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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-369-2000(O&M)

Date of decision : 28.02.2018

Gian Singh (deceased through LRs)

... Appellant(s)

Versus

Kehar Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. G.S. Bhatia, Advocate
for the appellant(s).

None for the respondent(s).

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the judgment and decree of the lower Appellate Court dated,20.01.200, whereby the judgment and decree of the trial Court dated 08.06.1996 has been set aside, in essence, the suit for declaration qua estate of Dalip Singh, has been dismissed.

It would be apt to give preface of the matter before adverting to the rival contention of learned counsel for the parties.

The appellant-plaintiff instituted the suit on the premise that plaintiff-Gian Singh was the real brother of defendant Nos.1, 2 and 6 and defendant Nos.3 to 5 were his nephews. The dispute was with regard to the property of Dalip Singh, brother of the plaintiff, who unfortunately died on 05.07.1992. He had left behind his share to the extent of 7/48 in the suit property. The plaintiff used to reside with the family of Nasib Singh, who

had also died. Dalip Singh was being served by Nasib Singh and his sons and a month prior to his death, developed serious ailments and lost control over his senses. On 01.07.1992, Dalip Singh was brought by Kharar by Randhir Singh son of Kehar Singh and Mewa Singh son of Nasib Singh. At that time, Dalip Singh was unconscious as he was examined by one Dr. S.S., Paul of Kharar, who also administered certain injections. He was again brought to Kharar for getting treatment on 02.07.1992. Kehar Singh and Randhir Singh represented to Mohinder Singh and Mewa Singh sons of Nasib Singh that they want to take Dalip Singh to Kharar for getting him treated by the doctor, got a Will dated 02.07.1992, which was a fraud having been played upon Dalip Singh as he was unconscious and therefore, there was no occasion for him to execute the Will.

The suit aforementioned was contested by the defendants by filing a joint written statement, in which, relationship of the parties was not denied, but it was stated that the Will, aforementioned, was executed by Dalip Singh out of his own free will and sound disposing mind. It was the sons of Kehar Singh, who was looking after Dalip Singh and serving him, even a mutation was also sanctioned on demise of Dalip Singh in favour of defendant Nos.3 to 5. Replication was filed, whereby all the averments made in the plaint were reiterated.

The trial Court on the basis of the pleadings, framed the following issues:-

- “1. Whether the plaintiff is entitled to the decree for declaration prayed for? OPP*
- 2. Whether the plaintiff is entitled to decree for joint possession of 7/192 share out of 7/48 share of Dalip Singh in*

the suit property? OPP

3. *Whether Dalip Singh executed a legal and valid Will dated 2.7.92 in favour of defendants No.3 to 5? If so, its effect? OPD.*

4. *Relief.”*

The appellant-plaintiff in support of his case appeared himself as PW-1 and got recorded statement of PW-2 Mohinder Singh, PW-3 Prem Singh, PW-3 Dr. Jagpal Singh and also examined PW-5 in rebuttal Gurmit Singh. He tendered in his evidence Ex.P1 and Ex.P2, jamabandi for the year 1989-90, Ex.PW3 Voter list for the year 1975, Ex.P4 Voter list for the year 1980, Ex.P5 voter list for the year 1984, Ex.P6 voter list for the year 1988 and Ex.PW4/A the reference chit, whereas the defendant examined DW-1 Ujagar Singh, DW-2 Balwant Singh, DW-3 Balwant Singh, DW-4 Kuldeep Singh, DW-5 Randhir Singh, DW-6 Dharam Singh and DW-7 Swaran Singh and produced on record Ex.DW2/A copy of register of Gurudawara Kiratpur Sahib, DW-3/A impugned will and Ex.DW3/B endorsement made on the same.

The trial Court on the basis of the aforementioned evidence, found that the Will was surrounded by suspicious circumstances as the Will did not contain the specific averment with regard to exclusion of real brothers while bequeathing the share in favour of the nephews. The appeal preferred before the lower Appellate Court by the defendants was allowed and the judgment and decree of the trial Court was set aside by believing the Will. It is, in this background of the matter, the present appeal has been filed.

Mr. Bhatia, learned counsel appearing on behalf of the

appellant-plaintiff submits that it has come on record through testimony of PW-3 Dr. Jagpal Singh that Dalip Singh was suffering renal failure and a person, who suffers from renal failure, remains unconscious for 3 to 4 days prior to death. The Will is of 02.07.1992, whereas he died on 05.07.1992. The registration of the Will do not tantamount to proving the Will. The testimony of DW-3 Balwant Singh, attesting witness of the Will, was not in tandem with the statement. He feigned ignorance with regard to the certain events, which were necessary to be sated in the cross-examination and therefore, the statement was liable to be discarded. The plaintiff was none-else, but brother of Dalip Singh, who died unmarried and issueless. The property could not have given to the nephews i.e. sons of Kehar Singh, who was also brother of the appellant-plaintiff as it was required to be equally distributed amongst the brothers being Class-II heirs. The defendants have failed to rule out the suspicious circumstances, surrounding the Will, therefore, declaration ought to have been granted on the basis of natural succession, being Class II. All these factors were not weighed in the mind of the lower Appellate Court, resultantly into, abdication and perversity, thus, urges this Court for setting aside the judgment and decree, under challenge, by formulating the substantial questions of law as drawn in the memorandum of appeal.

There is no representation on behalf of the respondents and from the perusal of the many orders, it is evident that nobody had appeared on behalf of the respondents, however, on 23.07.2012, Mr. L.S. Bhangu, Advocate, had appeared on behalf of the respondents. The appeal is of the year 2000, accordingly, I proceed to decide the same on merits.

I have heard the learned counsel for the appellant, appraised the paper book and as well as the record of the Courts below and of the view that there is no force and merit in the submissions of Mr. Bhatia, for, the most unclenching evidence which the appellant-plaintiff was required to prove, was the performance of the last rites of Dalip Singh, on the contrary, defendants have placed on record *parchi*/receipt performing the last rites at Kiratpur Sahib and also the fact that it was the defendants, who had performed the last rites. For all intents and purposes, it is deduced that Dalip Singh was, as stated in the written statement, living with the nephews, sons of Kehar Singh, brother of the appellant-plaintiff, who was looking after him. The appellant/plaintiff-Gian Singh has not been able to establish that Dalip Singh was, at any point of time, living with him or looked after.

As regards the condition of health, the testimony of PW-3 Dr. Jagpal Singh would not help the appellant-plaintiff as it was a general observation of a doctor that in case, a person, who suffers from renal failure, normally gets unconscious, but no evidence has come on record regarding unconsciousness, rather to specific question, in cross-examination, the attesting witness stated that the executant Dalip Singh had met him a day before execution of the Will. The Will is a registered document, which carries a presumption of truth, until and unless, the same is rebutted by very strong and cogent evidence, which the appellant-plaintiff failed to discard. The lower Appellate Court being the last Court of fact and law, in my view, examined the evidence threadbare and found that the Will was actually executed by Dalip Singh, bequeathing his share in favour of the nephews.

Keeping in view the aforementioned reasons, I do not find any illegality and perversity in the judgment and decree of the lower Appellate Court as the same is based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and accordingly, the present regular second appeal is dismissed.

28.02.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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