

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 2399 of 2016 (O&M)

Date of Decision:31.7.2018

Mohinder Singh

---Appellant

vs.

Gurdev Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mohd. Yousaf, Advocate
for the appellant

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit filed by the appellant-plaintiff claiming right of inheritance to his mother Smt. Pritam Kaur on the basis of natural succession, has been dismissed by the courts while accepting claim of contesting defendants-respondents that Pritam Kaur executed a valid registered Will dated 8.12.2005 in favour of Gurdev Singh son of Makhan Singh (since deceased) and Sadhu Singh son of Santa Singh, brother of late Smt. Pritam Kaur.

Counsel for the appellant has challenged findings recorded by the courts primarily on three counts. It is argued that Gurdev Singh

defendant No. 1 filed application under Section 148-A of the Code of Civil Procedure (in short “the Code”) by way of caveat against the appellant and Pritam Kaur, sufficient to show that Pritam Kaur did not have cordial relations with Gurdev Singh, therefore, it creates suspicion if Pritam Kaur bequeathed her property in favour of Gurdev Singh while excluding the appellant from inheritance. The second submission made by counsel is that Sadhu Singh, one of the beneficiaries under the Will, has signed the document at the time of registration. The respondents-defendants have raised a plea that Pritam Kaur had been residing with Sadhu Singh, thus, possibility of Sadhu Singh having exercised his influence upon Pritam Kaur for executing the Will in question cannot be ruled out. It is next argued that in the Will, there is recital that Pritam Kaur had already given a part of her property to Mohinder Singh but it has not been specifically recited as to what property was given by Pritam Kaur to Mohinder Singh and this fact also creates suspicion regarding genuineness of the Will in question.

Before advertng to the submissions made by counsel for the appellant, it is appropriate to recapitulate that it is not open for the court in second appeal to re-appreciate the evidence for recording a finding different from what has been held by the courts. Equally settled is that the second appeal can be admitted for hearing if the judgments impugned suffer from perversity or raise a question of law.

In the case at hand, one of the attesting witnesses of the Will namely Surinder Singh Sarpach appeared in the witness box to prove the Will in compliance with the provisions of Section 68 of the Indian Evidence Act. Counsel for the appellant has not made any submissions that the

respondents-defendants (propounders of the Will) have failed to prove the same in compliance with the relevant provisions of Evidence Act. Counsel has not pointed out any discrepancy or contradiction in the statement of Surinder Singh.

This brings the court to submissions made by counsel to bring home his contention that the Will is shrouded by suspicious circumstances. The application under Section 148-A of the Code was filed by Gurdev Singh son of Makhan Singh by contending that there is litigation between the applicant and the respondents regarding estate of late Makhan Singh situated at villages Diwali and Bhode Saprai. The respondents also filed two suits in which they sought relief of interim injunction but the same were dismissed. The application was filed in October 2003. The mere fact that there was some litigation with regard to estate of late Makhan Singh is not sufficient to show that Gurdev Singh and Pritam Kaur did not have cordial relations. Counsel has failed to point out if the documents pertaining to two suits allegedly filed by Mohinder Singh and Pritam Kaur are a part of records for appreciation, if Pritam Kaur raised a dispute against Gurdev Singh.

Sadhu Singh is the brother of Pritam Kaur. Both the courts have taken note of oral and documentary evidence adduced to establish that Pritam Kaur had been residing with her brother Sadhu Singh. It has also been proved on record that Sadhu Singh was not present at the time of execution of the Will but he was present at the time of registration of the Will. The mere fact that Sadhu Singh was present at the time of registration of the Will itself cannot constitute a ground to set aside findings of the

courts accepting the registered Will of Smt. Pritam Kaur. The Will contains recitals that Mohinder Singh is residing separately and his behaviour is not good. He had been misbehaving with the testator and he had already been given whatever the testator wanted to give him from her property. No such contention has been raised by counsel that Mohinder Singh did not get any property from his mother. He has failed to point out any materials on record that Mohinder Singh was not living separate or he had cordial relations with his mother. If the testator had any grievance to express qua behaviour of Mohinder Singh and that is why she wanted to exclude him from inheritance, nothing strange/abnormal can be found in her getting recorded that she did not want to give any thing more to his son Mohinder Singh. In this view of the matter, three circumstances pointed out by counsel for the appellant are not sufficient to entertain plea of the appellant that the Will is surrounded by suspicious circumstances or consistent findings recorded by the courts warrant intervention.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs. As the appeal has been decided on merit, application for condoning delay of 451 days in refiling the appeal is of academic relevance only.

(Rekha Mittal)
Judge

31.7.2018
paramjit

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