

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

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**RSA-3894-2016 (O&M)
Date of Decision : 20.02.2018**

Paramjit Singh and others

..... Appellants

Versus

Swaran Singh and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Hardip Singh, Advocate
for the appellants.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments of the courts below whereby even though the suit of the respondent No.1 was dismissed yet a Will propounded by the appellants was also held to be surrounded by suspicious circumstances and therefore discarded.

The respondent No.1 had filed a suit claiming that one Sohan Singh be declared dead and he be held entitled to jointly inherit his property alongwith the appellants. The appellants in the written statement did not deny the prayer that Sohan Singh be declared dead but claimed that he had left all his property to them by Will dated 15.05.1990. Both the courts below found that there was no material to prove that Sohan Singh had not been heard off for the last 7 years and consequently declined the issue of declaration that he was dead. On the issue of Will also, both the courts below held that the Will propounded by the appellants was surrounded by suspicious circumstances and that is how the appellants are before me.

The argument of the counsel for the appellants is that once the court had come to the conclusion that Sohan Singh could not be declared to be dead it should not have proceeded to decide on the question of Will.

In my opinion, this argument is misconceived. Once the issue was raised before the court, it was incumbent upon the court to decide the same and this has been so held in a catena of judgments. Even otherwise, if in a case like this, it is not so done it can lead to avoidable litigation, for instance, in the present case the trial court may have firstly held that Sohan Singh was not dead and then refused to decide the question of Will and the respondent No.1 had moved an first appeal, the appellate court could well have held that Sohan Singh was dead. May be then the appellants could have approached this Court and this Court could have upheld the verdict of the trial court that Sohan Singh could not be declared dead. There was a possibility that then the respondent No.1 may had moved the Supreme Court which could have held that in fact Sohan Singh had died. It would have been ridiculous if at that stage the matter regarding the validity of the Will had to be re-examined. In the circumstances, no fault can be found with the action of the courts below in deciding the issue of validity of Will which was specifically raised by the parties.

Coming to the suspicious circumstances, the courts below found that only one Gurmail Singh was examined who was claimed by the appellants to be a witness but who claimed himself to be a scribe. The courts below further found that two other witnesses who were mentioned (and who were not produced) were from different villages. The courts

below further found from a perusal of the Will that it was a document of a single page where the ink used in appending thumb impressions of Sohan Singh was quite old, whereas the ink of pen used in writing the body of Will seemed to be fresh. Further in my opinion, once the Will was stated to have been thumb-marked there was no reason why the appellants did not examine an expert because the science of comparing thumb impressions is an exact science.

Counsel for the appellants has not been able to dispel these suspicious circumstances.

Appeal is dismissed. No costs.

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

February 20, 2018
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No