

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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RSA-1418-2016 (O&M)
Date of Decision : 13.8.2018

Joginder Singh @Jangir Singh and others

...Appellants

vs.

Harnam Kaur

...Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. B.S.Rana, Senior Advocate with
Mr. R.S.Arya, Advocate
for the appellant(s).

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments of the Courts below dismissing a suit filed by the appellants.

The appellants filed a suit dated 10.10.2005 claiming a declaration that appellant No.1 was the owner of half of the land measuring 32 Kanals 1 Marla left behind his father and the appellants No. 2 to 5 were the owners of the remaining land measuring 13 Kanals and 9 Marlas. It was pleaded that the father of the appellant No.1 had about 8 acres of land and executed a registered Will in the year 1970. He died in the year 1973 but mutation was sanctioned in favour of his two sons and one daughter. The other son sold some land out of his share but ultimately died unmarried and issueless in the year 1998. After his death it transpired that he had left a Will of his share of land in favour of his nephew-Sukhwinder Singh who also died leaving behind his LRs as appellants No. 2 to 5. At that time,

from those papers of the brother the appellant No.1 had also discovered a copy of the Will of the father of 1970 and thereafter he filed the instant suit alongwith the LRs. During the trial of the suit, an application was filed for permission to lead secondary evidence in respect of the Will of 1970 stating that it was lost. It was allowed subject to proof of loss. Since no proof of loss was provided, the trial Court did not consider the secondary evidence. Consequently, it dismissed the suit holding that the Will of the father had not been proved. In the appeal, for the first time, it was informed that actually the original Will had been handed over to the counsel and had been lost by the Counsel and permission was sought to allow that counsel to give his testimony. The Appellate Court having rejected that application and having dismissed the appeal the appellants are before this Court. .

Learned Senior counsel has argued that the Will of 1970 was a registered Will and an official from the Sub-Registrar office had duly come to prove it and therefore there was no reason to have any doubt on the existence and genuineness of that Will. Moreover, since witnesses had died , persons covered under Section 69 of the Act had appeared and testified about the signatures of the witness on the Will. In the circumstances, as per the learned Senior counsel there was no need to move an application for secondary or additional evidence.

In my considered opinion, the argument cannot be accepted. Under the Indian Evidence Act, primary proof of document is the document itself. In the present case, right from day one, the appellant No.1 knew that the original Will was not in his possession. The appellants also knew that they could only succeed only if they were able to prove the Will of 1970.

Moreover, the Courts below also considered the huge delay of 32 years between between the death of the father and surfacing of this Will.

Learned Senior Counsel has then argued that after the death of the father the two brothers continued to remain in possession and therefore never bothered to check the revenue record. That also does not sound believable. Once it was the case of the appellant No.1 himself that the brother had sold some land, at that time the revenue record must have been seen. In the totality of the circumstances, I am not persuaded to hold that the findings of the Courts below are either based on no evidence or on such perverse misreading of the evidence so as to render them liable for interference in second appeal.

The appeal stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

13.8.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No