

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

RSA No.1297 of 1988 (O&M)
Date of decision : 24.02.2016

Mangal Singh

...Appellant

Versus

Baldev Singh and ors.

...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. Vinod K. Kataria, Advocate for the appellant.

Mr. Sanjay Majithia, Sr. Advocate with
Mr. Inderjeet Singh, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the judgment and decree of the lower Appellate Court, whereby suit for declaration and possession claiming 1/4th share vis-a-vis estate of Bir Singh has been declined by the lower Appellate Court, in essence, judgment and decree of the trial Court decreeing the suit, has been reversed.

Mr. Vinod K. Kataria, learned counsel appearing on behalf of appellant-plaintiff contends that Bir Singh was unmarried, therefore, his share devolved to other brothers being collateral. The defendants set up the

registered Will dated 30.05.1977 alleged to have been executed by Bir Singh. However, the Will was not proved as both the attesting witnesses of the same had died. Except the bald statement of Tehsildar that Will was registered, no other witness such as scribe who was alive has been examined and thus, there is no compliance of Section 68 of the Indian Evidence Act. The trial Court thus, decreed the suit. However, the lower Appellate Court while relying upon the statement of Tehsildar and reversed the findings and it is in these circumstances, the present appeal has been instituted.

He further submits that before filing of the suit, mutation vis-a-vis share of Bir Singh was entered into in favour of defendants on the basis of the aforementioned Will. The defendants sold the land to one Bikkar Singh. Bikkar Singh being aggrieved of the judgment and decree of the trial Court also filed an appeal before the lower Appellate Court but the same was dismissed vide judgment and decree dated 26.04.1986 which has attained finality and thus submits that following substantial questions of law are required to be formulated by this Court:-

1. Whether the defendants have been able to prove the execution of the Will dated 30.05.1977 in accordance with law?
2. Whether the judgment and decree of the lower Appellate Court suffers from illegality and perversity?

Mr. Sanjay Majithia, learned Senior Counsel assisted by Mr. Inderjeet Singh, Advocate for the respondents, submits that neither his office nor his clients have been able to ascertain the outcome of the judgment and decree dated 26.04.1986 passed against the subsequent vendee. It is not ascertainable whether the appeal had been filed in this

Court and its outcome. In the absence of the witnesses, the evidence of Tehsildar was sufficient for the purpose of proving the Will, thus, prays for dismissal of the appeal as no substantial question of law arises for consideration.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is substance in the submission of Mr. Kataria, for the reasons, that it has come on record that scribe of the Will was alive during the pendency of the appeal. Nothing prevented the defendants to examine him. The trial Court on the basis of the documentary evidence, much less, law, decreed the suit by granting 1/4th share in favour of appellant-plaintiff vis-a-vis the estate of Bir Singh. The Lower Appellate Court has reversed the findings on the premise that statement of Tehsildar is sufficient to prove the registered Will. I am not in agreement with the aforementioned findings for the reasons that it has come on record that scribe is alive, in essence, all the collateral of Bir Singh would have right to succeed vis-a-vis their share and rightly so, suit in that respect has been decreed.

Keeping in view the facts and circumstances, judgment and decree of the Lower Appellate Court is set aside. Question of law as noticed above are answered in favour of the appellant-plaintiff. The judgment and decree of the trial Court is restored.

Appeal stands allowed.

24.02.2016

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**(AMIT RAWAL)
JUDGE**