

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

RSA No.2918 of 2017 (O&M)

Date of decision:02.11.2018

Bhagwant Kaur and another ... Appellants

Vs.

Parminder Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. G.S.Poonia, Senior Advocate with
Mr. Arvind Kashyap, Advocate
for the appellants.

AMIT RAWAL J.

The appellant-plaintiffs have not been successful in claiming the relief of joint possession in the suit land by challenging two gifts deed bearing No.1657 & 1658 dated 10.11.2008 and Will dated 17.08.2009 executed by Dharam Singh son of Santa Singh in favour of defendants No.1 and 2, namely, Parminder Singh and Jatinder Singh sons of Kulwant Singh.

It has been alleged that Bishan Singh had two sons - Santa Singh and Wazir Singh. After the death of Bishan Singh, the suit property was inherited by both sons in equal share. Santa Singh transferred ½ share in favour of Kulwant Singh and Gian Singh sons of Dharam Singh. Wazir Singh was unmarried and issueless. On his demise, as per the testamentary documents, other half share devolved upon Dharam Singh.

It was further alleged that Dharam Singh during his life time did not execute any gift deed/Will nor did contain the signatures/thumb impressions of Dharam Singh. He was not in senses for the last five years

prior to death and the property at the hands of Dharam Singh was co-parcenary, therefore, he was not competent to execute the gift deeds, *ibid*.

The defendants opposed the suit aforementioned and alleged that it was self-acquired property of Dharam Singh. All the death ceremonies were performed by them as he was living with them and in lieu of the services, had executed the gift deeds.

On the preponderance of the evidence, the trial Court dismissed the suit and the appeal laid before the Lower Appellate Court was also dismissed.

Mr. G.S.Poonia, learned Senior counsel assisted by Mr. Arvind Kashyap, Advocate appearing on behalf of the appellant-plaintiffs submitted that both the Courts below have committed illegality and perversity in dismissing the suit as the defendants have not been able to bring the case within the expression “suspicious circumstances”, for, Dharam Singh used to sign but the Will was thumb-marked. DW5-scribe stated that hands of Dharam Singh used to tremble, therefore, he appended thumb impressions. The defendants have miserably failed to prove due execution of the Will as there was no compliance of the provisions of Section 63-C of Indian Succession Act. Dharam Singh was father of Gian Singh and appellants are the widow and daughter of Gian Singh, therefore, they could not have been deprived. Dharam Singh's father Santa Singh, during his life time equally distributed the share between two grandsons, Kulwant Singh and Gian Singh.

I am afraid the aforementioned arguments are not sustainable in the eyes of law, for, the most important fact which surfaced during the course of hearing was that Gian Singh had pre-deceased Dharam Singh. He died in 2009, whereas, Dharam Singh died in 2010. During all this period from 2009 to 2010, the appellants did not lay challenge to the aforementioned document. It was only after his death as they were afraid that he would have sought the execution of the same. It is a common practice amongst the legal representatives or successor-in-interest to lay challenge to the voluntary act of the predecessor after his death. Even nature and character of the property to be co-parcenary has not been proved as they are not 4th generation in lineage.

All these factors weighed in the mind of the Courts below while dismissing the suit, therefore, the arguments of Mr. Poonia, have not been able to bring the case within the realm of illegality and perversity to form the different opinion than the one arrived at by the Courts below.

No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 02, 2018

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No