

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**RSA No.2356 of 2014 (O&M)
Date of Decision.10.08.2016**

Rohtash Bhatia and others

.....Appellants

Vs.

Subhash Chander

.....Respondent

Present: Mr. C.B. Goel, Advocate
for the appellants.

Mr. Parminder Singh, Advocate
for the respondent.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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.

C.M. No.5652-C of 2014

The application for impleading the legal representatives of deceased-Sushil Bhatia (plaintiff No.2) is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record.

RSA No.2356 of 2014

The appellants-plaintiffs are aggrieved of the concurrent finding of fact whereby the claim in the suit seeking declaration and possession by way of partition in respect of suit property has been declined/rejected.

Mr. C.B. Goel, learned counsel appearing for the appellants submits that the suit was filed seeking the aforementioned relief. He, inter alia, contended that Hira Nand son of Piara Ram was the father of the defendant and maternal grandfather (Nana) of the appellants/plaintiffs

constituted a joint Hindu family with his son Subhash Chander and daughter Smt. Shano Devi. Thus, the entire property was ancestral and coparcenary in the hands of Hira Nand. Plaintiffs are none else but the sons of Hira Nand and therefore, are entitled to ownership of $\frac{1}{2}$ share as per the provisions of Section 6 of the Hindu Succession Act. The respondent-defendant by filing written statement contested the nature and character of the property as ancestral and contended that it is self acquired property and also propounded a registered Will dated 17.04.1997. The trial court noticed the evidence led in case but committed legal error in deciding the issue in favour of the respondent-defendant by holding that the property was not ancestral whereas the plaintiffs summoned the record keeper along with the revenue record. The said witness appeared and stated that the record was deposited in the office of Kanungo. Even another official witness namely Partap Singh, Patwari was summoned, who appeared but did not produce the summoned record. PW1, Rohtash Bhatia, stated in terms of averments in the plaint that Piara Ram son of Bihari Mal, who was his mother's father's father, owned agricultural land in Village Naraingarh Bhupatwala, Tehsil Sujabad, District Multan and after partition of the country, he was allotted land in village Dabarki, Karnal. He died intestate and mutation of inheritance bearing No.353 was sanctioned in the name of three persons namely Hira Nand, Ram Lal and Khem Chand. After consolidation, the land was allotted to three sons of late Piara Ram and therefore, character and nature of the property was ancestral. The Will had not been proved as per the provisions of Section 68 of the Indian Evidence Act and Section 63 (c) of the Indian Succession Act. It was, therefore, inadmissible and the Courts below have committed illegality and perversity in dismissing the

suit. DW-2, Jai Kishan, attesting witness to the Will and DW-4, Nathu Ram, scribe of the Will has been looked into by ignoring the fact that Jai Kishan did not belong to the village and no respectable member of local panchayat accompanied the testator-Hira Nand and the scribe cannot be treated as an attesting witness. The lower Appellate Court has also committed the same folly of not noticing the fact that the Will was surrounded by suspicious circumstances, thus, urges this Court for setting aside the judgments and decrees passed by the Courts below by formulating the substantial questions of law carved out in the memorandum of appeal.

Mr. Parminder Singh, learned counsel appearing on behalf of the respondent-defendant submits that there is no inconsistency between the statement of DW-2 and DW-4 as the scribe had clarified the distance of the place of attestation as 1 km though in first line, he stated as 15-16 kms. No evidence has been led qua ailment of Hira Nand rather the plaintiff in cross-examination admitted that he was having good health and the factum of performance of last rites by the defendant has also been admitted. The attesting witness deposed in terms of provisions of Section 63(c) of the Indian Succession Act. The plaintiffs have failed to prove the nature and character of the property being ancestral. Even the Will was not registered and DW-1 Ashok Kumar, Registration Clerk had brought the original Will on record. The other witness Iqbal Singh i.e. Lambardar of the village had died and therefore, he was not examined. The plaintiffs have misread the statement of the defendant with regard to nature and character of the property whereas to a question in the cross-examination, plaintiff No.1 stated that he did not know whether the property at the hands of Hira Nand had come in succession from great grand father, thus, urges this Court for

confirming the findings of the Courts below by dismissing the appeal, much less, the plaintiffs have miserably failed to discharge the onus in support of their contentions.

I have learned counsel for the parties, appraised the paper book and of the view that there is no merit and force in the submissions of Mr. C.B. Goel, learned counsel appearing for the appellants-plaintiffs, for, in essence the plaintiffs had failed to prove on record the character and nature of the property as ancestral. In fact, when the aforementioned official witnesses stated that the record had gone to the office of Kanungo Karnal, yet no attempt had been made despite taking numerous opportunities to summon the witnesses from the concerned department. In the absence of the Intqab and pedigree table, character and nature of the property could not be proved to be ancestral. In the Will, the testator stated that Subhash Chander was his only son who was looking after his father and therefore, the factum that other plaintiffs were residing at some other place had been proved on record which leads to conclusion that it was defendant-Subhash Chander who was living with Hira Nand and took care of him. The endorsement carries a presumption of truth as the contents of the Will had been read over to the testator. The attesting witness, DW2, stated in terms of Section 63(c) of the Indian Succession Act, that the Will was read over to Hira Nand, who after admitting the same to be correct, put his signatures over it in his presence and Iqbal Singh, other witness and thereafter, he appended his signatures over the same. This is the sufficient requirement of the law. The plaintiffs have miserably failed to lead any evidence with regard to the Will that it is surrounded of suspicious circumstances. It is unnecessary that attesting witness has to be from the same locality. As per

the statement of DW2, his village was only 1 km away from the place where Hira Nand residing. It was not a long distance. Concurrent finding of fact cannot be interfered with unless and until, there is gross illegality and perversity.

For the foregoing reasons, I do not find any illegality and perversity in the findings rendered by the Courts below as the same have been founded on correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 10, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No