

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

C.M. NO.8930 C OF 2014 &

R.S.A. NO.3844 OF 2014

DATE OF DECISION: DECEMBER 01, 2015

Hamir Singh and another

.....Appellants

VERSUS

Baldev Singh and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

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

**Present: Mr. P.K.S.Phoolka, Advocate,
for the appellants.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

Prayer in this appeal is to set-aside the judgement and decree dated 25.07.2012 passed by the Additional Civil Judge (Senior Division), Bathinda, whereby the suit for declaration and permanent injunction preferred by the appellant-plaintiffs has been dismissed and the appeal preferred against the same has also met the same fate by judgement dated 07.04.2014 passed by the District Judge, Bathinda.

It is the contention of learned counsel for the appellants that as per the stand of the respondents, they came to be the owners in possession of the property on the basis of an unregistered will dated 03.01.2007. He contends that the said will was never executed by Gurdev Kaur and in fact the same was shrouded with suspicion and in support of this contention, he

has submitted that the scribe of the will is not a regular scribe and he admits that he is not known to deceased Gurdev Kaur and were not on speaking terms. Similarly, he contends that after the death of Gurdev Kaur, one of her brothers, namely, Baldev Singh, had approached the Patwari and got *Rapat Roznamcha* entered seeking succession of the property of Gurdev Kaur in favour of their mother, Bhagwan Kaur. He, thus, contends that had there been a Will, then why the same was not produced at the first instance before the revenue authorities. He, therefore, contends that the findings recorded by the Courts below cannot sustain and deserve to be set-aside.

The contentions of learned counsel for the appellants, on consideration and keeping in view the evidence, which has been led by the parties as also the pleadings, cannot be accepted.

The respondent-defendants have been able to prove the due execution of the Will by producing not only the scribe and the attesting witness but also the said document has been produced in original. Merely because the same is not a registered document, would not effect the genuineness of the same unless found to be shrouded with suspicion, for which the counsel has referred to *roznamcha* and the statements of the witnesses but the same do not dent the veracity of the said document, especially when it has been proved on record that Gurdev Kaur was in a sound disposing mind. It is not in dispute that at the time when she died, her husband and two children had already died. She was residing in her parental house with her mother as also her brothers and, therefore, it is quite natural that she would have, in those circumstances, proceed to Will of her property in favour of her brothers. Merely because the appellant-plaintiffs are the brother and sister of deceased husband of Smt.Gurdev Kaur would not be a

ground in itself to return a finding that the Will is of suspicious nature, which would call for a finding to that effect.

Similarly the argument as raised by counsel for the appellants that the property being ancestral could not have been disposed of by her cannot be accepted in the light of the provisions of Section 8 of the Hindu Succession Act, 1956 (for short, “1956 Act”), which confers an absolute right upon her, especially when the property has been transferred and mutated in her name. The property devolved upon a Hindu, as per Section 8 of the 1956 Act, would not remain a joint family property. She has become owner in possession thereof in absolute term, which fact is not disputed by the appellant-plaintiffs and, thus, could execute the Will.

Both the Courts below have returned concurrent findings after properly appreciating the pleadings and evidence brought on record by the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

Since the main appeal stands dismissed, C.M. No.8930 C of 2014 for staying further alienation/disposing the suit property is also dismissed.

December 01, 2015
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE