

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

**RSA No.4818 of 2011 (O&M)
Date of decision:26.02.2016**

Labh Kaur and others ... Appellants

Vs.

Kashmir Singh and others ... Respondents

RSA No.2789 of 2012 (O&M)

Mehtab Singh and others ... Appellants

Vs.

Kashmir 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. Avnish Mittal, Advocate
for the appellants (in RSA No.4818 of 2011).

Mr. Vikram Preet Arora, Advocate
for the appellants (in RSA No.2789 of 2012).

Mr. Vikas Bahl, Senior Advocate with
Mr. Ramandeep Singh, Advocate
for the respondents No.13 to 21
(in RSA No.4818 of 2011).

AMIT RAWAL J. (Oral)

C.M.No.696-C of 2015 in RSA No.4818 of 2011

The application is allowed, subject to all just exceptions.

Regular Second Appeal No.4818 of 2011 (O&M) {2}

The applicants are permitted to produce and prove on record Annexures AX-1 to AX-20 as additional evidence in the present appeal.

C.M.No.14004-C of 2011 in RSA No.4818 of 2011

The application is allowed, subject to all just exceptions. Legal representatives of Malook Singh and Labh Kaur, as mentioned in the application are ordered to be brought on record, for the purpose of prosecuting the present appeal.

C.M.No.7481-C of 2012 in RSA No.2789 of 2012

For the reasons stated in the application, duly supported by an affidavit, delay of 66 days in filing the appeal is condoned.

C.M. stands disposed of.

C.M.No.7482-C of 2012 in RSA No.2789 of 2012

The application is allowed, subject to all just exceptions. Legal representatives of Malook Singh and Labh Kaur, as mentioned in the application are ordered to be brought on record, for the purpose of prosecuting the present appeal.

**RSA No.4818 of 2011 (O&M) and
RSA No.2789 of 2012 (O&M)**

This order of mine shall dispose of two Regular Second Appeals bearing No.4818 of 2011 and 2789 of 2012. The facts are being taken from 4818 of 2011.

The appellant-plaintiffs are aggrieved of the judgment and decree dated 07.09.2011 rendered by the Lower Appellate Court,

whereby, their suit has been dismissed.

Mr. Avnish Mittal, learned counsel appearing on behalf of the appellant-plaintiffs submits that suit for declaration claiming ownership and possession/joint possession vis-a-vis estate of Pritam Kaur was filed on behalf of her children. The suit was filed on the basis of un-registered Will dated 26.04.1987 executed by Pritam Kaur bequeathing her entire property in favour of the plaintiffs. The defendants are not falling in the category of Class I heir. Since Pritam Kaur was being served by the defendant-respondents, therefore, Will dated 29.12.1983 vis-a-vis her estate was executed. The trial Court on the basis of the oral and documentary evidence, much less, by relying upon the Will dated 26.04.1987, decreed the suit. However, the Lower Appellate Court discarded the Will, set up by the plaintiffs, on the ground that the Will was surrounded by suspicious circumstances and believed the Will dated 29.12.1983 being registered one. It is in these circumstances, the present appeal has been filed. He further submits that the judgment and decree of the Lower Appellate Court suffers from illegality and perversity, for the reasons that Will dated 29.12.1983 has not been proved, much less, ingredients of Section 63 (c) of the Indian Succession Act, as well as, Section 68 of the Indian Evidence Act, have not been complied with. Assuming for the sake of argument, if the Will dated 26.04.1987 is disbelieved, plaintiffs – Malook Singh and Labh Kaur, being class 1 heir/children, would succeed to her estate by way of natural

succession. The impugned judgment and decree of the lower Appellate Court is nothing but travesty of justice by holding that Will has not been scribed by the regular deed writer. It is settled law that there is no requirement to get a Will registered or to be scribed from the regular deed writer. Even testator can write a Will with his own free mind bequeathing the estate in favour of a person to whom he/she wishes. The Lower Appellate Court has misconstrued and misread the evidence brought on record. Pritam Kaur was not in sound disposing mind at the time of execution of the Will. Malook Singh had never participated in the execution of the Will. Mere non-presence in the execution of the Will, would not mean that the same is surrounded by suspicious circumstances. The defendants are none else, but the nephews, who have no right to claim the property. Thus, urges this Court to formulate the substantial questions of law.

Mr. Vikas Bahl, learned Senior Counsel assisted by Mr. Ramandeep Singh, Advocate for respondents No.13 to 21 submits that the subsequent events have taken place after the Lower Appellate Court dismissed the suit, inasmuch as that contesting defendants No.1 to 3, vide registered sale deed dated 14.10.2011 sold the land measuring 34 bighas 7 biswas in favour of respondents No.13 to 15. The compromise dated 19.01.2012 (Annexure AX-6), original of which has also been annexed with application bearing No.695-C of 2015, shows that the appellants acknowledged the execution of the aforementioned sale deed, much less, had

undertaken that they have no concern with the remaining land and shall withdraw the Regular Second Appeal. Even the appellants themselves have executed the sale deed dated 19.01.2012 in respect of land measuring 4 bighas and 15 biswas in favour of respondents No.13 and 16 and remaining piece of land measuring 5 bighas has already been sold to Ram Murti and certain amount was given in cash, yet the appellants are bent upon pursuing the present appeal instead of withdrawing the same. Such an act is nothing but dishonest, much less, outcome of greed. On merits, he submits that findings rendered by the Lower Appellate Court being the last Court of fact and law are based upon appreciation of oral and documentary evidence. No substantial question of law arises for adjudication of the present appeal. He further submits that after compromise, in case, the appellants have any grievance, they are at liberty to challenge the aforementioned sale deed, in the competent Court of law.

Mr.Avnish Mittal, in rebuttal, on instructions from his client submits that they have denied the execution of the compromise.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no merit in the appeal, for, the sale deeds mentioned above have not been challenged by way of additional evidence or by availing any other remedy. I have seen the original compromise which bears the thumb impression of Labh Kaur and Jasvir Singh, as well as, on the power of attorney attached.

Be that as it may, the aforementioned sale deeds cannot be said to be hit by doctrine of lis pendens as the same were executed after the dismissal of the suit. I am of the view that appellants have not been able to substantiate their right in favour of the execution of the sale deed and receipt of money as noticed above. The contest of the appeal with vehemence is an act of aggrandizement.

In view of what has been observed above, there is no illegality and perversity in the impugned judgment and decree rendered by the Lower Appellate Court, which is based upon the appreciation of oral and documentary evidence, much less, in view of the existing of the subsequent events. No substantial question of law arises for determination by this Court.

No ground for interference is made out.

Accordingly, the findings of the Lower Appellate Court are affirmed and the appeals are dismissed.

(AMIT RAWAL)
JUDGE

February 26, 2016
savita