

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 5358 of 2015

Date of Decision: 10.02.2016

Bir Singh
... Appellant(s)

Versus

Daya Kaur and Others
... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Arvind Kashyap, Advocate
for the appellant(s).

Shekher Dhawan, J.

Present regular second appeal against concurrent findings of both the Courts below in a suit for declaration to the effect that plaintiff is owner in possession of the land, as detailed in the head note of the plaint. The said suit for declaration was dismissed by the Court of first instance and first appeal was dismissed by learned District Judge, Panchkula.

For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

Relevant facts of the case that plaintiff had filed suit for

declaration that Bakshish Singh died leaving behind Tirath Singh, Bir Singh, Preet Singh and Preet Kaur and on his death mutation was sanctioned on the basis of inheritance. Plaintiff set up the plea that later on plaintiff could lay his hands on Will which was written in Urdu and was translated only a few months back. The said Will was executed by Preet Singh in his favour while in sound disposing mind. The said Will was thumb marked by Preet Singh and duly attested by witnesses Ram Chand and Jarnail Singh on 10.9.1962. As per plaintiff, he is in exclusive possession of the suit property on the basis of Will. Defendants denied this fact that mutation was sanctioned, the suit property was partitioned amongst plaintiff and defendants No.1 & 2 and even partition was sanctioned on 27.1.1987 in case No.47/Tehsil instituted on 28.11.1978. At that time, plaintiff had not disclosed any Will having been executed by Preet Singh. The said Will is forged document. More so, Preet Singh was residing with the family of the plaintiff and never served the plaintiff as he himself was unmarried at that time and got married in the year 1965 only. In fact, plaintiff and Preet Singh were residing with Tirath Singh. Defendants prayed that suit be dismissed.

On these facts, issues were framed by the Court below and after recording of evidence and appreciation thereof, the Court of first instance returned the findings that plaintiff failed to prove the due execution of the Will because it is surrounded by suspicious circumstances. As per the Court of first instance, propounder of the Will was required to remove the suspicious circumstances attending to

the Will but he has not been able to do so. The persons, who were to inherit the property in case of natural succession, have been disinherited without there being any reason and the Court of first instance dismissed the suit of the plaintiff. First Appellate Court dismissed the appeal and as such present regular second appeal before this Court.

Learned counsel for the appellant mainly submitted that the Will was duly proved by examining the attesting witnesses. The Will was executed in the year 1962 and at that time, sister was rightly excluded. The Will in question is 30 years old document and as per law, the said document has got a presumption of truth and correctness attached to it but the Courts below have completely ignored this fact while recording findings of facts. Misappreciation of evidence resulted into grave injustice and the said findings be set aside

Having considered the submissions made by learned counsel for the appellant, this Court is of the considered view that the plea of Will (Ex.P1) having been executed by Preet Singh has been duly appreciated by both the Courts below and concurrent findings of facts have been recorded. Both the Courts below have returned the findings of facts that propounder of the Will has not been able to remove the suspicious circumstances. The Courts below have also returned the findings that the Will has not been duly proved on the file in accordance with the provisions of Section 68 of the Indian Evidence Act, 1872. The Courts below have rightly taken the view that if deceased was living with the plaintiff, there was no reason that Will could not have come

into the notice of the plaintiff for such a long period of 45 years. Undisputedly, the said Will had not seen the light of the day for 45 years and the same was never produced at the time of sanctioning of mutation. Although the partition proceedings were pending for pretty long period from 1973 to 1978. The Court below also considered the facts that there was no reason to exclude the name of the sister of the testator and even name of the sister has not been disclosed. The Courts below have rightly taken the view that execution of Will is not beyond doubt and it has not been proved to have been duly executed by the testator in accordance with law. No substantial question of law involved in this case calling for acceptance of the regular second appeal. Hence, present regular second appeal stands dismissed.

(Shekher Dhawan)
Judge

February 10, 2016

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