

**210 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No. 2942 of 2012(O&M)
Date of decision : 29.11.2016**

Bharat Bhushan Appellant

versus

Vijay Kumar and others Respondents

**RSA No. 2949 of 2012(O&M)
Date of decision: 29.11.2016**

Bharat Bhushan Appellant

versus

Vijay Kumar Respondent

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Vijay S.Kajla, Advocate for the appellant.

Mr. Ankur Lal, Advocate for respondent No.1.

AMIT RAWAL, J. (Oral)

This order shall dispose of the above mentioned two regular second appeals. As common questions of law and facts are involved in both the appeals, for brevity facts are being taken from RSA No. 2942 of 2012.

Appellant-owner is aggrieved of the concurrent finding of fact whereby the suit of the respondent-plaintiff seeking declaration that the alleged Will dated 13.4.2006 allegedly executed by Rattan Singh son of Mehar Chand father of plaintiff and performa defendants No. 2 and 3 in

favour of defendant no.1, has been declared illegal, null, void ab initio and against the law.

Mr.Vijay S.Kajla, learned counsel appearing on behalf of the appellant submits that Rattan Singh was father of appellant Bharat Bhushan though respondent-plaintiff wrongly rendered him as son of Gurbachan Singh. In fact he was married to Sudesh Rani and out of his loins appellant-defendant No.1 was born. Since Rattan Singh was residing with the appellant, out of love and affection he executed a Will bequeathing his property in the manner indicated above and almost distributed the house in question in equal shares but no doubt bequeathed the two shops in his favour. The respondent-plaintiff had admitted the execution of the Will, yet the Courts below discarded the same and decreed the suit. In fact, the suit could not have been decreed in toto as appellant being the son of Rattan Singh, his respective share should have been determined. The Court did not frame the issue with regard to the parentage of the appellant and, therefore, the findings of the Courts below are not sustainable in the eyes of law. The onus of proving parentage would heavily lie upon the respondent-plaintiff. The witness to the Will has proved that Rattan Singh had thumb marked the Will in his presence thus there is compliance of the provisions of Section 63-c of the Indian Succession Act. Even the doctors who have examined him stated that he was of sound mind and his vitals were normal and, therefore, the execution of the Will dated 13.4.2006 cannot be said to be surrounded by suspicious circumstances though he is stated to have died on 21.5.2006. All these factors have not been taken care of by the Courts below and this appeal deserves to be allowed.

Mr. Ankur Lal, learned counsel appearing on behalf of

respondent-plaintiff submits that DW4-Sanjeev Kumar the alleged attesting witness, though in his examination-in-chief, states that he knew Rattan Singh for 14 years but did not know as to what disease he was suffering from much less the number of sons he have. There is a categoric stand in the written statement wherein the appellant-defendant has asserted himself to be son of Rattan Singh but no evidence of any kind or in terms of provisions of Section 50 of the Indian evidence Act has been led. Thus, the onus has not been discharged and there was no occasion to rebut the same. On the contrary respondent-plaintiff is the son of Rattan Singh and , therefore, rightly so this suit has been decreed and the plaintiff and defendants No. 2 and 3 have been held entitled to inherit the movable and immovable property of their father.

I have heard learned counsel for the parties, perused the paper book and gone through the records of the Courts below and am of the view that there is no force in the submissions of learned counsel for the appellant. DW4-Sanjeev Kumar admitted that he did not go to the office of Registrar for the purpose of registration of he Will. Despite the fact that he knew Rattan Singh for the last 14 years but did not know the names of his sons or their number to show that he was an introduced witness. Even there is no compliance of the provisions of Section 63(c) of the Indian Succession Act. The thumb impression of the deceased was not denied but it was stated that the same was taken on a blank paper. The onus was upon the appellant to prove that he was born out of the wed lock of Rattan Singh and Sudesh Rani but having failed to lead any evidence as per the provisions of Indian Evidence Act, I am of the view that appellant has failed to discharge the onus much less the stand taken in the written statement. It is a matter of

record that Rattan Singh was suffering from ailment i.e. brain tumor and much less he died a month thereafter. The testimony of the doctor would not be relevant and all the other factors are also to be looked into whether he was in a fit state of mind to execute the Will or not. Both the Courts below have rendered finding of fact and I do not want to interfere in the findings so recorded by them.

The appeal is dismissed.

As regards the other **RSA bearing No. 2949 of 2012**, appellant was a plaintiff in a suit seeking mandatory injunction for handing over the possession of the property in dispute. Having failed to prove the Will, I am of the view that plaintiff has no locus standi to seek the possession. His suit has rightly been dismissed. I do not want to differ with the findings of the Courts below. This appeal is also dismissed.

(AMIT RAWAL)
JUDGE

November 29, 2016
sunita

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No