

In the High Court of Punjab and Haryana at Chandigarh

RSA- 6040 of 2017(O&M)

Date of Decision:4.10.2018

Gurmel Singh

---Appellant

vs.

Gurdev Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Ajay Jain, Advocate
for the appellant

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit for declaration filed by the appellant and his co-plaintiff claiming inheritance to the estate of their grand father Inder Singh on the basis of registered Will bearing No. 65 dated 4.11.1997 was dismissed by the trial court vide judgment and decree dated 3.7.2014 and the plaintiffs-appellant remained unsuccessful before the first appellate court whereby appeal preferred by the appellant was dismissed and findings of the trial court were affirmed without any variance.

The appellant and his brother filed suit against Gurdev Singh and Gurjant Singh sons of Inder Singh and Jagbir Singh son of Harnek Singh, grand son of Inder Singh. The plaintiffs propounded the aforesaid registered Will purported to be executed in their favour whereby Inder Singh bequeathed the suit land in equal shares in favour of the plaintiffs to

the exclusion of other class -I heirs left behind by the deceased.

Suit was contested by defendant No. 1-respondent Gurdev Singh as Gurjant Singh and Jagbir Singh, defendants No. 2 and 3 were proceeded against ex parte. Gurdev Singh propounded Will dated 25.11.1997 purported to be executed by Sh. Inder Singh whereby the Will dated 4.11.1997 set up by the plaintiffs was cancelled. The courts have consistently held that suit land was self-acquired property of Sh. Inder Singh and contesting parties have failed to prove the Will set up by them and as such claim of the plaintiffs-appellant on the basis of testamentary succession is not tenable.

The sole submission made by counsel for the appellant is that as defendant No. 1, in reply to para 2 of the plaint, has admitted that Inder Singh executed Will No. 65 dated 4.11.1997 in favour of his grand sons but thereafter he executed Will No. 74 dated 25.11.1997 duly registered in the office of Sub Registrar, Rania in favour of defendant No. 1 to the extent of half share and defendants No. 2 and 3 regarding half share, there was no requirement for the plaintiffs to prove Will dated 4.11.1997 by examining at least one of the attesting witnesses in consonance with the provisions of Section 68 of the Indian Evidence Act. In addition, it is argued that since defendant No. 1 had admitted that Inder Singh executed Will dated 4.11.1997 and interest of defendants No. 2 and 3 is common with defendant No. 1, the said admission of defendant No. 1 shall also be binding upon defendants No. 2 and 3, who were proceeded against ex parte during trial. In support of his contention, he has relied upon judgment of the Hon'ble Supreme Court **Ram Chandra Verma vs. Jagat Singh Singhi 1996(2)**

RCR (Rent) 328.

I have heard counsel for the appellant and perused the paper book particularly the judgments impugned.

There cannot be any dispute about the settled position in law that propounder of a testament is obligated to prove that Will set up by him is genuine, valid and executed by the testator voluntarily without any pressure or undue influence in his sound disposing mind. There must be convincing materials on record to satisfy conscience of the court that Will represents the true and voluntary expression of the testator as to how his property would be dealt with after his departure from the world.

In the case at hand, defendant No. 1 has only admitted that Inder Singh executed Will dated 4.11.1997 in favour of his grand sons but he has not stated if the said Will is genuine, valid and is the result of free volition of Sh. Inder Singh. Indisputably, defendants No. 2 and 3, other class-I heirs of deceased Inder Singh who were sought to be excluded from inheritance to Inder Singh were proceeded against ex parte. The appellant and his co-plaintiff did not adduce any evidence to prove Will dated 4.11.1997, in accordance with law. The mere fact that defendant No.1 has admitted that Inder Singh executed the Will in question in favour of his grand sons by no stretch of imagination can be held to be binding against defendants No. 2 and 3 particularly in view of discussion made hereinbefore. That being so, the appellant cannot derive any advantage to his contention from the referred authority wherein there was some dispute whether the appellant is bound by the compromise decree entered into by Harkesh Rai Aggarwal and the respondents. It has been held in the referred

authority that three brothers made an admission prior to partition that the appellant is in possession of a room measuring 15' x 30' as tenant and admittedly it fell to the share of Lunkaran Singhi. In view of those admissions made by co-owners who have got joint interest and made their admissions against their interest, the admission bind all the co-owners. In view of the above that as the appellant and his co-plaintiff failed to prove the Will, in accordance with law, no error much less perversity can be noticed in the judgments impugned rejecting claim of the plaintiffs-appellant on the basis of Will dated 4.11.1997.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

4.10.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No