

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

RSA No.6464 of 2017(O&M)

Date of decision: 2.8.2018

Ajay Kumar and another

....Appellants

VERSUS

Ram Lal and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Kapil Khanna, Advocate for the appellants.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against the judgment and decree dated 31.05.2017 passed by the Additional District Judge, Jalandhar whereby the judgment and decree dated 09.11.2015 passed by the Civil Judge (Junior Division), Jalandhar (hereinafter to be referred as the trial Court) have been set aside and suit filed by Ajay Kumar and Harjit Kumar sons of Sat Pal and grandsons of Dass Ram claiming inheritance to the estate of Dass Ram on the basis of registered Will dated 01.12.2004 has been dismissed.

Counsel for the appellants would urge that to prove the Will in question, the appellants examined Parveen Kumar, Clerk, from the office of Sub Registrar, Jalandhar PW-1, Rajesh Nagpal, Deed Writer (scribe of the Will) PW-2, Harjinder Singh Numberdar, one of the attesting witnesses of the Will PW-3, Sat Pal father of the plaintiffs PW-4. It is argued that Rajesh Nagpal, Deed Writer has proved that he scribed the Will at the instance of Dass Ram son of Jagat Ram and the same was

entered at Sr. No.325 dated 01.12.2004 in the register maintained by him and the relevant entry is Ex.P2. It is further argued that Harjinder Singh Numberdar knew Ashok Kumar, the second attesting witness of the Will, therefore, testimony of Rajesh Nagpal and Harjinder Singh Numberdar are more than sufficient to prove the Will in question, a registered document. In addition, it is argued that the Will was executed by Sh. Dass Ram in the year 2004 but he died in 2010, therefore, there is no question of the Will being manufactured by the appellants/plaintiffs.

I have heard counsel for the appellants, perused the paper-book particularly the judgment passed by the Court in appeal and copies of testimonies of witnesses examined by the appellants to prove the Will Ex.P1, supplied during course of hearing.

Parveen Kumar, Clerk, office of Sub Registrar, Jalandhar produced second copy of the Will in original marked as Ex.P1. In his cross examination, he has admitted that none of the parties to Ex.P1 signed in his presence nor he identifies signatures of Sub Registrar who registered Ex.P1. He has no personal knowledge regarding Ex.P1. Meaning thereby that the witness only produced the document from records, maintained in the office of Sub Registrar, Jalandhar.

Rajesh Nagpal, Deed Writer, Tehsil Complex, Jalandhar was examined to prove that the Will Ex.P1 was scribed by him. In the opening line of his cross examination, he would state that he did not know Dass Ram personally nor Harjinder Singh Numberdar and Ashok Kumar, marginal witnesses of the Will, therefore, testimony of Rajesh Nagpal is not at all sufficient to prove the Will much less to establish identity of the testator namely Dass Ram.

Harjinder Singh Numberdar, one of the attesting witnesses of the Will was examined to prove the Will in compliance with the provisions of Section 68 of the Indian Evidence Act, 1872. In his examination in chief, he has identified his signatures along with his stamp on the Will Ex.P1 and further stated about registration of the Will on 01.12.2004. He has deposed that he personally knew Ashok Kumar, another witness to the Will who was further known to executant. The statement of Harjinder Singh in examination in chief itself is not sufficient to prove the Will in accordance with law or to establish identity of executant of the Will. In his cross examination, he has altogether demolished case of the appellant that the Will was executed by Sh. Dass Ram.

The Court in appeal in para 15 of the judgment has taken note of material facts elicited in cross examination of Harjinder Singh to record a factual finding that he has failed to prove the Will in accordance with law. A relevant extract therefrom, reads as follows:-

“I do not know Dass Ram executant of the will personally. As I used to sitting in the office of Sub-registrar Jalandhar so I used to sign the documents in routine and similarly I signed the alleged will executed by Dass Ram. In the office of Tehsildar myself one witness whose name I do not know, Das Ram and myself was present. Deed writer brought the executant and other in the office of Sub-registrar and he remained present there. I never visited the office/seat of the deed writer on the date of alleged execution of the Will in question. I do not know where the property in question is situate (sic). I do not know the name of the person in whose name the will was executed. I have not seen any document of

the property of the Das Ram (sic). Volunteered the will was executed in favour of grandson of the Das Ram (sic).”

A plain and casual reading of the facts brought-forth in cross examination of witnesses examined by the appellants to prove the Will makes it crystal clear that the appellants have failed to adduce satisfactory much less cogent and convincing evidence to prove the Will in accordance with law. As soon as the appellants failed to prove the Will, nothing survives for consideration whether the Will is genuine or otherwise. The mere fact that the Will is a registered document or Dass Ram died 6 years after alleged execution of Will would not enure to benefit of the appellants when examined in the light of discussion made hereinbefore. In this view of the matter, I find myself unable to accept contention of the appellants that the Court in appeal has committed an error much less perversity by setting aside the judgment and decree passed by the trial Court. On the contrary, a serious mistake committed by the trial Court which failed to appreciate the evidence in right perspective and in the light of provisions of Indian Evidence Act, 1872 has rightly been rectified by the Court in appeal. That being so, there is no scope for intervention in findings recorded by the Court in appeal.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

AUGUST 2, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no