

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.349-2013 (O&M)
Date of Order:17.09.2018

Virender Singh and others

..Appellants

Versus

Naveen Kumar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Manoj K. Tanwar, Advocate,
for appellants no.1, 2, 5 and 7.

Mr. Mohit Garg, Advocate,
for appellant nos.4 and 6.

Mr. S.K.Yadav, Advocate,
for appellant no.3.

Mr. Kulbir Narwal, Advocate,
for respondents no.1 and 2.

ANIL KSHETARPAL, J(Oral)

C.M.No.12830-C-2018

Application is allowed. Appeal is dismissed as withdrawn on behalf of appellants no.4 and 6 as they claim to have never authorised their brothers to file the present appeal.

MAIN

Defendants-appellants are in the regular second appeal against the judgment passed by the learned first appellate court.

Dispute in the present case is with regard to the estate of late Shri Ishwar Singh, who died on 24.08.1998. Late Shri Ishwar Singh died issueless. Plaintiffs filed a suit claiming a registered Will in their favour dated 08.05.1998, executed by late Shri Ishwar Singh. It is further pleaded

case of the plaintiff that late Shri Ishwar Singh used to reside with Karan Singh, their father. One of the plaintiffs was minor on the day he filed a suit.

Defendants no.1 and 2 contested the suit and pleaded that late Shri Ishwar Singh had executed another Will dated 18.08.1998 in their favour.

Learned trial court rejected both the Wills. However, learned first appellate court has upheld the registered will dated 28.05.1998 and discarded will dated 18.08.1998.

First appellate court has noticed that the Will set up by the defendants-appellants dated 18.08.1998. is exact replica of the first Will dated 08.05.1998. The court further found that second Will i.e. 18.08.1998 set up by the defendants is an unregistered will alleged to have been executed 6 days prior to the death of the testator. The court further noticed that the alleged scribe of the Will was only a 16 years old boy who had never executed any Will. When he appeared in evidence, he stated that the Will was executed 1½ month prior to the date of death whereas it was executed just 6 days before the date of death.

As regard will dated 08.05.1998, the court has further found that the attesting witness Umed Singh has been examined as PW2, who has proved the execution of the Will in accordance with Section 63 of the Succession Act, 1925. The court has further found that the Will has been proved before the court in accordance with Section 68 of the Evidence Act. Still further, Dayanand, the scribe has been examine as PW1 and he has also proved entry in his register maintained by the professional scribe, which also bears the thumb impression of testator late Shri Ishwar Singh .

It is further found that Yashpal Jain, Handwriting and Finger

Print expert has been examined who has compared the thumb impressions and found that the Will set up by the defendants-appellants dated 18.08.1998, does not bear the thumb impression of late Shri Ishwar Singh. This court with the help of learned counsel for the parties, also seen the record. It is apparent that the registered testament dated 08.05.1998 also bears the photographs of the executant. Thumb impression of late Shri Ishwar Singh are on both the pages of the Will. Still further, late Shri Ishwar Singh has also appeared before the Sub-Registrar and in token of having read over and explained the Will, thumb marked the Will in his presence. Still further, 2 attesting witnesses have attested the Will.

Learned counsel for the appellants, while referring to the statement of Dayanand, scribe, has submitted that Dayanand was not able to recognize the photographs of late Shri Ishwar Singh. It is undisputed that the professional scribe was examined after a period of 5 years in the Court. It cannot be expected from the scribe to recognize each and every person who had come to him for scribing any document.

Keeping in view the aforesaid findings, which are neither shown to be perverse nor result of any misreading or non-reading of substantive evidence, this court does not find any good ground to interfere.

The regular second appeal is dismissed.

September 17, 2018
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No