

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

**RSA No.4780 of 2012 (O&M)
Date of Order: 17.08.2017**

Basant Kaur and others

..Appellants

Versus

Surjit Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Advocate,
for the appellants.

Mr. Rajan Bansal, Advocate,
for respondents no.1 and 2.

ANIL KSHETARPAL, J (Oral)

Plaintiffs are in regular second appeal against the concurrent findings of fact arrived at by the Courts below.

In the present case, dispute is with regard to registered will dated 24.02.1999, allegedly executed by Hakam Singh in favour of his second wife Surjit Kaur. A reading of the will shows that Hakam Singh transferred land measuring 24 kanals 4 marlas in one village and land measuring 38 kanals 6 marlas in the second village through a family settlement acknowledged in a Civil Court decree in favour of his first wife i.e. Basant Kaur. Thereafter, he executed a registered will in favour of Surjit Kaur, defendant no.1, second wife, on 24.02.1999 with regard to remaining property.

To prove the registered will, defendants examined both the attesting witnesses and scribe. Defendant no.1 also stepped into the witness

box as DW4.

Learned trial Court after appreciating the evidence available on the file, upheld the Will and dismissed the suit filed by the plaintiffs.

Appeal filed by the plaintiffs have also been dismissed after re-appreciating the evidence available on the file.

Learned counsel for the appellants has submitted that ancestral nature of the property is not in dispute and, therefore, Hakam Singh could not have executed the Will only in favour of Surjit Kaur. He has submitted that marriage of Surjit Kaur with Hakam Singh is not proved on the file. He further submitted that there is discrepancy in the evidence of witnesses and the scribe because the scribe has said that a rough draft was prepared, whereas the witnesses do not support this version. He has further submitted that nothing has been given to the son and there is no reason assigned why the only son has not been given anything.

On the other hand, counsel for the respondents has read over the Will and stated that the will take care of everyone because the name of son is mentioned in the Will. The executant has further referred to the transfer of land measuring 62 kanals 10 marlas in favour of Basant Kaur (first wife) acknowledged in the civil Court decrees.

I have considered the submissions of learned counsel for the parties.

There is no dispute that the parties have admitted that the property is ancestral in nature. However, such position cannot be solely used for the purpose of recording a finding that the property is ancestral in nature. Plaintiffs have produced excerpt, which only links to the property of father of Hakam Singh i.e. Bogha Singh. Revenue record has not been

produced to prove that the property was ancestral. Still further, once Hakam Singh had accepted transfer of 62 kanals 10 marlas of land in favour of Basant Kaur through a family settlement duly acknowledged by consent decree, then the remaining property cannot be held to be ancestral. In family settlement, the property was distributed and 62 kanals 10 marlas was given to Basant Kaur (first wife).

Learned counsel for the appellants has further submitted that there is some discrepancy in the evidence as the scribe has stated that a rough draft of the Will was prepared, whereas the witnesses have not supported such assertion of the scribe.

I have considered the submission of counsel for the appellants. The will is dated 24.02.1999, whereas the witnesses were being examined in the Court after a considerable period. The contradiction in the statements given by the witnesses is not material, particularly when there is a registered Will, which is duly thumb marked and the photographs of the executant have been affixed.

Next argument of learned counsel for the appellants is that one of the attesting witnesses Gurpreet Singh has deposed as if the will in question is of Bogha Singh.

The statement of Gurpreet Singh has been read over. Although, there is some confusion. However, if the entire statement is taken into consideration, Gurpreet Singh, the attesting witness has specifically stated that the will was executed in accordance with the provision of Section 63 of the Indian Succession Act, 1925, by Hakam Singh. The statement of the attesting witness who has appeared in the Court to be read as a whole.

Some part of the statement cannot be read in isolation from the remaining

part.

Learned counsel for the appellants has further submitted that no provision has been made for Jaskaran Singh, the only son.

Hakam Singh gave 62 kanals and 10 marlas of land to Basant Kaur. She is mother of Jaskaran Singh. Even the Will dated 24.02.1999 is exclusively in favour of Surjit Kaur only. It is clearly mentioned in the Will that he has given 62 kanals 10 marlas of land to Basant Kaur, therefore, he is bequesting the remaining property to Surjit Kaur.

In view of what has been recorded herein above, I do not find any reason to interfere with the concurrent findings of fact arrived at by the Court below. The regular second appeal is ordered to be dismissed.

August 17, 2017
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No