

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 5771 of 2015 (O&M)
Date of Decision : 22.03.2016

Vinay Kumar Baria

....Appellant

Versus

Mamta and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ramesh Sharma, Advocate
for the appellant.

Surinder Gupta, J.

CM No. 14410-C of 2015

This is application under Section 151 of the Code of Civil Procedure (CPC) to place on record Annexures A-1 to A-4 and exemption from filing the certified copy of same.

The application, which is supported by affidavit, is allowed subject to all just exceptions and copies of pleadings and evidence (Annexures A-1 to A-4) are taken on record.

RSA No. 5771 of 2015 (O&M)

The dispute in this case pertains to title over House No. HE-1272, Phase 1, Mohali, which was owned by Dip Chand (since deceased). Plaintiffs are daughters of Dip Chand from his first wife while defendant no. 1-Vinod Kumar Baria is son of Dip Chand from his second wife Rani-defendant no. 2. Admittedly Dip Chand was owner of disputed house. Plaintiffs are claiming their share in suit property on the basis of natural succession and have challenged Will dated 29.12.2009 propounded by defendant no. 1-appellant in his favour whereby he claims exclusive ownership of disputed house.

2. Will dated 29.12.2009 is a registered document. It was

discarded by both the Courts below on the ground that execution of the Will is not proved as per provisions of Section 63 of Indian Succession Act, 1925 (later referred to as 'the Act of 1925'). Testimony of DW-3 Gurdeep Singh, marginal witness of the Will was also doubted as he was not related to or known to the testator.

3. Learned Civil Judge (Junior Division), SAS Nagar, Mohali observed that testimonies of DW-3 Gurdeep Singh and other marginal witness DW-4 Vinod Kumar show that both these witnesses were not known to the testator and normally no one chooses unknown person as attesting witness to his Will.

4. Defendant no. 1 also examined Sub-Registrar who registered the Will but his testimony was also discarded on the ground that signatures of testator were not taken in his presence and a Sub-Registrar is not an attesting witness. The fact that plaintiffs are unmarried daughters of the testator, whose mother had died long back in the year 1976 and exclusion of unmarried daughters, was considered to be a suspicious circumstance surrounding execution of the Will.

5. I have heard learned counsel for the appellant and perused the paper-book with his assistance.

6. Both the marginal witnesses examined in this case have nowhere stated that the Will after its execution was read over and explained to the testator, who admitted contents of the same as correct and put his signatures in their presence or that they have signed the Will in the presence of testator. Statements of both the witnesses were read over by learned counsel for the appellant during course of arguments and he could not point out the compliance of Section 63 of 'the Act of 1925'.

7. Learned counsel for the appellant has drawn my attention to the observations of a coordinate Bench of this Court in the case of **Sant Ram vs. Brij Mohan Kaura and another, 2006 (2) PLR 655**, wherein it was observed that certificate of registration issued in respect of a registered document under Section 60 of the Registration Act, 1908 is considered to be an ample proof of the fact that the document is registered. The above observation, in no manner, is applicable to the facts and circumstances of this case as the dispute in this case pertains to the Will which can be proved as per provisions of Section 63 of 'the Act of 1925' and Section 68 of the Evidence Act. Both the Courts have examined the Will and have recorded finding that the Will is not proved as per provisions of Section 63 of 'the Act of 1925'. Learned counsel for the appellant has not been able to assail the above finding of Courts below by referring to any evidence on record. The mere fact that Will is a registered document in no manner dispense with the compliance of provisions of Section 63 of 'the Act of 1925' to prove that it was validly executed. Section 63 of 'the Act of 1925' reads as follows:-

“63. **Execution of unprivileged wills** - Every testator, not being a soldier employed in an expedition or engaged in actual warfare, ¹[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.”*

8. As per provisions of Section 63 of 'the Act of 1925', it is required by propounder of the Will to prove:-

- (i) that the testator had signed or affixed his mark to the Will in the presence of attesting witnesses; and
- (ii) that the witnesses have signed the Will in the presence of testator.

9. The appellant has utterly failed to prove above ingredients of Section 63 of 'the Act of 1925' to prove that Will dated 29.12.2009 was executed by Dip Chand.

10. On perusal of judgments of both the Courts below and lower Court record, I find no legal or factual infirmity therein calling for any interference. No substantial question of law, requiring determination arises in this appeal, which has no merits.

Dismissed.

March 22, 2016
jk

(SURINDER GUPTA)
JUDGE