

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

426

RSA No.585 of 1991 (O&M)

Date of decision: 19.02.2018

Bhajan Singh

..... Appellant

Versus

Sucha Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. R.S. Bains, Advocate
for the appellant.

None for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in regular second appeal against the concurrent finding of fact arrived at by the Courts below.

Dispute is with regard to the estate of Kartar Singh who died on 26.08.1981 unmarried and issueless. The defendant No.2 had set up a registered Will allegedly executed by Kartar Singh in his favour dated 19.08.1981. Both the Courts after appreciating the evidence available on the file dismissed the suit filed by the plaintiffs on the ground that the Will has been proved in accordance with Section 68 of the Evidence Act as one attesting witness namely Ajit Singh has been examined. The Courts have also noticed that Jawan Singh, scribe of the Will has been examined and he has proved on file entry in his register at serial No.292 dated 19.08.1981.

I have heard learned counsel for the appellant at length and with his able assistance gone through the judgments passed by the Courts

below as well as the records.

Learned counsel for the appellant has submitted that the deceased Kartar Singh was admitted in the hospital on 29.07.1981 and he died on 26.08.1981. He has further referred to the statement of the doctor, PW-5 who has stated that the appellant was in semi-conscious stage at the time of admission in the hospital. He has further submitted that another attesting witness of the Will PW-7, Ujagar Singh has been examined who had denied the execution of the Will.

A careful reading of the statement of the doctor who has been examined as PW-5 shows that the deceased Kartar Singh was got discharged from the hospital on 19.08.1981 and he was re-admitted on 20.08.1981. The obvious purpose of discharge was to get the Will registered. The Will was got executed and registered in the Tehsil premises and the testator had appeared before the Sub-Registrar on 19.08.1981 at the time of registration of the Will. A document which has been registered by the Sub-Registrar has a presumption of correctness about its registration. The Sub-Registrar is a Government official. He has been assigned duty to register the documents after verifying the correctness thereof from the executants. The endorsement on the Will proves that the executor was asked about the correctness of the Will. In such circumstances, the genuineness of the registered document which has been proved in accordance with law cannot be doubted.

Next submission of learned counsel for the appellant is that Ujagar Singh, PW-7 has appeared and supported the plaintiff and has stated that no Will was executed.

In the considered opinion of this Court, one witness of the Will

cannot be allowed to hijack a registered document by resiling from what he has stated. As per Section 68 of the Evidence Act, the Will can be proved by the evidence of one of the attesting witness. In the present case, the attesting witness Ajit Singh who has been examined as DW-3 has supported the execution of the Will and proved the same in accordance with law.

Still further, the factum of the execution of the Will was also entered in the register of the professional scribe who has appeared as PW-7 and proved before the Court an entry at serial No.292 in his register.

Last argument of learned counsel for the appellant is that the Will is thumb marked, although, Kartar Singh was a retired Sub-Divisional Officer. It is the case of the plaintiff that Kartar Singh was admitted in the hospital on 29.07.1981 and he died on 26.08.1981. Obviously, Kartar Singh was not keeping well and therefore, was hospitalized for the last 21 days. Such being the position, if Kartar Singh had put his thumb impression rather than signing, the genuineness of the Will cannot be doubted.

In view thereof, there is no scope for interference with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

19.02.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

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