

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

RSA No.847 of 2013 (O&M)
Date of decision : 12.09.2018

Prem Singh

...Appellant

Versus

Avtar Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Arun Jain, Sr. Advocate with
Mr. Vikas Mohan Gupta, Advocate for the appellant.

Mr. Pankaj Jain, Advocate for respondent Nos.1 to 6.

ANIL KSHETARPAL, J.

Arguments were heard. Judgment was reserved. The judgment is being released.

Defendant No.10 has filed the present Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while decreeing the suit filed by the plaintiffs for declaration and for permanent injunction declaring them to be owners of the property on the basis of registered Testamentary document dated 15.03.1994.

The plaintiffs are grandsons of the testator. The Testator had bequeathed his property in favour of the plaintiffs who are grandsons representing succession in favour of families of sons of the Testator. Fourth son was admittedly issueless.

Originally, when the suit was filed, it was dismissed by the learned trial Court, however, in first appeal, the Court remanded the case to the trial Court for re-decision vide order dated 23.04.2008. After remand,

since original Testament was lost, an official from the office of Sub-Registrar was summoned who proved that the registered Testament is entered at Sr. No.529/3 in their record. Original record was brought by the official to prove the Testament. It may be noted that both the attesting witnesses of the registered Will namely Nasib Singh-PW2 and Jagir Singh-PW3 have been examined to prove the Testament. Defendant No.10 claims that he is a bona fide purchaser from Mewa Singh and Prem Kaur (issueless son of Hakam Singh and married daughter of Hakam Singh). It has come in evidence when Prem Singh appeared in the witness-box that he got two sale deeds registered, one in his own favour and one in the favour of his son within a span of three days because sale deed in favour of Prem Singh is dated 25.04.1995 whereas sale deed in favour of his son-Yoginder Singh is dated 28.04.1995. It may be noticed that after the death of Hakam Singh on 29.04.1994, Mewa Singh is alleged to have got sanctioned a mutation on the same day when last rites (kriya) of Hakam Singh is being performed on 04.05.1994.

The plaintiffs on coming to know about the aforesaid mutation, filed an appeal against the aforesaid mutation and dispute was pending between the family members. An appeal was filed on 30.10.1994. It is admitted by Prem Singh that he did not enquire from the family members about the dispute pending between them with regard to inheritance. As noticed earlier, it is a positive case of the plaintiffs that Prem Singh-defendant No.10/appellant was instrumental in getting the mutation entered and sanctioned immediately on the death of Hakam Singh.

It may be noted that learned Senior Counsel appearing for the

appellant did not address any argument with regard to the appellant being bona fide purchaser and rightly so, in view of the admission made by Prem Singh noted by both the Courts below. However, learned Senior Counsel has submitted that after remand of the case, no attesting witness has been examined. He further drew attention of the Court to the statement of Ramesh Kumar, an official from the office of Sub Registrar wherein he admits that photocopy of the Testament produced is not same when compared with the entry in the books. He further submitted that Waryam Singh, a police official has deposed that the record of the loss of the Testament has been destroyed. He further submitted that the Testament was scribed by Karamjit Singh Sidhu, Advocate but he has not maintained any register for making an entry of the documents scribed by him. He further submitted that Hakam Singh had suffered paralysis attack and had died within 14 days of the alleged execution and registration of the Testament.

On the other hand, learned counsel for the respondents supported the judgments passed by both the Courts below.

As regards the argument of learned counsel that no attesting witness has been examined after remand of the case, this Court does not find any substance therein. When the suit was filed, a photocopy of the registered Testament was produced. After production of the registered Testament, both the attesting witnesses were examined and both the attesting witnesses proved the execution of Testament in accordance with Section 63 of the Indian Succession Act, 1925. However, learned Trial Court dismissed the suit. An application for permission to lead secondary evidence had been filed, which was not contested by the defendants, and

hence the same was allowed but the trial Court overlooked that fact. It was for this reason that the learned first Appellate Court remanded the case vide order dated 23.04.2008. After remand, it was not necessary to re-examine the attesting witnesses. As noticed above, the original entry which bears the thumb impression of Hakam Singh and attesting witnesses, had been produced from the office of the Sub-Registrar. The gist of the Testament has been recorded in the register maintained in the office of Sub Registrar at Sr.No.529/3.

With regard to the second argument of the learned counsel that the photocopy of the Testament produced and the entry in the register is not the same, is also without substance. A photocopy of the registered Testament and the entry in the register maintained in the office of Sub-Registrar has to be different. This has been explained by the official witness i.e. Sub Registrar when he was re-examined by the learned counsel for the plaintiffs/respondents. Official has clearly admitted that gist of the Testament as noted in the record of the office of Sub-Registrar is same as is contained in the photocopy of the Testament. Hence, this Court does not even find substance in the second argument of the learned Senior Counsel.

Next submission of the learned counsel that original record of the Daily Diary Report has not been produced by Waryam Singh, Constable, where loss of the original Testament has been duly recorded is just to be noticed and rejected as Waryam Singh has specifically stated that the record of the DDR is destroyed being more than 8 year old.

Still further, the next argument of the learned counsel that the Scribe has not maintained any register also does not have force as Sh.

Karamjit Singh Sidhu, is a practicing Advocate. He has stated that he has scribed the Testament on the request of Mewa Singh. An Advocate is not required to maintain a register of the documents/Testaments which have been scribed by him.

Last argument of the learned counsel that Hakam Singh had suffered a paralysis attack and died within 14 days is also to be noted and rejected because Hakam Singh died on 29.04.1994 whereas the Testament is dated 15.03.1994. He died after a period of 1 month and 14 days. Mewa Singh, the defendant when appeared in the witness box admitted that he had spoken to Hakam Singh 10-15 days before his death and he was alright. Once, Mewa Singh himself has admitted that Hakam Singh was alright and the defendant-appellant has not led any evidence to prove that Hakam Singh was not in sound disposing mind, therefore, a registered Testament cannot be ignored merely on the ground that the Testator had died within a period of 1 year and 14 days.

Keeping in view the aforesaid facts, this Court does not find any ground to interfere with the concurrent findings of fact, arrived at by both the Courts below, while exercising the powers of second appeal.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

12.09.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No