

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 1552 of 1994 (O&M)
Date of decision : May 22, 2018

Amardip Singh and others

..... Appellants

Versus

Manjit Kaur and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Amit Kohar, Advocate and
Ms. Ramneeq Kaur, Advocate
for the appellants.

Ms. Swati Verma, Advocate
for the respondents.

Amit Rawal, J (oral).

The present appeal is directed against the judgment and decree of the lower appellate court whereby the suit of the respondent-plaintiff claiming ownership to the extent of entire share in the estate of Phuman Singh on the basis of Will dated 3.9.1984 had been allowed.

The facts as enumerated from the plaint are that Manjit Kaur who was daughter of Phuman Singh filed the suit against her brothers on the premise that Phuman Singh, his father during his life time executed a Will dated 3.9.1984 bequeathing the entire property in her favour. However defendants obtained a mutation in their favour which gave rise to the cause of action. The defendants contested the suit by pleading that Phuman Singh executed another Will dated 22.11.1984 whereby he bequeathed the entire property in favour of his two sons. The Will Ex. D-1 was attested by Jai Dev and at the time of its execution also attested the endorsement before the

Sub Registrar Ex.D/1/A.

The second Will Ex. D-1 reflected execution of the previous Will, even reasons of natural deviation were also assigned. The lower appellate court reversed the finding, rejected both the Wills and ordered that the estate of Phuman Singh be divided by way of natural succession. In essence decreed the suit, hence the present appeal.

Learned counsel for the appellant submitted that judgment and decree of the lower appellate court is not sustainable in the eyes of law. The Will dated 22.11.1984 had been proved by complying with the provisions of Section 68 of the Indian Evidence Act, 1872 much less Section 63-C of the Indian Succession Act, 1925. Phuman Singh died on 6.1.1985. Before that he had already deviated from the line of succession as he bequeathed the entire property in favour of Manjit Kaur in the previous Will dated 3.9.1984 and in the second Will dated 22.11.1984 by bequeathing the entire share amongst his two sons. Detailed reasons were assigned but the court below had erroneously rejected both the Wills and ordered for natural succession, therefore there is gross illegality and perversity in the judgment and decree of the lower appellate court.

Learned counsel appearing on behalf of the respondents submitted that there was dispute amongst the sons, therefore, Phuman Singh bequeathed the entire property in favour of Manjit Kaur, though there was another sister Jagtar Kaur and the lower appellate court should have decreed the suit in entirety but still satisfied with the finding of the lower appellate court the plaintiff agreed to 1/8th share.

I have heard learned counsel for the parties, appraised the paper book and records of the court below and of the view that that there is

no force and merit in the submissions made by learned counsel for the appellant, for, the lower appellate court has discarded both the Wills and fallen back to the natural succession, for, the Will dated 3.9.1984 as per the entire share was bequeathed in favour of Manjit Kaur i.e. respondent-plaintiff by deviating from the line of succession viz-a-viz sons and another daughter. The Will dated 22.11.1984 though was proved on record through the testimony of the attesting witness and being registered one but has been discarded on the issue of litigation amongst father and sons, therefore the finding arrived at by the lower appellate court in striking out the balance and equity in favour of the parties is correct appreciation of law and do not call for any interference.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

May 22, 2018
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