

Regular Second Appeal No.1385 of 2012 (O&M) { 1 }

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1385 of 2012 (O&M)
Date of Decision: August 8th, 2016

Nirmal Singh & others

...Appellants

Versus

Jagdish Mitter & others

...Respondents

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

Present: Ms.Sat Preet Kaur Grewal, Advocate for
Mr.Parveen Kumar, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

Appellant-plaintiffs, who are none else but the daughters,
one son and one grand-son of Bachint Singh, instituted a suit claiming
declaration qua 7/10th share in the estate of Bachint Singh, who was
owner in possession of land measuring 55 kanals 2 marlas.

Respondent No.10 and L.Rs of respondent No.2 are ex-
parte. Respondent Nos.1 and 3 to 9 are represented by Mr.Surinder
Thakur Advocate, but today there is no representation on their behalf.

Learned counsel for the appellants submits that only L.Rs of respondent

No.2 are contesting respondents. Accordingly, I proceed to decide the

appeal on merits.

Ms.Sat Preet Kaur Grewal, learned counsel appearing on behalf of the appellant-plaintiffs submits that Bachint Singh died intestate. He had left behind four sons and six daughters and on account of the aforementioned fact, claim of 7/10th share in the property was sought . The respondent-defendants allegedly set up a Will dated 2.6.1998, but did not produce on record the original Will. It has been proved by way of secondary evidence. Objection qua the same was taken, but the same has not been taken into consideration as the existence and loss of the Will was not proved. Respondent-defendants examined attesting witness and Deed Writer, but they did not state in terms of the provisions of Section 63 (c) of the Indian Succession Act (for short “the Act”). The Will was surrounded by suspicious circumstances as it has taken care of all the sons by discarding the other daughters. All the aforementioned aspects have been ignored by both the Courts below, thus, there is illegality and perversity in the judgments and decrees dismissing the suit.

I have heard the learned counsel for the appellant-plaintiffs and appraised the paper book.

As per the Will dated 2.6.1998, Bachint Singh had bequeathed his estate in favour of the defendants. It is natural

phenomenon that daughters are married and have been taken care of. No doubt, the original Will has not come on record, but the concerned Clerk from the office of the Sub Registrar has proved the same, which was registered. Numberdar and Deed Writer have also deposed in terms of the provisions of Section 63 (c) of the Act. The testator had appended his thumb impression after admitting the contents of the Will and in their presence they also did identical fashion.

In my view, the plaintiffs have failed to prove that Bachint Singh died intestate. The onus with regard to the Will surrounded by suspicious circumstances has not been discharged and, therefore, could not have been rebutted.

For the foregoing reasons, I find that there is no illegality and perversity in the judgments and decrees of both the Courts below, which are based upon appreciation of oral and documentary evidence. No substantial question of law arises for determination. No case for interference is made out.

Appeal stands dismissed.

August 8th, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No