.

I have heard learned counsel for the appellant-defendants and appraised the impugned judgments and decrees of the Courts below.

The examination-in-chief of PW3- Mukesh Kumar reads thus:-

"I Mukesh Kumar Numberdar Banwari, Tehsil Rajpura District Patiala do hereby solemnly affirm and declare as under:-

1. *That the deponent knew Smt. Mohinder Kaur widow of Sh. Uttam Chand resident of House No.B-1/4414, Sham Nagar, Rajpura.*

2. *That Smt. Mohinder Kaur executed a registered Will on 31.5.2000 in favour of Smt. Devi Rani wd/o Sh. Joginder Kumar.*

3. *That the Will was scribed by Sh. Bhagwant Rai Deed Writer, Tehsil Complex Rajpura at the instance of Smt. Mohinder Kaur. The contents of the Will were read over and explained to the executant in the presence of the deponent and other witnesses Sh. Tara Chand s/o Chothu Ram resident of Rajpura Town. Smt. Mohinder Kaur put her signatures on the Will after admitting the same to be correct in the presence of the deponent and other witness. The deponent also put his signatures in*

the presence of Smt. Mohinder Kaur and the witness Tara Chand. The deponent has been the original Will today in the Court. The attested copy of the Will is Ex.P-2. The deponent identifies his signatures on the original Will.

4. *That the deed writer also made the entry in this regard in the register maintained by him. The deed writer also put his seal and signatures on the Will dated 31.5.2000.”*

On going through the aforementioned, examination-in-chief of PW3- Mukesh Kumar, it is evident that he had deposed in terms of provisions of Section 63-C of Indian Succession Act. It is not necessary that the testator of the Will should be personally known to him. In my view, the entire evidence *vis-a-vis* examination- in-chief has to be seen. The appellant-defendants have not been able to cause any dent in the cross examination, thus, the execution and registration of the Will has been proved in pursuance to the provisions of Section 68 of the Indian Evidence Act.

The plea of Benami, though as a defence, is permissible but no evidence has been led to show that the expenses for entire construction were borne by Uttam Chand and not by Mohinder Kaur. Had it been so, Uttam Chand after raising construction would have got collusive decree in his favour in order to avoid the subsequent complication which has now been sought to be raised. After the death of Mohinder Kaur, the property has been

mutated in the name of beneficiaries of the Will. There is no challenge to the Will by way of counter claim, though it has been specifically challenged in the written statement. Though there is little force in the submission of Mr.Jhanji that both the brothers of Joginder Kumar have died and their wives and children are living in the same house but this Court while deciding the lis, would not get carried away by sentiments rather adjudicate the dispute judicially, i.e., as per the record.

Keeping in view the aforementioned observations, the appellant-defendants have not been able to substantiate that the registered Will was suffering from suspicious circumstances. I do not intend to differ with the findings rendered by both the Courts below, based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises to be adjudicated by this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 30, 2015
savita