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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-147-2012 (O&M)

Date of decision : 27.07.2016

Malkiat Kaur and another

... Appellants

Versus

Gurpreet Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Sandeeptha Mehta, Advocate
for the appellants.

Mr. P.S. Jammu, Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

CM-357-C-2012

For the reasons stated in the application which is supported by an affidavit, the delay of 14 days in filing the appeal is condoned.

CM stands disposed of.

RSA-147-2012

The appellants-plaintiffs are aggrieved of the concurrent findings of fact, whereby the suit for declaration and permanent injunction claiming ownership to the extent of 1/12th share in the estate of deceased Kartar Kaur and challenge to the registered Will dated 19.06.2001 has been dismissed by both the Courts below.

Ms. Sandeeptha Mehta, learned counsel appearing on behalf of the appellants-plaintiffs submits that Kartar Kaur was the owner of the land having 1/6th share out of 72 kanals 19 marals. She had two sons, namely, Jalour Singh and Sat Kartar Singh. Jalour Singh had pre-deceased her. She died in the year 2004. The appellants-plaintiffs are none-else, but the widow and children of Jalour Singh, who filed the suit aforementioned. The respondent-defendant propounded the Will aforementioned, vide which, her entire 1/6th share has been bequeath in favour of Iqbal Singh son of Sat Kartar Singh and examined one attesting witness-Angrej Singh and the scribe. The Will was surrounded by suspicious circumstances as there was an active participation of Sat Kartar Singh at the time of the execution. Angrej Singh was a chance witness, who was present in the Tehsil, whereas he had no knowledge and not known to the testator. Kartar Kaur did not dictate the contents of the Will to the scribe. Since, the parties were in fiduciary capacity and therefore, the onus was on the beneficiary to prove it qua bequeathing entire share in favour of the grand sons. There is a deviation from the line of succession, thus, the Will was liable to be rejected and the estate was required to be devolved as per the natural succession. Both the Courts below have failed to refer the aforementioned evidence/legal position. In support of her contentions, she relies upon the ratio decidendi culled out by the Hon'ble Supreme Court rendered in **“Krishna Mohan Kul @ Nani Charan Kul and another V/s Pratima Maity and others” 2003 (2) PLJ 520.** She further submits that Kartar Kaur was frail and suffering from ailment, much less, disabled to go to the office of Tehsildar and dictate the contents of the Will to the scribe. All these factors

have not been noticed by the Courts below, thus, urges this Court for formulation of the substantial questions of law as drawn in the memorandum of appeal.

Mr. P.S. Jammu, learned counsel for the respondent-defendant submits that there is no illegality and perversity in the judgment and decree rendered by both the Courts below and prays for dismissal of the appeal as no substantial question of law arises for determination.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit and substance in the plea of Ms. Sandeepa Mehta, for, onus to prove the frailty and mental state of mind was upon the appellants-plaintiffs. No medical record has been brought on record. The ratio decidendi culled out by the Hon'ble Supreme Court in **Krishna Mohan Kul @ Nani Charan Kul's case** (supra) is based upon the evidence led by the plaintiff which proved the illness of the testator. In my view, Angrej Singh-attesting witness had deposed in terms of Section 63(3) of the Indian Succession Act and the scribe has also deposed in terms of Section 68 of the Indian Evidence Act. The Deed Writer, namely, Lajpat Rai, deposed that Kartar Kaur appended her thumb impressions in his presence and thereafter, they also affixed their thumb-impressions. The appellants-plaintiffs have miserably failed to prove the element of the suspicious circumstances regarding the active participation of any of family member. The suit has rightly been dismissed by both the Courts below.

For the foregoing reason, I do not intend to differ with the findings rendered by both the Courts below which are based upon the

appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and accordingly, the appeal is dismissed.

27.07.2016
yogesh

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

Whether Reportable Yes/ No