

Sr.No.223

IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

RSA-2313-2012(O&M)

Decided on: April 21, 2016

Lachhmi and othersAppellants

vs.

Mohan Singh and othersRespondents

Coram: Hon'ble Mr. Justice Amit Rawal

Present: Mr. Hardip Singh, Advocate for the appellants.
 Mr. Vijay Lath, Advocate for respondents no.1 and 2.

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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)

The appellants-defendants are aggrieved of the concurrent finding of fact whereby the Courts have decreed the suit for joint possession holding that the property at the hands of Asha Ram qua his share was ancestral in nature and therefore, he could not have executed the will dated 19.06.1986 in favour of his wife-defendant no.1 Lachhmi Devi.

Mr. Hardip Singh, learned counsel appearing on behalf of appellants, submits that Bahadur Singh, Kanungo PW1 did not bring on record the original Excerpt and therefore, there is no compliance of the High Court rules and orders which have been affirmed and settled by this Court in **Banta Singh and others v. Phuman Singh and others 1972 PLJ 275** whereas, on the contrary, the original will dated 19.06.1986 has been proved through the testimony of Karam Singh DW5. Both the Courts below have found illegality and perversity in the claim of the defendants. The respondents-plaintiffs are none else but the two sons of defendant no.1 Lachhmi Devi since deceased. The will was executed by Asha Ram in favour of Lachhmi Devi who further sold the same to defendants no.3 and 4. Asha Ram died on 29.10.1999 and a

mutation as per the will was effected on 21.01.2000 whereas the suit has been filed on

14.06.2005 and no explanation has come forth in challenge the mutation within reasonable period much less, there is no challenge on the will and thus, urges this Court to formulate the following substantial questions of law:-

1. Whether the judgment and decree of both the Courts below is based upon the conjectures and surmises?
2. Whether the judgment and decree of both the Courts below are as per the provisions of High Court rules and orders as noticed in the judgment rendered by this Court in **Banta Singh and others's case(supra)?**
3. Whether the registered will dated 19.06.1986 executed by Asha Ram has been proved in accordance with the provisions of Section 68 of the Indian Evidence Act?

Mr. Vijay Lath, learned counsel appearing on behalf of the respondents, submits that Kanungo has produced the Excerpt which shows that the property had fallen to Asha Ram through three generations, he being the forth had derived a right by birth and, therefore, will could not have been executed in favour of Lachhmi Devi as all the sons had a right by birth in the property being ancestral in nature.

As regards execution of the will, though there had been a compliance of Section 68 of the Indian Evidence Act but Section 63(C) of the Indian Succession Act has not been complied with in a sense that DW5 Karam Singh did not depose in terms of the provisions of the Indian Succession Act and, thus, all the legal heirs at the best would be entitled to succeed to the estate of Asha Ram by way of natural succession and urges this Court for affirming the findings rendered by the Courts below.

I have heard the learned counsel appearing for the parties, appraised the paper book and of the view that there is force in the submissions of Mr.

Hardip Singh learned counsel appearing for the appellants that, on perusal of the

evidence of PW1 Bahadur Singh, Kanungo, it is discovered that he had not produced the original record and thus, there is no compliance of High Court rules and orders as held by this Court in **Banta Singh and others's case (supra)**. For the sake of scrutiny, examination in chief and cross examination of PW1 is reproduced as under:-

“PW1-Bahadur Singh, DC Office, Ropar.

On SA

Stated that in the present case I prepared the excerpt as per order of this Court and I have seen the same on the file which contains pages 1 to 261 which are true as per record. The excerpt is Ex.P1 and the translation version in Punjabi regarding Urdu document is Ex.P.2 which contains pages from 1 to 295. The record produced by me is true as per revenue record. I am working as Special Kanungo at D.C office, Ropar (Documents objected to).

XXXX *By Sh. JPS Dher Advocate for defendants no.1 to 4.*

The record from which I have prepared the excerpt is lying in the DC office record room. I have not brought the original record. The original record has not been prepared by me. I do not know who prepared the same. I belong to village Jodhpur. But I cannot tell the distance thereof from village Thali where the land in dispute is located. It is incorrect to suggest that the excerpt prepared by me does not tally with the original record.

XXXXX *By Sh. Chetan Kumar Gupta*

Advocate for defendants no. 6 and 7.

Opportunity given, nil.

*XXXXXX By Sh. Harjinder Singh, Advocate
for defendant no.5.*

*I have no personal knowledge about the facts
of the case. It is correct that Munshi was the
owner of the suit property and earlier Sobha
Singh was the owner of the suit property. Buta
Singh was the father of Sobha singh. It is
incorrect to suggest that I have prepared false
documents. It is incorrect that I deposed
falsely.*

RO&AC

CJ/JC/31.10.2006”

In view of the above mentioned fact that respondents/plaintiffs have failed to prove the character and the nature of the property being ancestral in the hands of Asha Ram. As regards the plea of Mr. Lath qua non compliance of the provisions of Sub section C of Section 63 of the Indian Succession Act, to the effect that Karam Singh DW5 had not stated that he appended his thumb impression on the will on the asking of testator, I am of the view that on co joint reading of the examination in chief and cross examination, it has surfaced that the said witness had appended signatures on the asking of testator. Thus, the impugned judgments cannot be said to have been suffering from inherent defects. All these above mentioned facts have not been noticed by the Courts below rather the Courts below have relied upon the statements of the witnesses examined on the point of original will whereas DW5 Karam Singh has been examined after the Court had granted the permission to the appellant/defendant to produce on record the original will. The registered will carries presumption of truth.

Since the plaintiffs have miserably failed to prove the property in nature to be the ancestral in the hands of Asha Ram, the claim in the suit was wholly un substantiated much less ill founded.

Keeping in view the aforesaid facts I am of the view that both the Courts below have committed illegality and perversity and decreed the suit. Accordingly, the substantial questions are answered in favour of the appellants/defendants and against the respondents/plaintiffs. Appeal is allowed and the suit stands dismissed.

April 21, 2016
mamta

(Amit Rawal)
Judge