

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. RSA No. 5577 of 2014 (O&M)
Date of Decision : 19.05.2016

Jasmal Kaur and anotherAppellants

Versus

Sahjdeep and othersRespondents

2. RSA No. 2095 of 2016 (O&M)

Jasmal Kaur (deceased) through LRsAppellants

Versus

Manjit Kaur and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Mayank Mathur, Advocate
for the appellants.

Surinder Gupta, J.

Both the above captioned appeals are being decided of by this common judgment.

2. Jasmal Kaur-appellant no. 1 with her son Harmandeep Singh-appellant no. 2 filed civil suit No. 116 of 28.02.2006 in the Court of Civil Judge (Junior Division), Sunam seeking declaration that she is owner in possession of 1/4th share and plaintiff no. 2 i.e. Harmandeep Singh her son is owner of 3/4th share in the house No. 3, Ward No. 3 near Vishawkarma Mandir, Sunam. Thereafter, she filed another civil suit at Chandigarh alongwith her son Harmandeep Singh and daughter Gurbaljeet Kaur, claiming ½ share in house no. 1272, Sector 37-B, Chandigarh on the basis of natural succession after death of Dr. Gurcharan Singh, husband of Jasmal Kaur and father of Harmandeep Singh and Gurbaljeet Kaur.

suit at Sunam but this matter is not in issue in this appeal as her both the suits were dismissed by upholding registered Will dated 28.10.2005, executed by Dr. Gurcharan Singh in favour of his daughter-in-law Manjit Kaur and grandson Sahjdeep defendants with regard to ½ share in his house and clinic at Sunam and his ½ share in the house at Chandigarh in favour of his grandson Sahjdeep.

3. Claim of plaintiffs based on natural succession was discarded by Civil Judge (Junior Division), Chandigarh with the observation that Dr. Gurcharan Singh was having good health and sound disposing mind at the time of execution of the Will. He was residing with his daughter-in-law and grandson in his last days of life and it was natural that out of love and affection he has executed the Will in their favour. He had given detailed reasons for giving his property at Chandigarh and Sunam to defendants. All his pensionary benefits were given to his wife and daughter as well. The son was ignored being not under his control and drug addict. The Will was also duly proved by scribe and marginal witnesses.

4. First appeal filed by plaintiffs in suit filed at Chandigarh was also dismissed by learned Ist Appellate Court and execution of the Will was upheld affirming findings of learned trial Judge.

5. As the similar matter of inheritance of share of Dr. Gurcharan Singh in suit property was in issue before the Court at Sunam it also relied on findings regarding the Will recorded by learned Civil Judge (Junior Division), Chandigarh and dismissed the suit. Appeal filed by plaintiffs in civil suit at Sunam was also dismissed by learned District Judge, Sangrur.

6. I have heard learned counsel for appellants at length and have perused the paper-book with his able assistance.

7. The first argument of learned counsel for appellants is that original Will was not produced before the Courts below. This Will was exhibited in the statement of official who had brought the record from office of Sub-Registrar, where the Will was registered and not in the statements of marginal witnesses and scribe. Learned Civil Judge (Junior Division), Sunam wrongly relied on the findings regarding the Will recorded by learned Civil Judge (Junior Division), Chandigarh. Based on the evidence produced before him he should have recorded a separate finding.

8. Submissions made by learned counsel for appellants are without merits. As already discussed, plaintiffs-appellants could file one suit relating to the property of Dr. Gurcharan Singh and not two suits at two different places. The civil suit filed at Chandigarh was decided prior to the suit filed at Sunam. In both the cases issue was same. Findings regarding the Will executed by Dr. Gurcharan Singh recorded by learned Civil Judge (Junior Division), Chandigarh operate *res judicata* in the civil suit filed at Sunam and learned Civil Judge (Junior Division), Sunam has committed no error of law while relying on that finding. On perusal of judgments, I find that the Will was duly proved and no such objection was taken that original Will had not been produced on record. Even otherwise, the Will in register of the Sub-Registrar is second copy of the Will bearing signatures of the testator and witnesses, as such, the same is primary evidence and certified copy of primary evidence produced and proved on record cannot be discarded on the ground that original Will has not been produced. The marginal witnesses have duly referred to the Will and have fulfilled the requirement of Section 63 of Indian Succession Act, 1925 and Section 68 of Evidence Act. No suspicious circumstances surrounding execution of the

Will were either brought on record or have been agitated during arguments by learned counsel for appellants.

9. From the facts of case it appears that Dr. Gurcharan Singh was a very intelligent person who wanted to save future of his daughter-in-law and grandson. He ignored his son terming him as a drug addict and out of his control. He secured future of his wife and daughter as well by giving them his pensionary benefits. He was having $\frac{1}{2}$ share in the property at Sunam and $\frac{1}{2}$ share in the house at Chandigarh. He has given share in the house at Chandigarh to his grandson and in house and clinic at Sunam to his grandson and daughter-in-law. It is nowhere the case of appellants that the testator was not in sound disposing mind at the time of execution of the Will.

10. On perusal of judgments of Courts below and paper-book I find no legal or factual infirmity therein calling for any interference. No substantial question of law requiring determination arises in these appeals, which have no merits.

Dismissed.

May 19, 2016
jk

(SURINDER GUPTA)
JUDGE