

Regular Second Appeal No.5149 of 2010 (O&M) { 1 }

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.5149 of 2010 (O&M)
Date of Decision: August 31, 2016

Jagjit Singh

...Appellant

Versus

Preet Mohinder & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.S.S.Sandhu, Advocate,
for the appellant.

Mr.Naresh Parbhakar, Advocate,
for respondent Nos.5, 7 & 8.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the dismissal of the suit seeking possession by way of partition of the suit property on the death of his father Bakshi Singh, who, according to the plaintiff, is stated to have died intestate.

Mr.S.S.Sandhu, learned counsel for the appellant-plaintiff submits that Bakshi Singh was owner in possession of the suit property. He died on 8.11.1986. In the year 1999, suit for partition was filed, but the defendants took up a plea of Will dated 20.5.1986 executed by Bakshi Singh. The said suit was amended and the Will was also challenged. The Will, according to the defendants, had been scribed by Manjit Kaur, but, when she appeared as PW-4 denied the same. Except the testimony of Baldev Raj DW-2, no other witness has been examined. Even Baldev Raj

had deposed that at the time of execution of the Will, he was 23 years old, in

essence Surjit Singh was giving him work. Surjit Singh is none else but husband of Prem Lata, the beneficiary of the Will. He further submits that from the contents of the Will, it appears that it has been prepared at the direction of Bakshi Singh and, therefore, the suspicious circumstance proved to the hilt, but the Courts below have not appreciated the same and, therefore, there is illegality and perversity in the impugned judgments and, thus, urges this Court for formulation of the substantial questions of law as culled out in the memorandum of appeal.

Per contra, Mr.Naresh Parbhakar, learned counsel for respondent Nos.5, 7 and 8 submits that the property in dispute is 2 marlas and 13 sarsahi and her husband died long time back, i.e., prior to the suit and she is taking care of handicapped daughter. Manjit Kaur also appeared and filed the written statement admitted scribing of the Will. Even plaintiff, in cross-examination, admitted the signatures of Paramjit Kaur and Manjit Kaur, thus, for all intents and purposes, the Will had been proved and there was no need even to examine the attesting witness, though he has been examined. Both the Courts below have dismissed the suit after appreciating the oral and documentary evidence. He further submits that the concurrent findings cannot be interfered with until and unless there is gross illegality and perversity, much less suspicious circumstance and, thus, urges this Court for affirming the findings.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force in the submission of Mr.Sandhu, for, Baldev Raj DW-2 had been extensively cross-examined. He even deposed in terms of the provisions of Section 63-C of the Indian Succession Act, much less there is compliance of provisions of Section 68

Regular Second Appeal No.5149 of 2010 (O&M) { 3 }

of the Act. It is immaterial whether the Will is registered or un-registered. The fact remains that it has been proved in accordance with law.

Manjit Kaur, in the un-amended suit, denied the scribing of the Will, much less claimed no share in the property. Even the plaintiff has admitted the signatures of the other witness, namely, Paramjit Kaur, who is none else but sister and as well as the scribe. It is itself a striking feature of admitting the Will. In my view, the appellant-plaintiff should have respected the will of testator Bakshi Singh giving the property, keeping in view the fact that Prem Lata, being widow, is taking care of the handicapped child.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below. No ground for interference, much less substantial question of law arises for determination by this Court.

Appeal stands dismissed.

August 31, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No