

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 3271 of 2013 (O&M)
Date of Decision : 30.01.2018

Pal Singh

....Appellant

Versus

Labh Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Ms. Sarika Gupta, Advocate
for the appellant.

Mr. Pankaj Jain, Advocate
for the respondents.

Surinder Gupta, J.

The dispute in this case pertains to inheritance of share of Dharam Singh, brother of plaintiff-appellant and husband of defendant no. 1 and father of defendants no. 2 and 3. He died on 09.03.2000.

2. Plaintiff has laid his claim over the share of Dharam Singh on the basis of unregistered Will dated 16.01.2000 in his favour while defendants are claiming share of Dharam Singh on the basis of natural succession. While discarding the Will as illegal and void, learned Additional District Judge, S.A.S. Nagar Mohali has observed in para 14 of the judgment as follows:-

“.....The appellant/plaintiff in order to prove the said Will, has examined PW-2 Sukhpal Singh, attesting witness of the said Will Ex. P1. This witness has stated that Dharam Singh had executed a Will dated 16.1.2000. Although, this witness has not stated in his examination-in-chief that the Will was executed by him, but during the course of his cross-examination, this witness has stated that the Will in question

was also got scribed by him. During the course of his cross-examination, he has also stated that he had copied one another Will, scribed by a lawyer. Then, he has stated that some items were said to be included by Dharam Singh in his Will, and some items had been included in his Will, by him at his own. This shows that the Will Ex. P1 was not executed at the instance of Dharam Singh. Although, it has been written in the Will that Dharam Singh was having no wife or issue, but the judgment Ex. D8 and decree sheet Ex. D9, have proved on record that Dharam Singh had got married with Labh Kaur. For these very reasons, the Will in question, which is unregistered one, is surrounded by some suspicious circumstances. DW-1 Bhag Singh, whose name has also figured on the Will Ex. P1, has given a death blow to the case of the plaintiff, as while appearing as DW-1, he has stated that Dharam Singh never executed a Will in his presence. He has even denied his signatures on the Will Ex. P1. The appellant/plaintiff has not got compared the signatures of said Bhag Singh, from a document expert. He has further stated that Dharam Singh had studied upto 10th Class, and as such, he was not supposed to put his thumb impressions, rather he used to put his signatures. In this way, the case of the plaintiff has been demolished by DW-1, whose name has figured on the Will Ex. P1, meaning thereby, the appellant/plaintiff has not been able to prove the execution of the Will Ex. P1 in his favour....”

3. Bhag Singh, the alleged marginal witness of the Will while

appearing as DW-1 has stated that Dharam Singh never executed any Will in his presence, which has been fabricated by plaintiff. He has stated that Dharam Singh was an educated person and never appended his thumb impression on any document. He was matriculate and used to put his signatures. Though, this witness has later admitted his signatures on the Will but the testimony of scribe and of this witness go a long way to prove that the Will propounded by plaintiff is not a genuine document. It is not disputed that defendant-respondent no. 1-Labh Kaur was legally wedded wife of Dharam Singh and defendant no. 2-Gurmit Kaur is his daughter. Plaintiff while appearing as PW-1 has admitted that when Labh Kaur left company of Dharam Singh, she was pregnant and gave birth to a child six months thereafter. Again a *panchayat* was convened and as a result of compromise she stayed in his village for about two months and again left the house after having a fight with Dharam Singh.

4. Learned counsel for the appellant has argued that plaintiff could not produce marginal witness of the Will as they have connived with defendants and refused to depose in favour of plaintiff. However, statement of one of the marginal witness DW-1 Labh Singh shows that he had admitted his signatures on the Will and this proves that deceased-Dharam Singh had executed the Will in favour of plaintiff as he was having strained relations with his wife.

5. On perusal of the Will, I find that it has not been scribed by a regular deed writer. No reason has been given for discarding the wife and children of Dharam Singh from inheritance of his property. As per recital in the Will, Dharam Singh was not having any children and was blind when the Will was executed. Keeping in view statement of scribe that he had

introduced many factors in the Will without permission and consent of testator, the Courts below have rightly discarded the Will as a suspicious document. Even otherwise, first page of the Will does not bear signatures or thumb impression of testator. It appears that appellant has attempted to divest wife and children of his brother from inheriting his property. Reason was obvious as wife of Dharam Singh was living separate. This appears to have led the appellant to make attempt to keep the property of his brother with him by fabricating the instant Will, but could not be successful in proving the same to be a genuinely executed Will of Dharam Singh.

6. In view of facts that have come on record, Courts below have rightly discarded the Will propounded by plaintiff and findings of Courts below to this effect call for no interference in this appeal.

7. As a sequel of my above discussion, this appeal has no merit and the same is dismissed.

January 30, 2018

jk

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No