

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

R.S.A. No.2340 of 2009 (O&M)

Date of decision: 08.04.2016

Banta Singh (since deceased) through
his LRs and others

..Appellants

Versus

Harjinder Singh and others

..Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. J. S. Puri, Advocate
for the appellants.

Mr. Vipin Mahajan, Advocate
for respondent Nos.1 and 2.

Jitendra Chauhan, J.

This regular second appeal is directed against the judgment and decree dated 08.12.2008, passed by learned Additional District Judge, (Fast Track Court), Gurdaspur (for short, the 'first Appellate Court') whereby, the appeal filed by the defendant-appellants, against the judgment and decree dated 23.12.2002, passed by learned Civil Judge, (Jr. Divn.), Gurdaspur, (for short, the 'trial Court') decreeing the suit of the plaintiff-respondents, has been dismissed.

The learned counsel for the appellants contends that appellants being sons and grandsons of Ram Singh, brother in law of deceased, Maya Devi, who died issueless, are her natural successors. The learned Courts below have relied upon the unregistered Will dated 10.03.1993, (Ex.P1) allegedly executed by Maya Devi, which is surrounded by suspicious circumstances. This Will was not produced for almost five years despite the fact that after the death of Maya Devi, the mutation of inheritance was sanctioned on 26.11.1991. One of the attesting witnesses of the alleged Will, PW1-Hardip Singh, in his cross-examination could not disclose the name of the husband of deceased, Maya Devi and he had no knowledge about the age of the deceased, Maya Devi. He admitted in clear terms that he had never visited her house. It is asserted that from the perusal of the register maintained by the scribe, Joginder Singh, it emerges that the entry was made at later stage. The learned counsel refers to the report of Sh. Arvind Sood, Hand Writing and Finger Print Expert, who stated that the thumb impression is ink smudged and blurred due to over inking in most portion of the thumb impression on the alleged Will, which is not comparable. This has been deliberately done by the respondents so that the same may not be compared. These material facts clearly indicate that the alleged Will is a bogus one.

The learned counsel cites '**H. Venkatachala Iyengar Vs. B. N. Thimmajamma and others**', 1959 AIR (SC) 443 to contend that burden to prove Will is on the propounder and it is the duty of the Court to ascertain the true state of affairs and intention of the testator.

On the other hand, the learned counsel for respondent Nos.1 and 2 refers to Ex.P3 to Ex.P14 to plead that deceased, Maya Devi was the owner of the property in dispute and during her life time she had executed a Will dated 10.03.1990 in favour of the respondents.

I have heard the learned counsel for the parties and carefully perused the entire record.

There is no dispute about the preposition of law laid down in H. Venkatachala Iyengar's case (supra) but the ratio of the reported case does not apply to the facts of the instant case.

The appellants have stated that the alleged Will is surrounded by suspicious circumstances. However, they have not led any cogent evidence to substantiate the assertion that the alleged Will is a result of fraud and the same is bogus one. The ownership of the deceased, Maya Devi over the suit land is established vide Ex.P3 to Ex.P14. On the other hand, the execution of the Will is duly proved by the testimonies of its witnesses, namely, Hardip Singh and

Raghubir Singh, who stated that deceased, Maya Devi, during her life time had executed a Will Ex.P1 and thumb marked the same after admitting it to be correct. In the considered opinion of this Court, the appellants have failed to prove any suspicious circumstances qua the alleged Will. Therefore, the learned Courts below have rightly passed the impugned judgments and decrees.

On consideration, this Court finds that the contentions of the learned counsel for the appellants only relate to the appreciation of evidence. Neither any evidence is shown to have been ignored from consideration, nor there is any misreading of evidence. These are pure findings of fact. No question of law, much less substantial question of law, arises in the present appeal. Hence, no interference is called for.

Dismissed.

08.04.2016

ashok

(JITENDRA CHAUHAN)
JUDGE