

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

RSA No.2527 of 2010 (O&M)

Date of decision : 07.04.2016

Lichho

...Appellant

Versus

Ved Parkash and others

...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: Ms. Gurpal Kaur Dulat, Advocate for the appellant.

Mr. Vikram Punia, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

CM No.7593-C of 2010

For the reasons stated in the application, which is duly supported by an affidavit, delay of 10 days in filing the appeal is condoned.

Application stands allowed.

Main Case

The appellant-plaintiff is aggrieved of the judgment and decree of the lower appellate court, whereby suit for declaration with consequential relief of joint possession, has been dismissed, in essence, judgment and decree rendered by the trial Court granting 1/24th share in the estate of

deceased-Lalu has been set aside.

Ms. Gurpal Kaur Dulat, learned counsel appearing on behalf of appellant submits that Lalu father of the appellant-plaintiff was the owner of land measuring 85 kanals 11 marlas. He executed a consent decree dated 20.07.1994 vide which land measuring 65 kanals 8 marlas was given to them. He also executed registered will dated 22.05.1976 qua remaining land. The Will was surrounded by suspicious circumstances, much less, has not been proved as the respondents-defendants are the propounders of the Will but did not discharge the onus as per the provision of Sections 68 and 69 of the Indian Evidence Act. The only plea taken in the written statement before the Court is that as per the provision of Section 90 of the Indian Evidence Act, Will is not required to be proved. He submits that for the purpose of proving the Will, provision of Section 90 of the Indian Evidence Act do not apply. He further submits that even consent decree has also been obtained by playing fraud and misrepresentation upon father. He was not aware of the consequential effect of suffering of the decree. Realizing this fact, decree has been challenged. In support of contentions, relied upon judgment *Bharpur Singh & others Vs. Shamsher Singh, 2009(1) RCR (Civil) 826* and thus urges this Court to set aside the findings rendered by the lower Appellate Court by formulating following substantial questions of law:-

1. Whether in the absence of the Will, the appellant-plaintiff would be entitled to her respective shares qua the land being part of Will which is not part and parcel of the Consent Decree?
2. Whether consent decree dated 20.07.1994 was result of fraud

and misrepresentation played upon Lalu?

Mr. Vikram Punia, learned counsel appearing on behalf of respondents submits that no evidence has been led to prove provision of Order 6 Rule 4, in essence, provision is wanting, therefore, consent decree suffered during the lifetime of Lalu not challenge by him cannot be set aside at the drop of the hat. The provision of Section 90 of the Indian Evidence Act would apply to Will as it was more than 30 years old. The son of the Lalu acknowledged the signature of his father on Will, thus, there is compliance of Section 69 of the Indian Evidence Act. He also relies upon *Lalitaben Jayantilal Popat Vs. Pragnaben Jamnadas Kataria and others, 2009(1) RCR (Civil) 715* to contend that suspicious circumstances is question of fact and once party has failed to lead evidence Will has to be deemed to have been proved.

I have heard learned counsel for the parties and appraised the paper book and of the view that vis-a-vis the claim of the appellant-plaintiff in respect of land measuring 65 kanals 8 marlas which is not part and parcel of Consent Decree, I am of the view that appellant-plaintiff has failed to prove the ingredients as enshrined under Order 6 Rule 4, much less, not led any evidence as to how and in what manner fraud was played as Lalu after considerable period of time did not challenge the same. It is common practice that out of successor of common ancestor after his death are knocking door of Court.

Accordingly, Consent decree dated 20.07.1994 suffered in favour of the respondent is upheld. As regards the claim of the remaining property i.e. 20 kanals 3 marlas, I am of the view that respondents-

defendants have failed to prove the Will aforementioned, as the provision of Section 90 of the Indian Evidence Act in lieu of ratio decidendi culled out in Bharpur Singh's case (Supra) would not be applicable. Provision of Section 68 have not been complied, in essence, none of the parties have deposed as per provision of Section 69 of the Act. Neither any witness from the office of Registrar has been examined to prove the attestation of the registration of the Will. Accordingly, all the successors of Lalu would be entitled to their respective share on the basis of natural succession i.e. in respect of land measuring 20 kanals 3 marlas.

Keeping in view the aforementioned facts and circumstances, question of law No.2 is answered against the appellant-plaintiff and No.1 is answered in favour of appellant-plaintiff and against the respondent-defendant. Judgment and decree of the lower Appellate Court is hereby modified to the aforementioned extent. Suit is partly decreed.

Appeal stands disposed of in aforesaid terms.

07.04.2016

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**(AMIT RAWAL)
JUDGE**