

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 2191 of 2016(O&M)

Date of Decision:4.5.2016

Piara Singh

---Appellant

vs.

Jaspal Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. S.S.Siao, Advocate
for the appellant

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

Rekha Mittal, J.

Piara Singh, the unsuccessful plaintiff is in appeal to challenge the concurrent findings recorded by the Courts below whereby his claim of ownership in possession to the extent of 1/5th share out of 1/42 share of Ms. Angrej Kaur wife of Mehar Singh out of land measuring 55 bighas 1 biswa, detailed in head note of the plaint has been dismissed as the Will dated 7.2.1995 propounded by Jaspal Singh, his brother purported to be executed by Ms. Angrej Kaur on the basis whereof mutation No. 468 was sanctioned on 7.5.2001 has been accepted to be genuine and valid Will, left behind by the erstwhile owner whereby the appellant has been excluded

from inheritance to the estate of Ms. Angrej Kaur (his mother). Ms. Angrej Kaur died in April 1995, left behind five class-I heirs i.e. three sons and two daughters. The present lis is a dispute between the appellant and his brother Jaspal Singh whereas the other class-I heirs have been impleaded as proforma defendants.

Counsel for the appellant has assailed the findings recorded by the Courts below as well as correctness and genuineness of the Will propounded by Jaspal Singh primarily on two counts namely;(i) the Will does not make reference to the other class-I heirs of the deceased or the reason for excluding them from inheritance and; (ii) Ms. Angrej Kaur was suffering from cancer and she passed away after about 2 months from the date of alleged testament.

I have heard counsel for the appellant, perused the paper book, judgments passed by the Courts below and a copy of the Will Ex. D1 produced by learned counsel.

Counsel for the appellant has not challenged that the Will in dispute has not been proved by the propounder in accordance with law. One of the attesting witnesses of the Will namely Gurdial Singh son of Teja Singh DW1 and scribe of the Will namely Mahavir Prasad Jain, deed writer were examined to prove the Will in compliance with the provisions of Section 68 of the Indian Evidence Act. The Will Ex. D1 does not make a reference to the other class -I heirs of the deceased but it has been specifically incorporated therein as to what weighed in the mind of the testator to bequeath her entire estate in favour of Jaspal Singh respondent No. 1. It has been mentioned that “my son Jaspal Singh has been rendering

services to me in every respect and I hope that he will continue to render services to me. I am extremely happy from the services of my aforesaid son and want to compensate him for his services.” It has been proved on record that Angrej Kaur was residing with Jaspal Singh and Jaspal Singh had been rendering services to his mother. There is nothing on record suggestive of the fact that any other class-I heir of the deceased is living in destitute much less dependent upon the property left behind by her. In the circumstances, there is nothing unnatural and abnormal if the deceased had decided to bestow her entire estate upon Sh. Jaspal Singh without even referring to other class-I heirs left behind by her.

The second submission made by counsel that the deceased was suffering from cancer does not get substantiated from any materials on record. Jaspal Singh DW4, in his cross examination has deposed that there were stones in the Gall Bladder of his mother and she was operated upon in PGI about 1½ years before her death. He has specifically denied that the deceased was a patient of cancer. Gurdial Singh, the attesting witness of the Will has categorically deposed that Angrej Kaur executed the Will according to her free volition without any pressure in lieu of services rendered by Sh. Jaspal Singh. In absence of any materials on record that Ms. Angrej Kaur was suffering from any serious ailment much less an ailment affecting her mental faculties rendering her incapacitated to understand her good or bad or implications of her testament, the mere fact that Ms. Angrej Kaur passed away on 11.4.1995 more than two months after the registered Will dated 7.2.1995 was executed by her is not sufficient to hold that the Will is surrounded by suspicious circumstances. I would hasten

to add that the consistent factual findings recorded by the Courts below are otherwise not amenable to challenge in the second appeal unless they are found to be perverse being based on misreading/misconstruction of evidence or by ignoring material evidence on record. The present appeal does not give rise to any question of law much less a substantial one warranting admission for hearing after notice to the contesting party.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

4.5.2016
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