

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

1. RSA No.4020 of 2011 (O&M)
Date of decision : 31.08.2016

Navbeer Singh

...Appellant

Versus

Shiv Raj Singh and others

...Respondents

2. RSA No.4021 of 2011 (O&M)
Date of decision : 31.08.2016

Navbeer Singh

...Appellant

Versus

Satwant Kaur 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. S.C. Chhabra, Advocate for the appellant.

Mr. S.K. Arora, Advocate
for respondents No.1 to 3 (In RSA No.4020 of 2011)
for respondents No.2 to 4 (In RSA No.4021 of 2011)

Mr. Vinod Khunger, Advocate for respondent No.4.
(In RSA No.4020 of 2011) and
for respondent No.5 (In RSA No.4021 of 2011)

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of aforementioned two appeals.

The appellant-defendant No.4 is aggrieved of the concurrent findings of the fact, whereby suit for declaration and consequential relief of permanent injunction in respect of estate of Bakhtawar Singh has been decreed by the trial Court and appeal filed against the same has also met with the same fate.

Mr. S.C. Chhabra, learned counsel appearing on behalf of appellant-defendant No.4 submits that as far as RSA No.4021 of 2011 is concerned, no attempt has been made to bring on record the LRs of Satwant Kaur and though this fact was brought to the notice of this Court recorded in order dated 12.09.2014. However in RSA No.4020 of 2011, LRs have been brought on record.

Mr. Vinod Khunger, learned counsel submits that as per the amendment in provision of Order 22 Rule 3 (2) as applicable to this Court, contract between parties and counsel will continue, therefore, since he was representing Satwant Kaur, he can represent her LR also. He submits that application for bringing on record the LRs in RSA No.4020 of 2011 was filed and amended memo has been taken on record. In view of the aforementioned provision, even if application for bringing on record LR has not been filed, yet Mr. Khunger in my view has right to contest the case by the LRs of Satwant Kaur.

Now coming to the merits of the matter, two suits, one at the instance of Harbans Kaur and another by Satwant Kaur widow of Harbans Singh pre deceased Bakhtawar Singh were instituted claiming the estate by

way of natural succession. The defendant No.1 i.e. Tejpal Singh son of Harvant Singh set up a registered Will dated 22.05.1987 Ex.D1 to contest that Bakhtawar Singh had bequeathed the entire estate in favour of him in view of the services rendered, therefore, plaintiff had no stake and claim in the property.

Mr. Chhabra, learned counsel further submits that factum of the Will was disclosed in the written statement. No steps have been taken by the plaintiff to dispel the recital in the Will and as well as signatures of testator in essence plaintiff had failed to lead the evidence in rebuttal. The registered document carries presumption of truth until and unless it is rebutted by direct, cogent or corroborative evidence.

From the glance of the other documents i.e. sale deed dated 20.01.1988 Ex.P6 executed by Bakhtawar Singh, it is evident that signatures are of one and same person. The Courts below held the Will to be suffering from suspicious circumstances as on endorsement, signatures of Bakhtawar Singh is in Punjabi whereas in the Will, it is in English. He says that even sale deed which is not subsequent to the execution of the Will also bears English signatures, thus it is sufficient for the Court to believe the Will. Even in the revenue proceedings, the mutation was ordered on the basis of the Will, therefore suit was not maintainable as it has been filed on 06.03.1999 and 10.06.1999 whereas mutation proceedings had culminated wayback in the June, 1989. All these factors should have weighed in the mind of the Courts below and liable to dismissed the suit. The reliance to the cancellation deed dated 18.03.1987 Ex.P1 is neither here and there. The findings of the lower Appellate Court that the grandson was of 5 year older

and 1 year and cannot render services to the deceased, would be meaningless and urges this Court for formulation of the substantial questions of law as culled out in memorandum of appeal.

Per contra Mr. Vinod Khunger, Advocate and Mr. S.K. Arora, learned counsels appearing on behalf of the respondents in both the RSA submits that contents of the cancellation deed dated 18.03.1987 Ex.P1 is the key for the dismissal of the suit. Bakhtawar Singh had been candid and coherent while cancelling the previous Will dated 15.06.1981 by reciting both Kulwinder Kaur and her brother were trying to deal with the property. He further specified that even after the death in case they come out with the legal documents or any other order of Court or of Government with regard to his property that shall not be taken into consideration. It is the said factor which weighed in the mind of the Court to disbelieve the Will. Even otherwise no harm is caused to the beneficiary. As per the suit, the Successor-in-interest of the Bakhtawar Singh are inheriting the property by way of natural succession and thus urges this Court for affirmation of the findings under challenge as no substantial questions of law arises for determination.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Chhabra, for, contents of the Cancellation Deed is striking feature for non-suiting the defendants who had propounded the registered Will dated 22.05.1987. In my view, even if the document relied upon by the defendants is registered document, same has been rebutted as per the cancellation deed. Cancellation Deed of the previous Will dated

15.06.1989 is a conclusive piece of evidence and same has not been disputed. The contents of the same speaks for themselves. Once the testator had already changed the line of succession, in my view, over the span of few months, no affection or love erupted in favour of beneficiary. The admitted position on record is that both the beneficiaries were of 5 year and 1 year at the time of execution of Will. No reasons have been assigned from changing the line of succession vis-a-vis the daughter and the widow daughter-in-law.

For the foregoing reasons, I do not intend to differ with the findings rendered by the Courts below as they are based on preponderance of the evidence.

No ground for interference is made out.

Both the appeals stand dismissed.

31.08.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No