

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

RSA No.4139 of 2014
Date of decision : 19.01.2016

Balak Ram @ Kaka Ram

...Appellant

Versus

Karnail Singh and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. R.S. Narang, Advocate for the appellant.

Mr. Pritam Saini, Advocate for respondent Nos.2 and 3.

AMIT RAWAL, J. (Oral)

Notice of motion.

Mr. Pritam Saini, Advocate accepts notice on behalf of respondent Nos.2 and 3.

The appellant-plaintiff is aggrieved of the findings of both the Courts below particularly the lower Appellate Court, non-suiting on account that despite having been allowed the application filed under Order 41 Rule 27 for leading additional evidence, the original Will dated 18.06.1997 has not been produced as and only marginal witness of the same has been examined.

This Court vide order dated 14.05.2015 ordered for requisition of the record of the lower Appellate Court. On perusal of the record of lower Appellate Court, the original Will is at page No.105 of the record. The findings rendered by the lower Appellate Court vis-a-vis non-appreciation of the original Will reads thus:-

“18. Ex.P1 is photocopy of Will which was produced before learned trial Court on 17.9.2007 and exhibited. Ld. Trial Court rightly kept the photocopy out of consideration as neither attesting witness of the Will was examined nor the original Will was produced.

19. Though, vide order of this Court dated 10.12.2013, permission was granted to the plaintiff to produce the original Will and examine an attesting witness, plaintiff failed to produce the original and only examined attesting witness Baljit Kumar, who identified his signatures and signatures of other marginal witness in the copy of the Will Ex.P-1. It appears that the original Will was not produced in the trial Court at all, even after the application for additional evidence was allowed. In these circumstances, the discrepancy in the date of the Will becomes significant. According to plaintiff's case, deceased Sh. Teja Ram executed Will dated 18.7.98 and the same date is mentioned in the copy of the Will Ex.P-1. The attesting witness, Baljit Kumar however, stated that Sh. Teja Ram executed unregistered Will on 18.6.97. Subsequently, in para 3 of his affidavit, he identified his signatures and signatures of the marginal witness on Will dated 27.6.97 and stated that at the time of execution of Will dated 27.6.97, Teja Ram was in perfect state of mind. Evidently, the original Will was never produced before the attesting witness PW-4 for identification of his own signatures, of

the testator and the second attesting witness. In the absence of the original Will, statement of the attesting witness is of no help to the plaintiff particularly when no permission of the Court was sought to lead secondary evidence of the Will. Learned Trial Court has correctly observed that mere marking of a document as an Exhibit is not sufficient and the document has to be proved as per procedure provided under the Indian Evidence Act. For want of the original Will, statement of PW-4 Baljit Kumar is of no assistance to the plaintiff, in the light of various contradictions and discrepancies therein. Mutation of the Will, as rightly observed, does not confer any right, title or interest. The Will of deceased Teja Ram has not been duly proved on record. Therefore, this Court concurs with the finding of learned trial Court that plaintiff failed to prove his absolute title in the property on the basis of Will executed by his deceased father.”

I am of the view that there are two factual errors in the order.

One is that date of the Will has erroneously been mentioned as 18.07.1998 whereas it is 18.06.1997 as the Original Will is on record. Since the appellant-plaintiff has been deprived of the adjudication of the appeal before the First Appellate Court being the last court of fact and law, I am of the view that no purpose would be served in pondering upon merits of the appeal as owing to aforementioned error again there is illegality and perversity in the impugned judgment and decree of the lower Appellate Court thus, following substantial question of law arises for determination:-

1. Whether the judgment and decree of the lower Appellate Court suffers from non-appreciation/mis-appreciation of the

documentary evidence?

Mr. Pritam Saini, Advocate has disputed the fact that original Will has not been placed on record. However, said fact is totally against the record of the lower Appellate Court.

Keeping in view the aforementioned facts, much less, without commenting upon merits and demerits of the matter, I am of the view the matter is required to be remanded back, on account of the reasons mentioned above.

Accordingly, impugned judgment and decree of the lower Appellate Court is set aside. The matter is remanded back to the lower Appellate Court to decide the appeal afresh after examining the oral and documentary evidence brought on record, in essence, appeal filed on behalf of appellant-plaintiff is restored to its original number.

Substantial question of law as noticed above are answered in favour of the appellant and against the respondents.

Appeal stands allowed.

Parties through their counsel are directed to appear before lower Appellate Court on 12.02.2016.

It is expected that lower Appellate Court shall decide the appeal as expeditiously as possible within a period of two months.

19.01.2016

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**(AMIT RAWAL)
JUDGE**