

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

107

RSA No.4869 of 2015 (O&M)

Date of decision: 16.08.2017

Kanto

..... Appellant

Versus

Pal Ram @ Pala Ram etc.

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. H.R. Bhardwaj, Advocate
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM-11642-C-2015

Delay of 21 days in re-filing the appeal is condoned.

CM-11643-C-2015

Allowed, as prayed for.

RSA No.4869 of 2015

Plaintiff is in Regular Second Appeal against the concurrent finding of fact arrived at by the Courts below.

Plaintiff had filed a suit for declaration claiming that she is owner to the extent of 1/6th share of land left by Bachna Ram. Defendant No.1 is the son of Bachna Ram whereas defendant No.2 is widow and defendant No.3, 4 and 5 are daughters. In defence, a joint statement was filed by defendants No.1, 2, 6 and 7 wherein registered Will dated 01.08.1975 was pleaded in favour of defendant No.1, only son of Bachna Ram.

Learned trial Court after appreciating the evidence available on the file and after noticing that one of the attesting witness namely Amar Singh has been examined as DW-2, dismissed the suit filed by the plaintiff. Learned trial Court further relied upon judgment passed in earlier litigation wherein this Will was disputed and upheld.

Appeal filed before the First Appellate Court was also dismissed.

I have heard learned counsel for the appellant at length with his able assistance and gone through the file.

Learned counsel for the appellant has submitted that the thumb impression of Bachna Ram were taken on the blank papers. He further point out that there is enough space available in between where narration of the Will ends and the place where thumb impression of Bachna Ram exist. He has further submitted that the judgment relied upon by the Courts below are not binding on the plaintiff as the plaintiff was not party to the aforesaid suit. He further submits that mere registration of Will would not prove the genuineness of the Will. He submits that the Will is surrounded by suspicious circumstances.

I have heard the learned counsel.

A bare look at the Will which has been produced on the file shows that the Will is a registered document and is thumb marked by Bachna Ram. Each page of the Will is thumb marked by Bachna Ram. On first page, the thumb impression is on the left hand margin whereas on the second page, the thumb impression has been put after the narration of the Will comes to an end. Still further, the Will is thumb marked even on the back page where Sub-Registrar has put its endorsement. These thumb

impressions were taken in the presence of the Sub-Registrar. Therefore, the first submission of learned counsel for the appellant is that the thumb impressions were taken on the blank paper do not stand close scrutiny.

Learned counsel for the appellant has further submitted that the Courts below have relied upon the earlier judgment dated 21.09.1979, however, that judgment is not binding on the plaintiff as he was not party to the aforesaid litigation. No doubt, plaintiff was not party to the aforesaid litigation, however, the Will was produced in that litigation. Attesting witnesses were examined. Even widow supported the Will. Still further, the Courts below have not solely relied upon the judgment passed in 1979. In the present case, DW-2/Amar Singh one of the attesting witness has been examined to prove the Will.

Therefore, there is no force in the argument of learned counsel for the appellant.

Learned counsel for the appellant has further submitted that merely because the Will is registered, the genuineness of Will cannot be assumed. He further submits that if a Will is surrounded by suspicious circumstance, mere registration of Will would not prove the genuineness of the Will.

I have considered the submission, however, I am unable to agree. The Will was registered on 01.08.1975. It is duly attested by two witnesses. Bachna Ram died on 06.08.1975. Mutation on the basis of the Will dated 01.08.1975, was sanctioned in favour of Pal Ram @ Pala Ram-defendant No.1. The present suit came to be filed in the year 2005 i.e. after a period of 30 years. A look at the Will would show that Will was executed by Bachna Ram and got registered. The widow of Bachna Ram and two

daughters of Bachna Ram have supported the Will.

In view of the aforesaid discussion, I do not find any reason to interfere in the concurrent finding of the Courts below.

Appeal is dismissed.

16.08.2017
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No