

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

RSA No.3947 of 2017 (O&M)

Date of decision : 30.08.2017

Raghbir

...Appellant

Versus

Smt. Bharapai and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Lochab, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM No.9996-C of 2017

For the reasons stated in the application, which is duly supported by an affidavit, application is allowed.

Exemption as prayed for, is granted.

Main case

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

Plaintiff had filed a suit seeking relief of declaration to the effect that he is joint owner in possession of the property measuring 232 kanals 18 marlas and some other property. Plaintiff sought a relief on the basis of the Will dated 03.06.2011 executed by late Sh. Satbir, the brother of the plaintiff.

The defendants had contested the suit and pleaded that the Will

dated 03.06.2011 propounded by the plaintiff is forged and fabricated.

Learned trial Court after appreciating the evidence available on the file recorded a finding of fact that late Sh. Satbir was suffering from bone cancer and unable to walk. Learned Court further held that Will dated 03.06.2011 is result of forgery. Late Sh. Satbir Singh ultimately died on 03.09.2011.

Appeal filed by the plaintiff was also dismissed by the First Appellate Court after re-appreciating the evidence available on the file. The findings recorded by the First Appellate Court are as under:-

“13. Plaintiff Raghbir has set up will dated 3.6.2011 and has examined three attesting witnesses, apart from appearing in the witness-box to support his case. However, after hearing learned counsel for the parties and going through the record I find myself unable to agree with the contentions of Id counsel for the plaintiff, as the plaintiff has miserably failed to prove the due execution of the will, rather the will is apparently forged and fabricated one. For this it is sufficient to point out that a perusal of will Ex P1 would show that the date '3.6.2011' has been subsequently added with different type writer as is clear from the comparison of font of the number, used in the will while referring the age of Satbir as 62 years and date at the bottom of the same. The number “6” at both the places is in different font. The ink is also different. This circumstance has remained unexplained throughout and makes the case of the plaintiff highly suspicious. This shows that the main body of the will was typed at one time and the date 3.6.2011 was added subsequently at some other time. The will has not executed on 3.6.2011. The execution of the will on 3.6.2011 as alleged is not proved.

14. *The plaintiff is trying to make out a case that the relations between Satbir and his wife defendant Bharpai were strained and it was he who used to look after Satbir during his illness and got his treatment done. So the execution of will in his favour is justified. However, his case is demolished by his own witnesses. PW2 Rajbir has admitted that Satbir used to reside with his wife. PW4 Shakti Singh not only admitted that Satbir used to reside with his wife but went on to state that she used to serve him in the time of his pain and suffering. Moreover, the medical record Mark A to Z and mark 1 to 12 was placed on record by the defendant. Had the plaintiff served his brother Satbir and got him treatment then these documents should have been in possession of the plaintiff Raghbir. So the statement made by plaintiff Raghbir that Bharpai had left him and he served Satbir and got him treated is incorrect.*

15. *Another stand, which the plaintiff has taken to justify the execution of the will in his favour is that defendant Bharpai has received 2½ acre land from her father-in-law. But this is also not proved on the file. The plaintiff Raghbir in his cross-examination admitted that there is no land in the name of Bharpai. PW2 Rajbir also admitted that there is no land in the name of Bharpai. So this plank of the plaintiff also does not work and cannot take him through. PW2 Rajbir has admitted that Satbir and his wife used to produce Mushroom. This fact is admitted by PW3 Rajender that Satbir used to do farming of Mushroom before his illness. So there is nothing on record to show that he defendant Bharpai had ever left Satbir, so as to compel him to divert the natural succession and execute will in favour of Raghbir, plaintiff.”*

Learned counsel for the appellant has reiterated the arguments

which were addressed before the First Appellate Court. Learned counsel has further submitted that the Will has been proved by examining the attesting witnesses.

I have considered the submission. In case of a Will, plaintiff does not get the relief by merely proving the thumb impression of the deceased. The propounder of the Will has to dispel all suspicious circumstances before he can get relief on the basis of the Will. In the present case, both the Courts have found that the Will is a fabricated document. Late Sh. Satbir Singh has left behind a widow. However, no reason has been given as to why widow has been deprived of the property.

For the reasons recorded above, I do not find any good reason to interfere with the concurrent findings of fact arrived at by the Courts below.

Regular Second Appeal is dismissed.

30.08.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No