

RSA-1390-1992 (O&M)

**1668 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-1390-1992 (O&M)

Date of decision : 17.12.2018

Taro @ Sukhwinder Kaur @ Sukhwant Kaur (deceased)
through LRs

... Appellant

Versus

Rai Kaur (deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Salar, Advocate for the appellant.

Mr. Sarju Puri, Advocate for the respondents.

AMIT RAWAL, J.

The present regular second appeal is directed against the concurrent findings of fact, whereby the suit of the respondents-plaintiffs for declaration claiming 1/5th share in the estate of Gurdev Singh, has been decreed by the trial Court and affirmed by the lower Appellate Court.

The plaintiff-Rai Kaur, mother of Gurdev Singh, instituted the aforementioned suit on the premise that the property, in dispute, was owned and possessed by Gurdev Singh. He died in the year 1982 i.e. on 17.01.1982 leaving behind mother, widow, two sons and one daughter, therefore, in the absence of any testamentary document, his estate was liable to be inherited by way of natural succession.

Defendant Nos.2 to 11 were proceeded *ex parte*.

Appellant-defendant No.1 contested the suit and propounded the Will dated 22.12.1981 of Gurdev Singh, allegedly attested by two witnesses, namely, Uday Pal Singh and Faqir Chand.

The trial Court discarded the Will and conferred the status of the respondent-plaintiff as 1/5th share. The appeal preferred before the

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lower Appellate Court was also dismissed.

Learned counsel appearing on behalf of the appellant-defendant No.1 submitted that the genesis of the judgment and decree of the trial Court and that of the lower Appellate Court, is based upon the testimony of PW6, Handwriting Expert. It is a common practice that the expert toe to the line of his client. The expert erroneously opined that the thumb-impressions on the Will viz-a-viz mortgage deed, were not of the same person, but while decreeing the suit, failed to advert to the detailed cross-examination and examination-in-chief of DW2- Uday Pal Singh, who despite extensive cross-examination, proved that he was the witness of the Will and the Will was dictated by Gurdev Singh to the typist in Punjabi, who typed in English. It is not a requirement of law that the Will has to be written by a scribe as any person can write or type it. The emphasis was laid to the mutation bearing No.6529, which was sanctioned in favour of the appellant-defendant No.1 on the basis of the Will, thus, there is gross illegality and perversity in the concurrent findings of fact and prays for setting aside the same.

Learned counsel appearing on behalf of the respondents-plaintiffs submitted that the mother of the deceased was Class-I heir as per the provisions of Schedule-I of Section 8 of the Hindu Succession Act. He supported the concurrent findings of fact by relying upon the report, which has gone un-rebutted, in the absence of re-examination of the thumb-impressions at the behest of the defendants. The remedy to claim the ownership by way of declaration vested with the Civil Court as the mutation does not confer any title. DW2-Uday Pal Singh, candidly admitted that there were many deed writers in the vicinity and office of the Sub-Registrar

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was in front of them. No explanation has come on record that Gurdev Singh, who was living in USA, had come to India and did not get the Will registered, thus, urges this Court for dismissal of the present regular second appeal.

I have heard learned counsel for the parties, appraised the paper book as well as the records of the Courts below and of the view that there is no force and merits in the submissions of Mr. Salar, for, DW2-Uday Pal Singh, in cross-examination, admitted that there were 10-15 (ten to fifteen) deed writers, who were sitting in Court premises and office of the Sub-Registrar was in front of the place of the scribe. He did not ask the Gurdev Singh for attestation of the Will from some Lambardar for registration. He could not remember whether Gurdev Singh told him the age of the children or not. All these factors reveal that he did not know the family members of the deceased or their age. A witness, who is basically signing the Will, is a trusted person, knowing the testator or his family members. For all intents and purposes, it is deciphered that Gurdev Singh had died intestate and mother i.e. plaintiff being Class-I heirs had 1/5th share. This is what has been held by the Courts below.

In this view of the matter, there cannot be any illegality or perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination.

Resultantly, the second appeal is dismissed.

17.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**