

Date of decision : 19.4.2018

.....Appellants

Satbir Singh

..... Respondent

Present:- Mr. Rakesh Nagpal, Advocate for the 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 ?*

CM-8233-C-2017

For the reasons mentioned in the application, delay of 60 days in refiling the present regular second appeal is condoned.

Application stands disposed of.

RSA-3422-2017

Impugned in the present regular second appeal is the judgment dated 15.9.2016, passed by learned Additional District Judge, Kaithal, affirming the judgment and decree dated 19.12.2013 passed by learned Additional Civil Judge (Senior Division), Kaithal, vide which suit filed by the plaintiffs-appellants was dismissed.

In nutshell, plaintiffs-appellants namely Inder Singh and Vijay Pal have filed a suit for declaration and injunction against their brother Satbir claiming that they are actual owner of the property on the basis of the Will dated 11.9.2006 executed by their father-Jeet Singh @ Jeet Ram in favour of plaintiffs and defendants.

It also comes out that Jeet Singh @ Jeet Ram who was the original owner, left behind his three sons who were party to the suit and one daughter Geeta Devi. Geeta Devi is not made party to the suit. Defendant had denied the execution of the Will.

From the pleadings, following issues were framed: -

1. Whether the mutation dated 1.9.2011 in respect of the suit property is wrong, illegal, null and void and not binding on the rights of the plaintiffs and the plaintiffs are owner in possession of the same in view of Will dated 11.9.2006? OPP.
2. If issue No. 1 is proved whether the plaintiffs are entitled for permanent injunction restraining the defendant from dispossessing the plaintiffs from the property in question in any manner whatsoever and from alienating the property in any manner whatsoever? OPP.
3. Whether suit is not maintainable? OPD.
4. Whether the plaintiffs have no locus-standi or cause of action to file the present suit? OPD.
5. Whether the suit is bad for non-joinder of the necessary parties? OPD.
6. Relief.

A perusal of the trial Court judgment shows that original Will was not produced before the learned trial Court. Photostat copy was placed on file which was neither marked nor exhibited. Plaintiffs had, however, examined witnesses of the Will namely Bali Ram as PW-2 and Harikesh as PW-3. Their statements show that they merely claimed that the Will was written in their presence on the asking of Jeet Singh-father of the parties. They did not state that Jeet Singh put his thumb impression on the alleged Will dated 11.9.2006 in their presence. They also nowhere stated that they also put their signatures or thumb impressions on alleged Will dated 11.9.2006 in the presence of Jeet Singh. As per the death certificate (Ex. D-

1) Jeet Singh died in the hospital on 11.9.2006 and the Will was alleged to have been executed in the hospital itself. However, plaintiffs-appellants also examined an employee of the Government Hospital, Kaithal. According to him, Jeet Singh died on 12.9.2006.

Therefore, learned trial Court came to the conclusion that even if the date of death of Jeet Singh is to be taken as 12.9.2006 and assumed that he was having sound disposing mind. Neither the Will was proved nor the necessary ingredients to prove the Will dated 11.9.2006 were proved. It was also found that the Will was executed in the hospital when Jeet Singh was in serious condition and not in sound disposing mind.

In view of above, I do not find any illegality or infirmity in the judgment dated 15.9.2016, passed by learned Additional District Judge, Kaithal, affirming the judgment and decree dated 19.12.2013 passed by learned Additional Civil Judge (Senior Division), Kaithal,

Dismissed.

Since the main petition is dismissed, the miscellaneous application pending, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

19.4.2018
preeti

Whether speaking / reasoned	Yes
Whether Reportable:	No