

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.1020 of 2012 (O&M)

Date of Decision:12.07.2018

Narayan Saran Dass

...Appellant

Versus

Sudesh Rani

...Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Santosh Kumar, Advocate for the appellant.
Mr.Anuj Raura, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

CM-2729-C-2012

The application is allowed. Delay of 4 days in re-filing the appeal is condoned.

CM stands disposed of.

Main case

The plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

Dispute in the present case is with regard to the estate of late Sh.Rameshwar Dass Shukla, who is stated to have died on 10.1.2003, contested between adopted son-the plaintiff/appellant and niece of wife, i.e. respondent. Late Sh.Rameshwar Dass Shukla, the testator, is alleged to have executed a testamentary document on 7.1.2003. Testamentary document is attested by two marginal witnesses namely Ashwani Kumar and Bhupinder Singh. Both these witnesses have been examined to prove the execution of the Will.

This Court has heard the learned counsel for the parties and with their able assistance gone through the judgments passed by the courts below and the record.

Learned counsel for the plaintiff-appellant has submitted that the plaintiff had asserted in the replication that testamentary document is not signed by the executant-testator. He has further submitted that it was the duty of the propounder, i.e. defendant-respondent to prove that the testamentary document bears the signatures of testator. He has next submitted that the Will was executed just three days before the date of death and therefore it must be assumed that the testator was not in sound disposing mind.

This Court has heard the submissions.

Once the plaintiff had taken a stand that testamentary document does not bear the signatures of the testator, it was his duty to prove the assertion made in the replication. On this, learned counsel for the appellant pointed out that during the pendency of the suit, an application for permission to compare the signatures of the testator was moved by the defendant-respondent, which was allowed but no expert was examined.

As noticed earlier, onus was on the plaintiff who had denied that the testamentary document does bear the signatures of the testator. Still further, direct evidence is available. Both the attesting witnesses have deposed that testator had signed the Will in their presence and they had signed the Will in the presence of the testator. Further, the original Will is part of the record as Ex.R7. Photographs of the testator and the beneficiary have been affixed. The testamentary document is attested by a Notary Public and by an Advocate. The plaintiff has led no evidence to prove his

assertions made in the replication.

The next argument of the learned counsel for the appellant that the testator died within three days and therefore, the Will is suspicious, is also to be noticed and rejected. The plaintiff-appellant has not led any evidence to prove that on 7.1.2003, the testator was not in sound disposing mind. No doubt, the testator died within three days, however, that itself cannot be taken as a solitary suspicious circumstance to discard a testamentary document. On careful reading of the testamentary document, it is apparent that the plaintiff was a adopted son and the testator had written in the Will that he has not been looking after him for the last 12 years and he is residing separately.

No other argument was raised.

In view of the aforesaid discussion, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below. The Regular Second Appeal is dismissed. Pending application(s), if any, shall also stand disposed of.

12.07.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No