

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

RSA No.360 of 2017 (O&M)

Date of decision:06.03.2018

Balak Ram @ Kaka Ram

... Appellant

Vs.

Karnail Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R.S.Narang, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-plaintiff is in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit for possession and permanent injunction of the suit property, i.e., one room of house no.27, Old Indira Colony, Mani Majra, U.T.Chandigarh; with consequential relief of injunction against the respondent-defendants for not taking illegal, unlawful forcible possession and interference, had been dismissed by the trial Court and upheld by the Lower Appellate Court.

Mr. R.S.Narang, learned counsel appearing on behalf of the appellant-plaintiff submitted that the plaintiff instituted the suit aforementioned on the premise that the property belonged to father of the plaintiff and defendant No.1, namely, Teja Ram, comprising in khasra no.52//26/1/27(0-4), khewat no.437, khatauni no.506 situated at Mani Majra, U.T.Chandigarh. On the said land, a house was constructed by the

father of the plaintiff bearing No.27, Old Indira Colony Area, Chandigarh. During the life time, father of the plaintiff executed a Will dated 18.06.1997 vide which the aforementioned house was bequeathed in favour of the appellant-plaintiff and his brother namely, Satpal, in other words, Karnail Singh and other children were disinherited. The defendant took the shelter only for two days as his house was demolished by Chandigarh Administration but later on did not vacate the premises necessitating the filing of aforementioned suit.

The trial Court dismissed the suit on the ground that the plaintiff did not produce on record the original Will and appeal filed before the Lower Appellate Court was also dismissed.

This Court, vide order dated 19.01.2016 rendered in RSA No.4139 of 2014 remitted the matter to the Lower Appellate Court for fresh adjudication with liberty to lead additional evidence. The appellant-plaintiff in compliance of the said order produced the original Will and also examined the witness, namely, Baljit Kumar son of Om Parkash for the purpose of compliance of provisions of Section 68 of Indian Evidence Act, 1872 but the Lower Appellate Court dismissed the appeal. It is in this background, the present Regular Second Appeal.

He further submitted that the Lower Appellate Court has committed illegality and perversity in negating the Will on the premise that the witness did not give correct particulars of the Will, whereas, Will was of 18.06.1997 which inadvertently was mentioned as 18.07.1998. This aspect could have been overlooked, for, the witness after a long time did not

remember the exact date. It has also been proved on record that other siblings had deposed that father had executed a Will in favour of appellant and his brother Satpal by bequeathing the aforesaid house. All these factors, if read together would have resulted into decretal of the suit but owing to mis-direction and non-appreciation of piece of evidence, there is perversity. He further submitted that partition of property is not allowed in Chandigarh, therefore, the observation of the Lower Appellate Court leaving to the parties to avail remedy of partition is not correct appreciation of law.

I have heard the learned counsel for the appellant, appraised the judgments and decrees of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Narang.

No doubt, the appellant-plaintiff had attempted to prove the Will by examining the witnesses. There has not been compliance of the provisions of Section 63(c) of Indian Succession Act, 1925. Section 63 reads as under:-

“63 Execution of unprivileged Wills. —Every testator, not being a soldier employed in an expedition or engaged in actual warfare or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules:—

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

© **The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.**

The aforementioned provisions of the Act envisaged three situations: one Will has to be attested by two or more witnesses and each of them had seen the testator to either append his signatures or thumb impressions or mark or has seen the other person sign the Will in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and third situation, each of the witnesses signed in the presence of the testator.

However, in the instant case, there had been compliance of the
aforementioned provisions except direction by the testator or personal
acknowledgment of his signatures from the testator. In the absence of the
same, there has not been compliance of the aforementioned provisions. The
aforesaid view of mine is derived from the ratio decidendi culled out by the
Hon'ble Supreme Court in **Janki Narayan Bhoir Vs. Narayan Namdeo
Kadam 2003(1) RCR (Civil) 409.**

Thus, in my view, Will has not been proved in accordance with
law. In the absence of the same, Teja Singh stated to have died intestate,
therefore, the property is to be inherited by all the legal heirs by way of
natural succession.

In view of what has been observed above, I do not find any
illegality and perversity in the findings under challenge which are based
upon the appreciation of oral and documentary evidence, much less no
substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 06, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No