

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4038 of 2016 (O&M)

Date of Decision: November 12, 2018

Ashok Kumar & others

...Appellants

Versus

Inder Dev & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Rai Singh Chauhan, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

Appellant-plaintiffs sought declaration vis-a-vis the estate of Surinder Datt on the basis of the registered Will dated 18.01.1995, which has been declined by the trial Court and upheld by the Lower Appellate Court.

It was alleged that Surinder Datt was married and had two daughters already married. On the demise of his wife, he started living with the plaintiffs sons of Guru Datt as Surinder Datt and Guru Datt were real brothers. Both the attesting witnesses of the Will had died and their children, as per the provisions of Section 69 of the Indian Evidence Act (for short, the Act) were examined. Not the least, even Ashok Kumar Scribe of the Will, who was examined also brought on record the register. Despite that, the courts below ignored the Will and upheld the order of the Financial Commissioner Ex.D7, whereby mutation on the demise, was ordered as per the natural succession.

The defendants had taken the plea of non-maintainability of the

suit as the previous suit on the same ground was dismissed in default and challenge to the mutation proceedings was upheld by the Financial Commissioner. There was no dispute between the testator and the married daughters disinherited from the natural line of succession. The trial Court dismissed the suit and the appeal laid before the Lower Appellate Court also met with the same fate.

Mr. Rai Singh Chauhan, learned counsel representing the appellant-plaintiffs submitted that the order of the Financial Commissioner was assailed before the trial Court. Provisions of Section 69 of the Act have been complied with as one of the son of Sukh Ram Dass appeared and identified the signatures of his father. Even the person from the office of Sub Registrar where the Will was registered had been examined. All the witnesses including the Scribe have been consistent. Execution of the Will is a pointer to deviate from the line of succession and, therefore, could not be a ground for suspicious circumstances.

I have heard the learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Chauhan, for, PW-9 Surjit Kumar admitted that Sukh Ram Dass Nambardar, his father, had appended the signatures on the Will in Urdu, whereas he did not know Urdu. In such circumstances, provisions of Section 69 of the Act remained uncomplied.

Financial Commissioner rejected the plea of the plaintiffs by relying on the statement of Ashok Kumar (plaintiff No.1), who candidly admitted the relationship between testator and the married daughters to be cordial. No reasons have been mentioned in the Will for disinheriting the natural legal heirs. The plea that Surinder Datt died in 1997, whereas the

Will of 1995 could have been revoked had there been the element of suspicious, would also not sustain. The plaintiffs attempted to target the natural heirs first before the revenue court and then the civil court. It is not incumbent and obligatory upon the revenue authorities to effect the mutation on the basis of the Will. In other words, they had a right to discard the same.

As an upshot of the aforementioned observations, the argument of Mr. Chauhan is not able to bring the case within the realm of perversity. No ground for interference is made out, much less involvement of substantial question of law. Resultantly, the appeal is dismissed.

November 12, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No