

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4424 of 2017 (O&M)

Date of Decision: 15.09.2017

Bogha Singh

... Appellant

Versus

Gurcharan Singh and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Tribhawan Singla, Advocate,
for the appellant.

RAJIV NARAIN RAINA, J.

1. Bogha Singh, Gurcharan Singh and Sukhdev Singh were brothers and sons of Dasaunda Singh r/o Village Dhurkot, Tehsil Tapa, District Barnala. On the death of the Dasaunda Singh the brothers inherited property in equal shares. Sukhdev Singh renounced the world never to return, but before he left, he executed a testamentary Will on March 02, 1976 which was registered.

2. Sukhdev Singh bequeathed his share of property to his brother Gurcharan Singh which made Gurcharan Singh full owner of the share of Sukhdev Singh. This prompted Bogha Singh to file a suit in November 2010 after waiting for many years in the hope of return of Sukhdev Singh which event never happened.

3. Dissatisfied with his lot, Bogha Singh filed a previous suit to challenge the Will but remained unsuccessful. The Court upheld the Will as legal and valid. Again he came to Court in November 2012, this time with

the plea that since Sukhdev Singh had not been declared civilly dead therefore, the Will could operate only after establishing the factum of death.

4. This issue went to trial and both the Courts have held that since the registered Will was an old document of over 30 years, there is a presumption of truth attached to it being a private document in public office. Sukhdev Singh had remained unheard of for the last 30 years and the plaintiff and defendants agreeing to this position then the presumption of death would arise 7 years from the date the man was last heard of by those who would know his whereabouts.

5. Therefore, the first appellate Court held that there is no need to prove the factum of death. This is a plausible view taken by the Court and not an impossible one but all the same which have been reached by the two Courts after appreciating the evidence adduced by the parties, weighing it and deciding on its evidentiary worth, one way or the other and, therefore, on the second appeal side of this Court, restricted as it is by the provisions of Section 100 CPC or Section 41 of the Punjab Courts Act, 1918 I would not interfere with a view taken and to refrain from substituting the findings with what may appear to be a better view of the evidence. That is not the scope in appeal against an appellate decree.

6. Since no patent illegality has been committed or jurisdiction overstepped or any serious misreading of the evidence on record by the lower appellate court, I would not find any warrant to interfere in this appeal and would accordingly dismiss the same in limine, finding after hearing the learned counsel, as not requiring notice to respondents or admission of the matter for regular hearing on any law point, being a case wholly devoid of

merit and the appellant having lost in two courts, for the right reasons.

(RAJIV NARAIN RAINA)
JUDGE

15.09.2017
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Whether speaking/reasoned *Yes*

Whether reportable *No*