

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.3757 of 2016 (O&M)

Date of decision:08.12.2016

Harbhajan Singh

... Appellant

Vs.

Amarjit Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R.N.Moudgil, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-plaintiff is aggrieved of the concurrent findings of facts and law, whereby, the suit seeking following relief has been dismissed which reads thus:-

“(A) Suit for declaration to the effect that the plaintiff is the owner in possession of the shop no.5 and shop no.6 situated in Block “J” Phase -II situated near the Chhota Bijli Ghar Dalhousie Road Pathankot, by virtue of Will dated 2.2.2005 executed by Shri Khazan Singh son of Shri Bahadur Singh resident of Patel Chowk, Gali No.2 Pathankot Tehsil Pathankot District Gurdaspur in favour of the plaintiff i.e. Shri Harbhajan Singh son of Shri Jagat Singh resident of Patel Chowk Gali No.2 Pathankot Tehsil Pathankot District

Gurdaspur and defendant no.1, 2 and 3 have no right, title or concern with the same and the entries reflected in the records of the improvement Trust Pathankot – defendant no.4 in the name of defendants no.1 and 2 alleged to be made on the basis of Will dated 28.12.2004 are illegal, null and void, ultravires, false, fictitious, fabricated and invalid and liable to be set aside and are not binding on the rights of the plaintiff as Khazan Singh never executed any such Will in favour of defendant no.1 and 2 which is result of fraud and fabrication and the subsequent sale of shops no.5 and 6 Block “J” Phase III, Dalhousie Road, Pathankot Tehsil Pathankot District Gurdaspur by the defendants no.1 and 2 dated 26.08.2005 in favour of the defendant no.3 are also illegal, null and void and invalid against the law and facts, liable to be set aside and not binding on the rights of the plaintiff and are liable to be set aside/cancelled and needs to be substituted with the name of the plaintiff as the alleged Will does not confer any valid title upon the defendants no.1 and 2 and have no competence to transfer/sell the name.

AND

B) Suit for permanent injunction restraining the defendants from claiming themselves to be the exclusive owners of the suit property fully detailed and described in the head note of the plaint (A) on the basis of wrong, illegal and invalid entries in

the records of the Improvement Trust Pathankot -defendant no.4 and the defendants be further restrained from transferring mortgaging or alienating or disposing of the suit property in any shape or manner.”

Mr. R.N.Moudgil, learned counsel for the appellant-plaintiff submits that the plaintiff is none-else but brother-in-law of deceased Khazan Singh with whom he was working since long. Out of love and affection taking care of the fact that his daughters, i.e., defendants No.1 and 2 were already married and settled, bequeathed his entire property by virtue of a registered Will dated 02.02.2005. The Scribe -PW2, has been examined and one of the attesting witnesses, namely, Kamal Kumar - PW4, from the office of Municipal Councilor was also examined but during the examination-in-chief, he turned hostile, thus, the Courts below discarded the Will, resultantly dismissed the suit. He further submits that even if the witness has turned hostile, the Court can look into other evidence and upheld the Will.

In support of his aforementioned contention, relies upon the ratio decidendi culled out by this Court in **Gurdev Singh and another vs. Smt. Shanti and others 1989 CivCc 40**. The registered document carries a presumption of truth, whereas, the respondents have not been able to disprove the signatures of Khazan Singh on the Will, aforementioned, rather, they set up un-registered Will dated 28.12.2004 which was not proved. The sale of the property in favour of the defendant No.3 was also challenged, thus, there is gross illegality and perversity in the findings under

challenge.

I have heard learned counsel for the appellant-plaintiff, appraised the judgments and decrees of the Courts below.

This Court called upon Mr. Moudgil to read out the statement of PW4 and on hearing the statement made by PW4, Kamal Kumar has not deposed in terms of provisions of Section 63(c) of Indian Succession Act. As per the requirement of law, the Will has to be attested by two or more witnesses and each of them has seen the testator to sign or affix thumb impressions or other person and there has to be direction of the testator. The aforementioned ingredient is conspicuously wanting. In case of such situation, the Will has rightly been discarded as the requirement of law has not been complied with.

The aforementioned view of mine is reiterated by the ratio decidendi culled out by the Hon'ble Supreme Court in **Janki Narayan Bhoir vs. Narayan Namdeo Kadam 2003(1) RCR (Civil) 409.**

There is no dispute with regard to the ratio decidendi culled out in the judgment rendered in Gurdev Singh's case (supra) cited by Mr. Moudgil but once there is no compliance of the provisions of Section 63(c) of the Indian Succession Act, it would be insignificant and immaterial to rely upon the statements of other witnesses. Even the other witnesses have not disposed in terms of the aforementioned provisions of law.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by both the Courts below which are based

upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

December 08, 2016

savita

(AMIT RAWAL)

JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No