

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1261-2013 (O&M)
Date of Order: 22.11.2018

Talwinder Singh and others

..Appellants

Versus

Ranjit Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anupam Singla, Advocate,
for the appellants.

Mr. R.S.Chauhan, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

Legal heirs of defendants are in the appeal against the concurrent findings of fact arrived at by the courts below.

Plaintiff-respondent Ranjit Singh filed a suit and claimed succession to the property of late Smt. Sham Kaur on the basis of a registered Will executed on 09.06.1993 (registered on 10.06.1993), who was maternal aunt of father of Ranjit Singh (the plaintiff). Plaintiff further pleaded that he was delivered possession by late Smt. Sham Kaur during her life time by getting entry in the daily dairy report of the revenue official on 05.10.1995.

Defendant Sher Singh is son of sister of Ajmer Singh, husband of Sham Kaur. He had set up a Will dated 23.04.1990.

Both the courts after examining the evidence have found that the registered Will has been proved. One attesting witness, namely,

Gurnam Singh appeared in evidence and tendered his affidavit in lieu of examination in chief while appearing as PW7. The case was adjourned on the request of learned counsel for the defendant-appellant. Unfortunately, before he could appear for cross-examination, he died. Hence, plaintiff examined Deep Chand, adopted son of another attesting witness, namely, Malkiat Singh as PW12. He also examined Joginder Pal, professional deed writer, who had scribed the Will. Both the courts on appreciation of evidence have decreed the suit.

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

Learned counsel for the appellant has submitted that in the present case since Gurnam Singh did not appear for cross-examination, therefore, his evidence cannot be read because the statement is not complete. He further submitted that although, it is claimed that Deep Chand is an adopted son of Malkiat Singh, the other attesting witness but his adoption has not been proved.

This court has considered the submissions of learned counsel for the appellant.

No doubt, Gurnam Singh could not appear for cross-examination as he had died. However, his statement cannot be totally overlooked by the court particularly in view of the fact that he could not appear because of a supervening fact i.e. his death. The cross-examination of Gurnam Singh was deferred on the request of learned counsel for the defendant. Still further, the Will has been proved by examining Deep Chand who has appeared as PW12, the alleged adopted son of Malkiat

Singh. In the present case, adoption was not a dispute between the parties and therefore, adoption was not required to be proved. Once Deep Chand while appearing has stated that he identifies signatures of his adoptive father Malkiat Singh, the requirement of Section 69 of the Evidence Act stands fulfilled. The official from the registering authority has also been examined to prove that the Will has been registered. Still further late Smt. Sham Kaur in a previous litigation had filed a written statement disclosing and admitting execution of the registered Will.

Keeping in view the aforesaid facts, 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.

November 22, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No