

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.4967 of 2011 (O&M)

Date of Decision: October 26th, 2016

Ravi Kumar & others

...Appellants

Versus

Mahesh Sharma & others

...Respondents

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

Present: Mr.Aalok Jagga, Advocate,
for the appellants.

Mr.Suman Jain, Advocate,
for respondent Nos.1 & 3.

AMIT RAWAL, J. (Oral)

Appellant-plaintiffs are aggrieved against the concurrent findings, whereby the prayer in the suit seeking declaration and joint possession with consequential relief of permanent injunction being owner to the extent of 1/3rd share in equal shares being legal heirs of Brij Mohan son of Ram Chander and defendants being joint owners in possession to the extent of 2/3rd share in equal shares of the suit property, i.e., agricultural land, three houses, challenging the order dated 30.5.2000 passed by the Assistant Collector 1st Grade sanctioning mutation No.1110 in respect of the agricultural land, has been declined by both the Courts below.

Mr.Aalok Jagga, learned counsel for the appellant-plaintiffs submits that Ram Chander and Ram Kumar were two brothers and sons of Balak Ram. His wife Saraswati Devi predeceased him. Ram Chander was survived by two sons and one daughter, namely, Madan Mohan-defendant

No.1, Brij Mohan (now deceased) and Vijay Luxmi-defendant No.2. Ram Chander, during his life time, executed a registered Will dated 3.11.1993, vide which he has almost equally distributed 35% share in favour of Madan Mohan, 35% in favour of Brij Mohan, 15% share in favour of daughter Vijay Laxmi and 15% share in favour of daughter-in-law Jai Rani wife of Madan Mohan. However, the love and affection for Brij Mohan volte-faced by execution of a second registered Will dated 17.2.1994, whereby he had excluded Brij Mohan from succession of entire property, though there is a reference of the pre-history. The Will was surrounded by suspicious circumstances, as it has surfaced in the cross-examination of Madan Mohan-defendant No.1 and as well as the attesting witnesses DW-3 Naresh Kumar that the relations between Brij Mohan and Ram Chander were cordial. Even Ram Chander attended the marriage of daughter of Brij Mohan and other functions, as it is the sufficient requirement of law.

He further submits that the property at the hands of Ram Chander was ancestral as he had inherited it from Balak Ram. Though the property was situated in Lal Dora, but the relations between the parties would reveal that the same was not in Lal Dora. It was left by Ram Chander and the plaintiffs being 4th generation in lineage would be entitled to succeed in the estate as per their share. All these factors have not been taken care of by the Courts below, thus, there is illegality and perversity.

Per-contra, Mr.Suman Jain, learned counsel for respondent Nos.1 and 3 submits that the second Will mentions about the previous Will and, therefore, the previous Will could not be looked into. The previous Will has not been proved on record. The attesting witness to the first Will and the second Will is the same, i.e., DW-3 Naresh Kumar. Even DW-2

Krishan Kumar Deed Writer has been examined. DW-1 Krishan Kumar Registration Clerk has also been examined to prove the registration. Registered documents carries a presumption of truth. Plaintiffs have failed to lead any evidence for rebutting the same and rightly so, the Courts below have dismissed the suit, thus, there is no illegality and perversity.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submission of Mr.Jagga, for, plaintiffs have failed to prove on record the suspicious circumstance. The execution of the second Will, i.e. dated 17.2.1994 has been proved through the testimony of DW-3 attesting witness, DW-2 Deed Writer and DW-1 Registration Clerk from the office of Sub Registrar, who have deposed on the same lines. The execution of the Will always deviate from the line of natural succession. The plaintiffs have failed to prove the character and nature of the property being ancestral and, therefore, for all intends and purposes, the property at the hands of Ram Chander is to be accepted as self-acquired. He is well within his right to deal with the property in the manner and mode he wanted. The will of the testator cannot be challenged unless and until there is very strong suspicious circumstance, required to be proved through direct and cogent evidence, which is conspicuously wanting in the present case. Having cordial relations, is immaterial for proving the changing the line of succession. Both the Courts below have rendered the findings based on appreciation of oral and documentary evidence.

For the foregoing reasons, I do not intend to differ with the concurrent findings as there is no illegality and perversity. No substantial question of law arises for determination by this Court.

Accordingly, the appeal stands dismissed.

October 26th, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No