

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Regular Second Appeal No.644 of 2016 (O&M)

Date of decision: 11.2.2016

Subhash Chander through LRs

... Appellants

Versus

Parikshit and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Kanwaljti Singh, Sr.Advocate, with
Mr.Roopak Bansal, Advocate,
for the appellants.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

AMIT RAWAL,J. (Oral)

CM No.1767-C-2016

This is an application for condoning the delay of 22 days in
refiling the appeal.

For the reasons mentioned in the application, delay of 22 days
in refiling the appeal is condoned.

CM No.1768-C-2016

This is an application for impleading the LRs of appellant No.1.

For the reasons mentioned in the application, the application is
allowed. The persons mentioned in para. 3 of the application are directed to
be impleaded as LRs of the appellants subject to all just exceptions.

The Registry is directed to make necessary corrections in the memo of parties

RSA No.644 of 2016

The appellant-plaintiff is aggrieved of the concurrent findings of fact whereby his claim seeking declaration, i.e. owner in possession of 1/4th share in the suit property as per Will dated 6.9.1968 as well as challenge to the sale deed, mutations and the subsequent revenue record be declared null and void much less illegal and the consequential relief of injuncting the defendants from alienating the suit property and changing the nature of the same, has been dismissed by both the courts below.

Mr.Kanwaljit Singh learned senior counsel assisted by Mr.Roopak Bansal, Advocate submits that both the courts below have erroneously declined the suit for want of compliance of the provisions of Section 63(c) of the Indian Succession Act, 1925. Harbans Lal Malik scribe of the Will when appeared in the witness box deposed that the father of the plaintiff never signed or executed any Will in his presence though he further submitted that he went to the house of the plaintiff on his asking who expressed his desire to execute a Will with regard to his estate. The aforementioned statement of the witness is clearly in compliance with the requirements of the aforementioned provisions.

The suit aforementioned was filed on 4.1.2013 on inquiring knowledge of the Will. The other witness has corroborated version of the plaintiff. The essential requirements of law as envisaged under Section 68-A of the Indian Evidence Act has been complied with through the testimony of Harbans Lal Malik. All the subsequent sale deeds would not confer any

right or title upon the vendees in view of the Will executed by the deceased father. The father of the plaintiff expired on 25.9.1968 as per death certificate Ex.P36 and, therefore, due to long delay, the pension record of the father was not traceable. Other witness Mr.Hans Raj had expired on 16.9.1993 and, therefore, the plaintiff did not have knowledge about the place of residence of the members of the family of deceased Hans Raj. Once the property in the revenue record is shown joint, it is deemed to be un-partitioned, then each co-sharer has right on every inch of the land. This led to the framing of questions of law as framed in the memorandum of appeal.

I have heard learned counsel for the appellant and appraised the record and I find that there is no merit in the present appeal.

It would be appropriate to reproduce Section 63 of the Indian Succession Act. It reads as follows :

“63. Execution of unprivileged wills.-Every testator, not being a soldier employed in an expedition or engaged in actual warfare, [or an airman so employed or engaged,] or a mariner at sea, shall execute his will according to the following rules:--

(a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person;

and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

On going through the aforementioned provisions, it is clearly stipulated that the witness and the testator have to state that the Will was signed in the presence of each other, in the essence, on the asking of the testator. The only witness namely the scribe, aforementioned, has not stated compliance of the aforementioned statutory requirements of law. It is now well settled that in case witness to the Will do not conform to the provisions of law, the Will has to be discarded. Rightly so, the courts below discarded the Will. Even otherwise much water had been flown and the property had been exchanged. No explanation has come forward for filing the suit at a belated stage. Even possession has not been sought and, therefore, in the absence of such relief, the suit for declaration and permanent injunction was not maintainable.

In view of what has been noticed above, I do not find any perversity and illegality in the impugned order. No questions of law much less a substantial arises for determination by this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 11, 2016

Sonia/Paritosh Kumar