

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

RSA No.1775 of 1988 (O&M)

Date of decision:03.04.2019

Sat Pal and others

... Appellants

Vs.

Raj Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Dharminder Singh, Advocate for
Mr. Ravinder Malik, Advocate
for the appellants.

Mr. Arun Jain, Senior Advocate with
Mr. Abhishek Dhull, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

The present regular second appeal is directed against the concurrent findings of facts and law whereby suit of the respondent-plaintiffs for declaration and possession with consequential relief of injunction in respect of agricultural land measuring 7 kanals 15 marlas qua the estate of Ram Sarup, has been decreed by the trial Court and affirmed in appeal.

It was alleged in the plaint that Ram Sarup was owner of land measuring 7 kanals 15 marlas. On 17.11.1983, he died un-married and issueless, therefore, there was no Class I heirs. The plaintiffs four in number were none-else but his brothers claimed succession being Class II heirs.

The defendants contested the suit and propounded un-registered Will dated 05.06.1980 of Ram Sarup.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the plaintiffs are the only legal heirs of Ram Sarup since deceased?OPP*
- 2. Whether the plaintiffs inherited the suit land from Ram Sarup and are owners in possession thereof.?OPP*
- 3. Whether the plaintiffs are estopped from filing the suit?OPD*
- 4. Whether Ram Sarup executed Will dated 5.6.1980 in favour of defendants no.1 to 4?OPD*
- 5. Whether the plaintiffs have no locus standi to file this suit?OPD*
- 6. Whether the defendant no.5 is sister's son of Ram Sarup, if so its effect?OPD*
- 7. Whether the plaintiffs have no cause of action?OPD*
- 7-A Whether the plaintiffs were dispossessed from the suit land during the pendency of this suit, if so its effect?OPP*
- 8. Relief.”*

The plaintiffs in support of the pleadings brought on record the pedigree table and examined two witnesses to establish they being Class II heirs and also examined PW3-Ahodhya Parshad. On the other hand, defendants attempted to prove on record the Will, Ex.D1 by examining nine

witnesses including DW3-Dharam Pal and DW5-Rati Ram, attesting witnesses of the Will.

The trial Court disbelieved the testimony of the attesting witnesses and discarded the Will and decreed the suit by devolving the succession of Ram Sarup's estate to Sher Singh, daughter's son and as well as brother's son as Class II heirs. The appeal laid before the Lower Appellate Court was also dismissed.

Mr. Dharminder Singh, learned counsel appearing on behalf of the appellants submitted that there was no occasion for the Courts below to believe the testimony of PW3-Ahodhya Parshad when there was compliance of the provisions of Section 68 of Indian Evidence Act. Ex.D7, affidavit of Ayodhya Parshad has been mis-interpreted. The plaintiff-Raj Pal admitted in cross-examination that relation of Ram Sarup were not cordial with them so he was living with Sher Singh. Ram Sarup and Sher Singh had one joint bank account which has been exhibited as Ex.DW4/A. As per the two insurance policies as Ex.DW5/A and Ex.DW5/B, Sher Singh was his nominee. There was a mortgage deed in favour of deceased Ram Sarup and it was redeemed by Sher Singh. All these facts lead to irresistible conclusion that there was love and affection of Ram Sarup towards Sher Singh, beneficiary of the Will.

Per contra, Mr. Arun Jain, learned senior counsel assisted by Mr. Abhishek Dhull, Advocate appearing on behalf of the respondents submitted that Will was surrounded by five suspicious circumstances as noticed by both the Courts below. In the absence of same, natural

succession would prevail, thus, no fault can be found in the aforementioned findings.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of the Courts below and of the view that following Substantial Question of Law arise for adjudication of the present appeal:-

“Whether the defendants have been able to prove the due execution of the Will claiming devolution on the basis of the documentary evidence?”

In the cross-examination, DW3-Dharam Pal stated that Ram Sarup did not execute the Will on the blank paper. An affidavit, Ex.DW7 was confronted to him wherein it was purportedly noted that Ram Sarup had executed the Will in question but denied the same. No application for comparison of the thumb impression of PW3 with the standard one has been filed. Rajesh Kumar, deed writer who scribed the Will did not state that Ram Sarup was in sound disposing mind. Even other attesting witness also deposed in the same manner. DW1-Sher Singh, who was not stranger to Ram Sarup, in cross-examination, stated that he cultivated the land, which he had purchased during his life time. If at all, there was such trust, Ram Sarup would have disclosed the execution of the Will Ex.D1 in his favour. The Will did not see the light of the day or mutation proceedings etc.

The findings of fact and law, in my view, cannot be said to be suffering from illegality and perversity and conferring the ownership, devolution of interest qua estate of Ram Sarup in equal proportion. The

substantial question of law, above is answered in favour of the respondents and against the appellants.

Resultantly, the regular second appeal is dismissed.

April 03, 2019
savita

(AMIT RAWAL)
JUDGE

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