

106.

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

Regular Second Appeal No.3795 of 2014 (O&M)

Date of decision:19.10.2015

Gulkanwar Singh and another

... Appellants

versus

Pritam Kaur and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Amit Arora, Advocate,
for the appellants.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (*Oral*)

CM No.10514-C of 2015

Application is allowed, as prayed for. Annexures A1 and A2 are taken on record.

Regular Second Appeal No.3795 of 2014 (O&M)

1. The plaintiffs, who lost their suit in both the courts below, are the appellants before this court.
2. The plaintiffs had two sets of reliefs sought as representatives, being widow and sons of Sardool Singh against Sardool Singh's mother, brothers and their representatives. The first

set of relief was with reference to 1/4th share that stood recorded in the name of Sardool Singh claiming the whole of such 1/4th share as surviving to the plaintiffs under the Will dated 24.04.1993. The other set of relief was a claim of joint possession with reference to estate of Sardool Singh' father Kirpal Singh as securing to them under natural succession as legal heirs of widow and sons of predeceased son Sardool Singh. The contesting defendants were the widow of Kirpal Singh and the surviving sons and representatives of Kirpal Singh.

3. But for the Will said to have been executed by Sardool Singh even apart from the plaintiffs, the 2nd defendant, who was the daughter of Sardool Singh and Pritam Kaur, who was the mother of Sardool Singh, would have been class-1 heirs. The first issue was, therefore, a consideration of whether the Will executed by Sardool Singh was established. The court found that Sardool Singh was a lawyer and it was most unlikely that he would have executed a Will and not even registered it. If he meant only his own family surviving to his estate to the exclusion of Class-I heir, the court also found that the Will was surrounded by suspicious circumstance, in that, there was no justification given for exclusion of the daughter and the mother. The counsel has made available copy of the Will as directed by this court. The Will makes a reference to an unmarried daughter but states that he had already provided cash to his wife to

take care of the expenses and for dowry for the daughter and, therefore, he was making no provision. Admittedly, there was no reference to his own mother in the Will. A Will is normally an instrument to give expression to the intentions of the testator and the propounder takes upon himself the burden of casting away any suspicious circumstance. The disinheritance is perceived at all times to be a circumstance that would require to be explained and the propounder will, therefore, bring appropriate evidence as to why the testator did not make provision for all his legal heirs. There could be instances that could be supported through oral evidence to bring an air of authenticity. It is invariably a question of fact of how the suspicion is sought to be removed. Though a Will is not compulsorily registrable, judging from the normal course of conduct of a person in a particular status and understanding, the court shall be even justified in making an inference about the character of document, if it was not registered. There could be no rule of thumb that a registered Will obtains a greater credible value than an unregistered Will. The courts experience is that there as many as registered Wills disbelieved as there could be unregistered Wills that are believed to be true. I have seen through the copy and it is literally scribbled in a few lines on a letterhead of a lawyer. It is rather unusual for a lawyer to be making a solemn instrument of a Will, not even a foolscap paper but on a small sized letterhead.

Again, since the executant was also a lawyer, he should have surely known that appropriate recitals would be expected of him, spelling out the justification for disinheriting the mother or the daughter. In this case, the daughter has not contested the Will but even as regards the mother, it would seem surely artificial considering the profession and the learning from the profession of the executant. The two courts below were not convinced that this document was genuine and the person who gave evidence for the testators, has not evoked any confidence. I find no reason to discard such a finding.

4. As regards the Will propounded by the defendants with reference to the estate of Kirpal Singh, Kirpal Singh had made reference to the fact that his two sons including Sardool Singh had died. He had two other sons surviving him, namely, Sajjan Singh and Baldev Singh, who are parties in suit. Kirpal Singh had excluded the representatives of the deceased sons as requiring no special bequest since they had their own land and also observed that two of his surviving sons had been living away from him and were having separate business. He, therefore, made his wife alone as the beneficiary and had the instrument duly attested and registered before the Registering Officer. The defendant had examined the attestors and the court found the bequest to be natural and also took note of the fact that two of the sons had been disinherited accepted the Will and it was the only plaintiffs, who were challenging the

Will. The Will of the father was indeed subsequent to the death of Sardool Singh and the recitals through the Will were found to be natural and the court took note of the fact that the conduct of the parties and the line of defence taken by the parties as well to uphold the Will. The suit was ultimately dismissed finding the Will propounded by the plaintiffs to be false and the Will propounded by the widow of Kirpal Singh to be true and here again, I find no error in the ultimate dispensation that the plaintiffs were not granted any relief.

5. The learned counsel says that even if the Wills were not true and the Will of Kirpal Singh was true, the plaintiffs must have been granted the right of joint possession with reference to the share by natural succession. As regards the estate of Sardool Singh, I do not think there was any such warrant for a court to modify the decree, for, the plaintiffs were seeking for the relief of joint possession with reference to the share as would obtain in their favour if the Will of Sardool Singh was true and the share if the property of Kirpal Singh was to operate as on interstate succession. If the Will of Kirpal Singh was found to be true and the plaintiffs had been totally disinherited and that the property would go only to Pritam Kaur as per the Will executed by him, then a decree for joint possession with reference to the share did not simply arise. If the joint possession must have been granted to the property of Sardool

Singh, such relief could not be granted without providing for a share to Pritam Kaur. It is no body's case that the plaintiffs' own possession of the property held by Sardool Singh is in jeopardy. The plaintiffs will be competent to carve out the share of Sardool Singh after making a provision for a share of Pritam Kaur-the mother, who will be entitled to 1/5th share and the plaintiffs would themselves be entitled to 4/5th share along with the daughter, as regards the property of Sardool Singh, to the extent admitted and recognized in the revenue records, that right cannot be said to have been lost by the dismissal of the suit, for, the courts were doing no more than rendering an adjudication on the validity of the Wills and the dismissal of the suit must be understood in that context only.

6. The second appeal is dismissed as devoid of merits on the above terms.

(K.KANNAN)
JUDGE

19.10.2015
sanjeev