IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No.2492 of 1988 (O&M)
Date of decision:22.05.2019

Jagsir Singh and others ... Appellants

Vs.

Hari Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. M.S.Joshi, Advocate
for the appellants.

Mr. Chanderkant, Advocate for
Mr. A.S.Manaise, Advocate
for respondents No.1 to 9.

Mr. Ranbir Singh Rawat, Advocate
for respondent no.2.

Mr. Kashmir Singh, Advocate
for the respondent(s).

AMIT RAWAL J. (Oral)

The present regular second appeal is directed against the concurrent findings of fact and law whereby suit of the appellant-plaintiffs for declaration with consequential relief of permanent injunction claiming ownership of suit property on the basis of registered Will dated 16.6.1973 of Malli, grandfather, has been dismissed by trial Court and affirmed in appeal.

It was alleged that Malli had two sons Tulsi, Munshi and two daughters Nihal Kaur and Sito. Tulsi Singh was drug addict and Munshi Singh was involved in many criminal cases and on account of love and affection executed a Will in favour of children of Tulsi Singh and Munshi Singh i.e. grand children. On the same date, he also executed a mortgage

SAVITA KADIAN
2019.07.03 10:11
I attest to the accuracy and
integrity of this document
High Court Chandigarh

deed in favour of Darbara Singh for a paltry amount of Rs.4,000/-. Malli died in the year 1954. On his demise, the property was mutated in favour of the appellants but thereafter, on contest, in favour of all the legal heirs, giving cause to file the suit.

The defendants opposed suit and stated that Will was surrounded by suspicious circumstances as there was no reason to disinherit the daughters. Both parties led extensive evidence. The defendants, propounder of the Will, examined Darbara Singh, Surjit Singh-Lambardar, attesting witnesses and scribe also.

Mr. M.S.Joshi, learned counsel appearing on behalf of the appellants submitted that judgments and decrees of the Courts below discarding the Will are not sustainable in the eyes of law as both attesting witnesses have deposed in terms of the provisions of Section 63(c) of Indian Succession Act, 1925 (for short "1925 Act"). Under the Hindu Law, the married daughters had always been taken care of at the time of marriage and Will is always deviation from the line of succession. Tulsi Singh was a drug addict whereas Munshi Singh was involved in many criminal cases. In order to save the future of grand children, the Will aforementioned was executed. The registered document carried a presumption of truth. There was hardly any suspicious circumstances in discarding the Will, thus, there is illegality and perversity.

Per contra, Mr. Kashmir Singh and Mr. Ranbir Singh Rawat, learned counsel appearing on behalf of the respondents submitted that Darbara Singh was interested witness as on the same date i.e. 16.06.1973,

SAVITA KADIAN
2019.07.03 10:11
I attest to the accuracy and
integrity of this document
High Court Chandigarh

the mortgage deed was executed for a paltry amount of Rs.4,000/- whereas the market value was approximately Rs.24,000/-. The statement of the witnesses was not in accordance with the provisions of 1925 Act as not a word was stated regarding appendation of thumb impressions or signatures on the directions of the testator. No doubt, the Will is always change from the line of succession but no reasoning was assigned as to how and under what circumstancese married daughters had been taken care of at the time of marriage, thus, there was no loss of love and affection and urged this Court for upholding the concurrent findings.

I have heard the learned counsel for parties, appraised the judgments and decrees as well as record of the Courts below and of view that there is no force and merit in the submissions of Mr. Joshi.

In view of the latest judgment rendered by the Hon'ble Supreme Court in **Civil Appeal No.4988 of 2019 titled as Kirodi (since deceased) through his LRs vs. Ram Parkash and others decided on 10.05.2019**, the substantial question of law in respect of regular second appeal is not required to be framed as provisions of Section 41 of the Punjab Courts Act, 1918 would be applicable

The reasoning assigned by the Courts below is perfectly legal and justified. On going through the statement of PW1-Surjit Singh, Lambardar and PW2-Darbara Singh, it is revealed that they did not oppose regarding appendation of the signatures on the directions of the testator. The aforementioned view of mine is derived from ratio decidendi culled out by the Hon'ble Supreme Court in **Janki Narayan Bhoir Vs. Narayan Namdeo**

SAVITA KADIAN
2019.07.03 10:11
I attest to the accuracy and
integrity of this document
High Court Chandigarh

Kadam 2003(1) RCR (Civil) 409.

No effort was made to get the thumb impressions/signatures of Malli to be compared from the admitted signatures. It is true that the testator sometimes execute the Will which outside the line of succession but there is no evidence whether Munshi Singh was involved in criminal cases and Tulsi Singh was drug addict also alleged care taken by the beneficiary could not prove regarding minority. Even the testimony of Darbara Singh proved that he borne the entire expenses for execution of the Will and there was active participation which was also one of the suspicious circumstances.

As an upshot of my findings, arguments of Mr. Joshi, have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below. No substantial question of law arises for adjudication of the present appeal.

The status quo order dated 28.11.1988 passed by this Court is hereby vacated.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 22, 2019
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No

SAVITA KADIAN
2019.07.03 10:11
I attest to the accuracy and
integrity of this document
High Court Chandigarh