

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

RSA No.4479 of 2017(O&M)

Date of Decision:-16.08.2018

Surender Kumar.

.....Appellant.

Versus

Kurukshetra Central Co-operative Bank & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Ravi Dutt Sharma, Advocate for the Appellant.

JASWANT SINGH, J.(ORAL)

Plaintiff is in second appeal aggrieved against the concurrent findings returned by the Courts below, whereby his suit for mandatory injunction to the effect that all the retiral benefits of one Gulab Singh son of Buddu be released to him, has been dismissed by Civil Judge (Junior Division), Pehowa vide its Judgment and Decree dated 25.10.2013 and the findings thereof have been affirmed by Additional District Judge, Kurukshetra vide her judgment and decree dated 13.12.2016.

Learned Counsel for the appellant has argued that both the courts below have wrongly dismissed the suit of appellant on the ground of maintainability, by wrongly holding that appellant has not been able to prove himself to be sole heir of Gulab Singh-deceased. It has been argued that the validity of Registered Will dated 16.03.1999 executed by Gulab

suit filed by respondent no 3-Rohit Chauhan much prior in time. Further, it is argued that during his lifetime, Gulab Singh used to treat appellant as his son, as appellant used to take care of Gulab Singh and consequently, vide application dated 17.01.2008 and affidavit dated 05.01.2008, Gulab Singh had nominated appellant as his nominee to his employer bank i.e respondent no 1 and 2. It is however argued that both the courts below have failed to consider these aspects of the matter and consequently, prayer has been made for setting aside the judgments and decrees passed by the courts below.

I have heard learned Counsel for the appellant at length and have perused the paper book with his assistance. However, I do not find any merit in the present appeal and consequently, same is liable to be dismissed.

It is apparent from the judgments passed by the Courts below that previously a suit was filed by respondent no 3-Rohit Chauhan son of Gulab Singh against Gulab Singh, whereby Rohit Chauhan had sought setting aside of sale deed as well as release deeds executed by Gulab Singh during his lifetime. During the pendency of the suit, Gulab Singh expired and present appellant Surender (who is not at all related to Gulab Singh) sought himself to be impleaded as LR of Gulab Singh on the basis of registered Will dated 16.03.1999. It is not disputed that the said application was allowed. It is further not in dispute that the said litigation was fought upto the Hon'ble Supreme Court which was ultimately won by Surender Singh-appellant, however, it seems that there was no decision on the validity or otherwise of the said Will.

Undisputedly, appellant-plaintiff is claiming right to retiral benefits of Gulab Singh in the present suit on the basis of Will dated 16.03.1999. However, it is apparent from the Judgment and Decrees passed

by the Courts below, appellant has not led any evidence to prove the said Will in this suit as well. The argument of the appellant-plaintiff that in previous suit, Will dated 16.03.1999 was never put to question by wife and children of Gulab Singh, is completely misconceived. It was for the appellant to show that in the previous suit, Will was proved by him and consequently, he was held to be Legal heir of Gulab Singh. However, no such evidence has come on record, neither it is shown that an inquiry was held by the court regarding the validity of Will dated 16.03.1999 in previous suit. It is settled position of law that any application filed, either under Order 22 Rule 3 CPC or under Order 22 Rule 4 CPC are only for the purpose of pursuing the '*lis*' on behalf of a deceased party and is not conclusive regard crystallization of rights inter-se the LRs of deceased party. Rights only stand crystallized once an issue is framed qua inheritance of deceased party and same is adjudicated upon by the Court of competent jurisdiction. In the alternative, an inquiry, as envisaged under law, is conducted by the Court for the purpose of deciding the validity of Will. During the course of arguments, counsel for appellant has failed to point out any proceedings in which adjudication qua inheritance of estate of Gulab Singh has ever been made in the manner as required under law. It is settled position of law that even if a Will is admitted by the opposite party, still, Will is required to be proved as per provisions of Evidence Act, being a testamentary document.

In this view of the matter, both the courts below have rightly held that appellant is not entitled to seek service benefits on death of Gulab Singh, as he is not related to Gulab Singh and further since natural heirs of Gulab Singh, namely, Rohit Chauhan (son), Versha (daughter) and Smt.

Rajesh Kumar (wife) (respondents no 3 to 5 respectively) are alive, who have admittedly taken the service benefits on death of Gulab Singh.

In view of the above, finding no question of law much less any substantial question of law arising for determination in the present second appeal, the same is hereby dismissed.

(JASWANT SINGH)

JUDGE

August 16, 2018

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>