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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 11.07.2016

1.

RSA-4631-2009 (O&M)

Kamaljit Lal

... Appellant(s)

Versus

Satnam Singh and others

... Respondent(s)

2.

COCP-2205-2010

Kamaljit Lal

... Appellant(s)

Versus

Paramjit Lal and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Takhi, Advocate
for the appellant(s).

Mr. Munish Gupta, Advocate
for the respondent(s).

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)

This order of mine shall dispose of the appeal bearing **RSA No.4631 of 2009** titled as **“Kamaljit Lal V/s Satnam Singh and others”** and the petition bearing **COCP No.2205 of 2010** titled as **“Kamaljit Lal V/s Paramjit Lal and others”**.

The appellant-plaintiff is aggrieved of the concurrent finding of

fact, whereby the claim qua declaration/estate of the deceased Gujar Ram on the basis of the Registered Will dated 24.07.1995 (Ex.P-3) has been negated.

Mr. Arun Takhi, learned counsel for the appellant-plaintiff submits that Gujar Ram survived by three sons, two daughters and one widow. On 24.12.1993, he executed a Registered Will in favour of all the three sons. However, the relation with other two sons i.e. defendant Nos.1 and 2 became strain and as a result thereof, he cancelled the Will vide cancellation deed dated 10.06.1994 and executed a fresh registered Will dated 24.07.1995 in favour of the appellant-plaintiff. Both the Courts below have non-suited the appellant-plaintiff on the ground that there was an active participation of the plaintiff, whereas the legal position on record is that in case, the relationship of a father has become strain with other person, the other son would be taking care of the father and would be dependent incomplete. Since, Gujar Ram wanted to execute the Will in favour of the appellant-plaintiff and was taken him to deed writer for the purpose of the attestation/registration. Both the witnesses have deposed as per the terms of Section 68 of the Indian Evidence Act, much less, Section 63 (c) of the Indian Succession Act. The daughters have also deposed in favour of the appellant(s)-plaintiff(s), but there is no reference to the testimony, thus, there is gross-misreading, much less, perversity and urges this Court to formulate the substantial questions of law as culled out in the memorandum of appeal. In support of his contentions, he relies upon the judgments passed by this Court rendered in “Karmi wd/o Jai Chand V/s Sital and another” 2015 (2) RCR (Civil) 63 and “Jaswinder Singh and

other V/s Karta Singh and others” 2004 (3) Civil Court Cases 80 (P&H).

On contrary, Mr. Munish Gupta, learned counsel appearing on behalf of the respondent(s)-defendant(s) submits that the witnesses of the appellant-plaintiff, in cross-examination, spilled the beans i.e. PW-5 Gurchain Dass stated that the contents of Will were dictated by the appellant-plaintiff-Kamaljit Lal to the deed writer. He also stated that the relationship with the other brothers was also not bad, but not as good as with the appellant-plaintiff, thus, the second Will was nothing else, but surrounded by the suspicious circumstances i.e. owing to the active participation, rightly so, the same has been discarded and thus, there is no illegality and perversity in the judgment and decree, under challenge, much less, no substantial question of law arises for determination and urges this Court for affirming the findings of the judgment and decree, under challenge. In support of his contentions, he relies upon the judgment passed by this Court rendered in *“Jangir Singh and others V/s Gurdev Singh and others” 2004 (2) PLR 479* and *“Balbir Singh V/s Kashmir Singh and others” 2004 (3) RCR (Civil) 45.*

I have heard the learned counsel for the parties and appraised the paper book and of the view that the submissions of Mr. Arun Takhi sans merit for the following reasons:-

PW-5 Gurchain Dass, in cross-examination, deposed that the entire contents of the Will were dictated by the appellant-plaintiff-Kamaljit Lal. No doubt that the son would definitely assist his father for the purpose of the documentation and other related things, but in the instant case, the appellant-plaintiff had actively participated by not only taking his father to

the deed writer for attestation/registration, but even dictated the terms and conditions of the Will.

It is a matter of record that Gujjar Ram expired in the month of November 1995. No doubt that daughters had deposed in favour of the appellant-plaintiff, but the other attenuating circumstances i.e. the preponderance of the evidence, have to be looked into for the adjudication of the *lis*. The contents of Will relied upon by the plaintiff reveal that Gujjar Ram did not have good relation with other sons, whereas PW-4 Surjit Singh, in cross-examination, submitted that the other sons were not at loggerheads with Gujjar Ram. Even the appellant-plaintiff, in examination-in-chief, deposed that he was never present in the office of the Registrar or deed writer, but the aforementioned evidence has been shattered through the cross-examination of the PW-5 Gurchain Dass. The lower Appellate Court, being the last Court of fact and law, after examining the evidence, did not find any weigh or substance in the submissions of the appellant-plaintiff, rightly so, the appeal has been dismissed by upholding the finding of the trial Court. The judgment relied upon by Mr. Aurn Takhi deals with the proposition, where the son had taken the testator for the purpose of attestation/registration, but the facts in the present case, are contrary to the facts in the judgment cited above.

Keeping in view the facts and circumstances of the case, I do not intend to differ with the findings rendered by both the Courts which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination.

Accordingly, the appeal stands dismissed.

COCP-2205-2010

As regards the contempt petition, the main appeal has been dismissed, therefore, no cause of action survives in the present petition and accordingly, the same is also dismissed.

11.07.2016
yogesh

**(AMIT RAWAL)
JUDGE**