

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4516 of 2017 (O&M)

Date of Decision: December 18, 2018

Jaswant Singh & others

...Appellants

Versus

Sukhdev Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Rai Singh Chauhan, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

Appellant-defendants are in Regular Second Appeal against the concurrent findings of fact and law, whereby the suit of the respondent-plaintiff for declaration and ownership on the basis of the registered Will dated 18.09.2001, has been decreed in part. Appeal taken before the Lower Appellate Court was also dismissed.

Plaintiff Sukhdev Singh asserted that besides him, his father Ram Singh had three more sons, i.e., defendant Nos.1 to 3 and three daughters (defendant Nos.4 to 6). By virtue of the registered Will dated 18.09.2001, he bequeathed the land bearing Khasra No.89(1-1) and measuring 15K-13M and 13K-3M bearing different khasra numbers. It was asserted that defendant Nos.1 and 2 had launched criminal proceedings against their father Ram Singh and that was the reason they were ousted from the line of succession.

Defendants opposed the suit and stated that the Will was suspicious and had not been executed by Ram Singh as prior to the

aforementioned Will, had executed two other Wills. There was no reason for him to oust from the succession as the civil suit was filed at his instance, but the same was dismissed on technical grounds.

Plaintiff examined attesting witness Sardara Singh, whereas the defendants examined another attesting witness.

The trial court partly decreed the suit and granted declaration of ownership in respect of land measuring 15K-13M only, whereas land measuring 1K-1M and 13K-3M have been given to all the four sons in equal share.

Mr. Rai Singh Chauhan, learned counsel for the appellant-defendants submitted that the judgments and decrees of the courts below are not sustainable on the following points:

- 1) PW-2 Sardara Singh was not in conformity with the provisions of Section 16(c) of the Indian Succession Act. He even did not recognize his thumb impression/signatures on the Will;
- 2) Plaintiff has not examined the scribe or any attesting witness, much less competent person from the office of the Sub Registrar;
- 3) Plaintiff had been greedy and staked the claim in the entire property, but on evidence it was found that land measuring 13K-3M and as well as 1K-1M were ancestral;
- 4) FIR entailed into acquittal and the suit was by all the sons;
- 5) If all the evidence had been looked cumulatively, suit was liable to be dismissed as Ram Singh deemed to have died intestate.

I am afraid that the aforementioned argument is not sustainable as from the contents of the registered Will read out during the proceedings of the court, testator gave plausible reason of disinheritance of three sons as they had been litigating with him. On the contrary, the plaintiff established on record that his father Ram Singh had recommended him to be appointed as Lambardar. DW-2 Ujagar Singh, other attesting witness examined by the defendants, tried to create suspicious circumstances. The alleged suspicious circumstance would pale into insignificance owing to the reasons assigned.

The appellant-defendants have not been able to controvert the thumb impressions of the testator. The Will also reflected the execution of previous two Wills and their revocation. It is not the case that entire property has been taken by the plaintiffs, as noticed above. Only land measuring 15K-13M, as per the Will, has fallen to the share of the plaintiffs. As regards the remaining land, there is equal distribution.

For the reasons mentioned above, I do not find any illegality or perversity in the concurrent findings of fact and law, which are based on appreciation of oral and documentary evidence. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

December 18, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No