

RSA No.3531 of 2010 (O&M)

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

RSA No.3531 of 2010 (O&M)

Date of decision:13.05.2016

Baldev Singh and others

... Appellants

Vs.

Sartaj Singh and others

... Respondents

RSA No.3057 of 2010 (O&M)

Sartaj Singh and others

... Appellants

Vs.

Baldev Singh 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:- Mr. Arun Jain, Senior Advocate with
Mr. Abhishek Dull, Advocate
for the appellants (in RSA No.3531 of 2010) and
for respondents No.1 to 3, 5 to 8 (in RSA No.3057 of 2010)

Ms. Satpreet Grewal, Advocate
for the appellants (in RSA No.3057 of 2010)
for the respondents (in RSA No.3531 of 2010).

AMIT RAWAL J. (Oral)

C.M.No.10364-C-2010 in RSA No.3531 of 2010

The application is allowed, subject to all just exceptions. Legal representatives of Palwinder Kaur as

mentioned in the application, are ordered to be brought on record for the purpose of prosecuting the present appeal.

C.M.No.10365-C-2010 in RSA No.3531 of 2010

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

C.M. stands disposed.

Main Appeals

This order of mine shall dispose of aforementioned two Regular Second Appeals. RSA No.3057 filed at the instance of the appellant-plaintiffs in civil suit No.68 of 2004 (hereinafter referred as “first suit”) seeking declaration that they are entitled to inherit 1/4th share of deceased brother Mohinder Singh son of Gian Singh on the basis of the Will dated 22.10.1977 and the other suit bearing No.429 of 1999 titled as Parwinder Kaur alias Pinto vs. Baldev Singh and others (hereinafter referred as “second suit”), wherein, she being daughter of Gian Singh claimed ½ share in the land described in the head note of the plaint belonging to Gian Singh.

The trial Court decreed the first suit by granting 1/5 share to all siblings, whereas, the Lower Appellate Court granted entire share of Mohinder Singh to Palwinder Kaur being the daughter from his first wife on the premise of having full blood relationship. It is in these circumstances, the appellants are in Regular Second Appeal, whereas, second suit has been dismissed by both the Courts below

owing to fact that the defendants therein propounded the registered Will dated 11.08.1989 which has been upheld.

Mr. Arun Jain, learned Senior Counsel assisted by Mr. Abhishek Dhull, Advocate appearing on behalf of the appellant-plaintiffs submits that Gian Singh was married twice. Out of first marriage with Jaswant Kaur, Mohinder Singh and Parwinder Kaur were born, whereas, the plaintiffs, i.e., appellants herein, namely, Baldev Singh, Vikram Singh, Sukhwinder Singh, deceased were born out from his second marriage with Kashmir Kaur. Mohinder Singh born from his first wife predeceased Gian Singh as he died in the year 1981 and whereas, Gian Singh died in the year 1999. Therefore, the Lower Appellate Court ought not to have granted to entire share to Palwinder Kaur on the premise of having full blood relationship with Mohinder Singh as share of Mohinder Singh would have also fallen to Gian Singh. This fact has totally been ignored by the Court below and thus, urges this Court to formulate the following substantial questions of law which read thus:-

“i) Whether the judgment and decree of the Lower Appellate Court granting the entire share of Mohinder Singh to Palwinder Kaur on the premise that predeceased Gian Singh being father is legal and justified?

ii) Whether share of Mohinder Singh would devolve upon the estate of Gian Singh or not?”

Ms. Satpreet Grewal, learned counsel appearing on

behalf of the respondent-defendants in the first suit and appellant-plaintiffs in second suit submits, that though the Court below did not accept the Will propounded by the defendants but the fact remains that Mohinder Singh was the real brother of Palwinder Kaur. Having full blood relationship with him, rightly so entire property has been held to be succeeded by her. The factum of deaths aforementioned was not pleaded, much less, any document in this regard except by way of additional application bearing No.C.M.No.7951-C-13 has been placed for the first time and it tantamount to filling up the lacunae and taking away right accrued in favour of Palwinder Kaur and therefore, cannot be permitted. As regards, other RSA, she submits that Will has not been proved in accordance with law. There is no compliance of the provisions of Section 63 (c) of Indian Succession Act, much less, Section 68 of the Indian Evidence Act. The Will was surrounded by suspicious circumstances and thus, for intents and purposes, Gian Singh would be deemed to have died intestate and the property would devolve upon all other legal heirs by way of natural succession. All these aspects have totally been ignored by both the Courts below. She further submits that there is illegality and perversity in the judgments and decrees of the Courts below and thus, urges this Court to formulate the substantial questions of law as culled out in the memorandum of appeal.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below and of the view that there is force in the submission of Mr. Jain qua share of

Mohinder Singh having predeceased father Gian Singh would devolve upon him and therefore, Palwinder Kaur cannot be held entitled to succeed Mohinder Singh's entire share. Death certificates have been placed on record which are supported by affidavits and factum of death is not disputed, therefore, the documents are taken on record.

In view of the aforementioned facts, I am of the view that substantial questions of law, as noticed above in RSA No.3531 of 2010 are answered in favour of the appellant-plaintiffs in first civil suit and judgment and decree of the Lower Appellate Court is required to be modified. Share of Mohinder Singh would devolve upon Gian Singh and Palwinder Kaur also. Out of share of Gian Singh, would also be sub-divided among all the children including the defendants in the first suit and plaintiffs in second suit. Parties shall file application qua their respective shares. However, in other case, I am of the view that respondent-defendants have been able to prove the registered Will dated 11.08.1989 executed by Gian Singh, through the testimony of attesting witnesses which has been deposed in terms of provisions of Section 63 (c) of Indian Succession Act, much less, Section 68 of the Indian Evidence Act and withstood wrath of cross examination left no cause to the Court to form different opinion as what has been referred in the Will, i.e., desire of the testator.

Accordingly, I do not intend to differ with the findings rendered by both the Courts below in the aforementioned suit which are based upon the appreciation of oral and documentary evidence,

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much less, no substantial question of law arises for determination of this Court.

Accordingly, RSA No.3531 of 2010 is allowed and RSA No.3057 of 2010 is dismissed.

**(AMIT RAWAL)
JUDGE**

May 13, 2016
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