

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

RSA No.3017 of 2016 (O&M)

Date of decision:08.05.2018

Amrit Pal Singh Cheema (since deceased)
through LRs

... Appellant

Vs.

Mohini Rajput and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Charanjit Bakshi, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-plaintiff is in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit claiming declaration with consequential relief of permanent injunction to the estate of Raminder Pal Singh Cheema by propounding the Will dated 30.06.1993, has been dismissed by the trial Court and affirmed by the Lower Appellate Court.

Mr. Charanjit Bakshi, learned counsel for the appellant-plaintiff submits that suit was filed on the premise that plaintiff was the nephew of Raminder Pal Singh, who after divorce in the year 1977 was living with the plaintiff. He never lived with his children, i.e., defendants nor executed any Will dated 31.01.2000. The Will probated in London could not be looked into, in view of the judgment rendered by the High Court of Bombay in **Dr. Devika Damji Shah Vs. Rashmi Mukesh Shah and another, decided on 27.07.2012**. The basis of ratio in the aforementioned judgment is

interpretation of Section 13 of CPC. On the contrary, the appellant-plaintiff had proved on record the Will through the attesting witnesses PW2 and PW3, therefore, there was compliance of provisions of Section 68 of Indian Evidence Act and Section 63(c) of Indian Succession Act. The defendants had not examined any witness to the Will except by tendering the order of Probate granted by the Court at London, therefore, there is gross illegality and perversity in the findings under challenge.

I have heard the learned counsel for the appellant-plaintiff, appraise the judgments and decrees of the Courts below and of the view that there is no illegality and perversity in the judgments and decrees under challenge, for, both the witnesses have not deposed in terms of provisions of Section 63(c) of Indian Succession Act as they did not utter a word that they had appended the signatures on the directions of the testator. Raminder Pal Singh Cheema died on 16.05.2000. The defendants are the real children of Raminder Pal Singh Cheema, whereas, plaintiff is the nephew, in essence, Raminder Pal Singh Cheema was maternal uncle of plaintiff. The Will dated 30.06.1993 did not disclose the reasons for deviation from the natural succession. The taking divorce is personal decision of husband and wife, wherein, children were not the party. The Will dated 31.01.2000 propounded by the defendants had been probated by the Court at United Kingdom. All these facts weighed in the mind of the Courts below.

As far as applicability of ratio decidendi culled out in the aforementioned judgment is concerned, the question which arises as to whether probate is judgment or not, answer is 'No'. The probate is not a

judgment as it puts accord on validity of Will but do not decide the title and therefore, the ratio decidendi culled out in the aforementioned judgment would not apply to the facts and circumstances of the present case.

The arguments of Mr. Bakshi, have not been able to bring the case within the realm of illegality and perversity enabling this Court to form the different opinion than the one arrived at by the Courts below which are based upon the appreciation of oral and documentary evidence.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

May 08, 2018

savita

Whether Speaking/Reasoned

Whether Reportable

(AMIT RAWAL)

JUDGE

Yes/No

Yes/No