

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

**RSA No. 1555 of 1995(O&M)**  
**Date of decision : May 17, 2016**

**Amarjit Singh and others**

**..... Appellants**

**Versus**

**Baljit Singh(died) through L.Rs and others**

**..... Respondents**

**RSA No. 1442 of 1995(O&M)**

**Chand Singh**

**..... Appellants**

**Versus**

**Baljit Singh and others**

**..... Respondents**

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

**Present:-**

Mr. Arihant Jain, Advocate  
for the appellants in RSA No. 1555 of 1995.

Mr. Kanwal Goyal, Advocate  
for the appellants in RSA No. 1442 of 1995.

Mr. Raj Kumar Gupta, Advocate  
for the respondents.

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

**Amit Rawal, J (oral).**

Vide order dated 12.1.2016 RSA No. 1442 of 1995 was dismissed for non-prosecution and vide order dated 16.3.2016, learned counsel for the appellant was directed to move an appropriate application for restoration of the appeal but till date no such application was filed. Therefore, this Court on its own motion restores the appeal and proceed further to decide the appeal on merits.

This order of mine shall dispose of two appeals bearing RSA No. 1555 of 1995 at the instance of defendants Nos. 2, 3 and 6 and RSA No. 1442 of 1995 at the instance of defendant No.7 who are aggrieved against the concurrent finding of fact whereby the suit of the respondents-plaintiffs seeking declaration, possession and permanent injunction in respect to the estate of Bishan Singh-grand father on the basis of un-registered Will dated 30.1.1967 has been partly decreed. The sale deed dated 20.2.1980 allegedly executed by Amarjit Singh in favour of defendant No.7 has been held to be intact but giving liberty to the plaintiff to take possession in accordance with law.

Mr. Arihant Jain, learned counsel appearing on behalf of the appellant in support of grounds of appeal has raised multi fold arguments:-

i) The Will dated 30.1.1967 had been allegedly attested by two witnesses namely Niranjana Singh and Bhagwan Singh. Both the attesting witnesses have not been examined.

ii) No evidence as per provisions of Section 69 of the Indian Evidence Act, 1872 (hereinafter referred to as 'the Act')

has come on record to state about the death of the attesting witnesses and the plaintiffs failed to examine the thumb impression of the aforementioned witnesses.

iii) PW-3 Scribe of the Will was not regular deed writer/scribe. He though, stated about the death of the aforementioned witnesses but could not depose as per provisions of Section 69 of the Act. In essence, he had not given the best possible evidence to prove death of the attesting witnesses.

iv) The suit filed in the year 1985 was barred by law of limitation. The trial court erroneously recorded the finding qua issue No.4 having not pressed as plaintiffs failed to prove from the date of execution that in the year 1967 he was 2 ½ years old, rather, in case the testimony of PW-3 is to be believed he disclosed the age of the plaintiff as 8/9 years. The suit was filed in the year 1985 and majority might have been attained as by that time he was almost 25 years old and the suit could not have been filed in the year 1981, when three years expired from attaining the age of majority.

v) The mutation Ex.D-1 on account of death of Bishan Singh was entered by way of natural succession i.e.in favour of both the sons namely Jarnail Singh and Amarjit Singh and three daughters namely Karamjeet Kaur, Malkiat Kaur and Bant Kaur and submits that following substantial questions of law arise for determination by this Court:

1. Whether the plaintiff discharged the onus, much less proved the ingredients of Section 69 of the Act?

2. Whether the Will dated 30.1.1967 has been proved in accordance with law?

3. Whether the suit was within the period of limitation or not as question of limitation as per provisions of Section 3 of the Act can be taken at any stage.

Mr. Kanwal Goyal, learned counsel appearing on behalf of the appellants in RSA No. 1442 of 1995 submits that defendant No.7 is a bona fide purchaser for a valuable consideration as while entering into sale deed dated 20.2.1980 he examined the revenue record and found that mutation Ex.D-1 had been entered in favour of all the siblings of Bishan Singh by way of natural succession and the sale deed qua the share of Amarjit Singh, thus, both the courts below committed illegality and perversity in not granting the status of bona fide purchaser, thus urges this Court for setting aside of the aforementioned findings by raising the following substantial questions of law:-

1. Whether defendant No.7 is a bona fide purchaser for a valuable consideration as the revenue record did not disclose the factum of Will dated 30.1.1967.

Mr. Raj Kumar Gupta, learned counsel appearing on behalf of the respondents submits that Scribe PW-3 who was the only surviving witness, in the year 1987 deposed that both the attesting witnesses, named above, had died, thus pleads that there is

compliance of provisions of Section 69 of the Act. On account of non-availability of the attesting witnesses having died the testimony of Scribe is sufficient evidence and would be weighed in terms of provisions of Section 68 of Indian Evidence Act, 1872 and 63-C of the Indian Succession Act, 1925. Both the attesting witnesses had appended their thumb impressions in the presence of the testator who also did in the same manner. The written statement qua the age of the plaintiffs is evasive, thus, there is non compliance of provisions of Order 8 Rule 5 CPC, the concurrent finding of fact cannot be interfered unless a specific substantial question of law arise for determination whereas on examination of finding of both the courts below it is found that no such substantial question of law arise.

He further submits that the lower appellate court being the last court of fact and law rendered the finding after examining the oral and documentary evidence. PW-1 Gurdev Singh deposed that Niranjn Singh was his maternal uncle so there is compliance of provisions of Section 69 of the Act, thus urges this Court for affirming the finding rendered by both the courts below.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force in the submissions of Mr. Jain and Goyal, for, PW-1 deposed about the death of Niranjn Singh to whom he was related to. For the sake of brevity Section 69 of the Indian Evidence Act, 1872 reads thus:-

*69. Proof where no attesting witness found.—If no such attesting witness can be found, or if the document purports to have been executed in the*

*United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.*

On conjoint reading of statements of PW-1 and PW-3, it is seen that nowhere it has come on record that thumb impression of the person who executed the Will was his. The respondents-plaintiffs failed to lead evidence for examining the admitted thumb impression from the disputed thumb impressions available on the Will, much less factum of death of attesting witness by examining any relatives of them, thus, there is no compliance of provisions of Section 69 of the Act. The plaintiffs have failed to lead any direct and cogent evidence, much less corroborative to prove the age that he was 2 ½ years at the time of execution of the Will whereas on the contrary PW-3-Scribe stated that he was 8/9 years old. Since the parties were at variance and issue No.4 qua limitation was also framed but has been decided against the appellants qua having not pressed. It is settled law that Section 3 of the Limitation Act, 1908 empowers the Court to take cognizance of applicability of the same at any stage of the matter.

Be that as it may, once the respondents-plaintiffs, as noticed above, has failed to prove ingredients of Section 69 of the Act, in my view genesis of the suit was based upon Will and having failed to prove the will, property was mutated in the name of all the siblings of Bishan Singh by way of natural succession vide Mutation

Ex.D-1 and on the basis of that, Amarjit Singh, as notice above, executed sale deed dated 20.2.1980 in favour of defendant No. 7. In my view defendant No.7 had made a reasonable enquiry regarding ownership of property from the revenue record as it did not disclose about factum of Will. Even defendant No.8-mother of the plaintiff also did not depose about the age of the plaintiff.

For the foregoing reasons, both the courts below, having not discussed the aforementioned statutory provisions of law, much less evidence brought on record ought not to have decreed the suit, thus, there is illegality and perversity in the judgments and decrees of both the courts below, much less the judgments suffer from repugnancy, accordingly the same are set aside. The substantial questions of law, noticed above are answered in favour of the appellants except the substantial question of law regarding limitation and against the respondents-plaintiffs.

The suit stands dismissed. Resultantly, appeals are allowed.

**(AMIT RAWAL)**  
**JUDGE**

**May 17 , 2016**  
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