

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 2942 of 2015 (O/M)

Date of decision : 27.4.2018

Dharambir and another

..... Appellants

Versus

Smt. Rajbala and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Kulvir Narwal, Advocate, for appellants.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J. (ORAL)

Impugned in present regular second appeal is judgment dated 17.12.2014, passed by learned District Judge, Jhajjar, affirming judgment and decree dated 28.2.2012, passed by learned Additional Civil Judge (Senior Division), Bahadurgarh, vide which suit of the plaintiffs for declaration and permanent injunction was decreed.

In this case, the estate of Ishwar Singh son of Sohan Lal is in dispute. Plaintiff Raj Bala claims that after death of his first wife Har Pyari, Ishwar Singh married her. From the marriage, two children, namely, Pardeep and Ritu were born. Pardeep was given in adoption to Jasso Devi, vide adoption deed datd 12.5.2000. Jasso Devi happens to be sister of Raj Bala. She claims that defendants have procured a bogus Will No. 694 dated 8.3.2006. Ishwar Singh never executed said Will.

On the other hand, defendants No. 1 to 3, who happen to be sons and daughter of Ishwar Singh from first marriage with Har Pyari claim that Ishwar Singh had never married Raj Bala. They have also denied relationship of Pardeep and Ritu with deceased.

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From the pleadings, following issues were framed :-

1. Whether the plaintiffs are owners in joint possession of 1/5th share (1/10th each) in property mentioned in para no. 1 of the plaint ? OPP
2. Whether the will no. 694 dated 8.3.2006 is illegal null and void and not binding upon the rights of the plaintiffs ? OPP
3. Whether the plaintiffs are entitled to the decree for permanent injunction as prayed for on the grounds mentioned in the plaint ? OPP
4. Whether the suit is not maintainable in the present form ? OPD
5. Whether the plaintiffs have no locus standi and cause of action to file the present suit. ? OPD
6. Whether the plaintiffs have suppressed the material facts from the Court and not entitled to the discovery relief for injunction ? OPD
7. Relief.

Trial Court took up issues No. 1, 2 and 3 together and held that registered Will No. 694 dated 8.3.2006 is a suspicious document. Same was accordingly discarded. Trial Court believed that Raj Bala had married Ishwar Singh and from said marriage, two children, namely, Pardeep and Ritu, were born, out of which Pardeep was given in adoption. However, Ritu, minor daughter is still living with her brother. As such, declaration and injunction was granted to the effect that plaintiffs are owner in possession to the extent of 1/5th i.e. 1/10th share each in the property in dispute and that Will dated 8.3.2006 is not binding on the rights of plaintiffs being null and void. A decree for permanent injunction was also passed in favour of plaintiffs restraining defendants from ousting plaintiffs from joint possession of property and from alienating the property on the basis of said Will dated 8.3.2006. The findings are upheld in appeal.

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I have heard the learned counsel for appellants and called for lower Court record and examined it.

After going through the disputed Will, I am of the view that same has been rightly discarded by both the Courts below. It comes out that Will was executed by Ishwar Singh on 8.3.2006 on the ground that he is not enjoying good health. He died five days later on 13.3.2006. At the time of execution of Will, Dharambir, one of beneficiary was present though, in the suit he has denied the same and stated that Will was found after death of Ishwar Singh. In the Will, there is no mention about his wife Raj Bala and minor daughter Ritu. In the normal circumstances, when a person executes a Will, he takes care that after his death, his wife and minor children, particularly, daughter is looked after well. Non mentioning of legal heirs also is one of suspicious circumstances. Will was executed five days before the death of Ishwar Singh and one of the beneficiary was present. Therefore, trial Court rightly concluded that Will No. 694 dated 8.3.2006 is liable to be discarded. Regarding relationship of Raj Bala, it comes out that first wife Har Pyari of Ishwar Singh had admittedly died. She left behind three children, Dharambir, Shree Parkash and daughter Kamal who is married. It also comes out that in the matriculation certificate of Ritu, her date of birth and parentage is mentioned which shows that she was born on 3.6.1989. The matriculation certificate of Pardeep (Ex.P7) also shows Ishwar Singh as his father. Moreover, adoption deed of Pardeep shows that Ishwar Singh and Raj Bala being father and mother gave Pardeep in adoption to Jasso Devi. Adoption deed bears photograph of Ishwar Singh. Therefore, trial Court rightly concluded that Raj Bala was married with Ishwar Singh and two children were born from said marriage. Since Pardeep was given in

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adoption, Ritu alongwith her mother Raj Bala are class-I heirs. The finding of facts have been recorded by two Courts below.

The learned counsel for appellants has relied upon Section 6 of The Punjab Custom (Power to Contest) Act, 1920.

I am of the view that said section does not bar plaintiffs from claiming declaration that they are also class-I heirs and entitled to succeed the estate of Ishwar Singh.

The learned counsel for appellants has also relied upon authority of this Court in *Daljinder Singh Versus Harbans Kaur*, 2001 (2) RCR (Civil) 294, to press that mere presence of one of the beneficiary is not a ground to discard Will.

I am of the view that this is one of the circumstance and when other circumstances are also taken into consideration, Will was rightly held to be suspicious document and rightly discarded. There are concurrent finding of facts recorded by two Courts below. There is no illegality and perversity in the findings recorded by two Courts below. Hence, regular second appeal is dismissed. Since main case has been dismissed, therefore, pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

27.4.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No