

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

RSA No. 822 of 2014 (O&M)

Date of decision : 9.3.2015

Resham Singh Pal

.. Appellant

versus

Manjit Singh and others

.. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Amardeep Singh Gill, Advocate, for the appellant.

Rajesh Bindal, J.

The appellant is one of the legal heir of plaintiff, namely, Late Dharmi @ Tarsem Kaur, who having failed in both the Courts below, has filed the present appeal. Late Dharmi had filed the suit for declaration to the effect that she is the joint owner to the extent of 1/3rd share and consequently in joint possession to the extent of 1/3rd share of the property owned by late Karam Singh being natural heir. Karam Singh was issueless. Plaintiff claimed that she was real sister of late Karam Singh.

Amar Kaur is real sister of late Karam Singh, whereas defendant nos. 2 to 4 are sons/ daughters of Mohinder Singh, brother of Karam Singh. Karam Singh died on 13.10.1992. He died intestate and was issueless. It was on that basis that the plaintiff filed suit claiming 1/3rd share in the property. The plea set up by defendant no. 2 -Buta Singh son of Late Mohinder Singh was that the property had devolved on him on the basis of a Will executed by late Karam Singh on 6.6.1972 on the basis of which even mutation was also sanctioned on 22.3.1993. Civil Suit was filed on 24.5.1999. The primary issue in the present case remained as to whether the Will dated 6.6.1992 executed by late Karam Singh was genuine and in case it is so, the claim of the plaintiff will not survive. The onus of the issue was on the defendants as they had projected the Will. The will was a registered document. The plaintiff did not even step in the witness box to doubt the veracity of the Will and face cross-examination.

The Will was Executed by late Karam Singh in favour of sole son of his late brother. The sisters were excluded. There was nothing abnormal in the process. Even the other defendants in the suit namely one sister of late Karam Singh and two sisters of the beneficiary in the Will also supported the case set up by him. The scribe of the Will was produced to prove that the document was duly executed. It was read over to the executant, who appended his signatures and thumb impression in his presence and other two witnesses, who had signed the Will in his presence. He further submitted that the executant of the Will was of good health. It is also evident from the fact that late Karam Singh lived for more than 20 years after execution of Will. The Will was executed without any pressure in lieu of service rendered by defendant no. 2 and also love and affection. There was entry to that effect in the register maintained by the scribe at Sr. No. 267. Nothing could be brought on record which could demolish the statement made by him in chief.

Both the witnesses to the Will had expired. Daljit Singh, son of one of the attesting witnesses was produced, who identified signatures of his father Kartar Singh and other attesting witness Shankar Singh. He also claimed that he was also present when the Will was executed. They had gone to Teshil office for registration after it was scribed and signed by the executant and the witnesses. Kashmir Singh son of another witness Gurbachan Singh was also produced as DW3, who identified signatures of his late father. Evidence was also produced to prove the fact that Karam Singh had been residing with defendant no. 2 Buta Singh, and his late father Mohinder Singh. Buta Singh while appearing as DW7 reiterated whatever was the case set up in the pleadings. His case could not be demolished in cross-examination.

Considering the ample evidence produced on record by defendant no. 2, Buta Singh proving the genuineness of registered will executed by late Karam Singh in his favour, in my opinion, no error has been committed by the courts below in dismissing the suit filed by predecessor-in-interest of the appellant. Once the execution of registered will in favour of Buta Singh was proved by defendant no. 2, the claim made in the suit regarding 1/3rd share in the property being legal heir of late

Karam Singh on the plea that he died issueless and intestate falls flat. No substantial question of law arises. The appeal is accordingly dismissed.

9.3.2015

vs

(Rajesh Bindal)
Judge