

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2860 of 1988 (O&M)

Date of Decision: April 11, 2019

Smt.Prito & another

...Appellants

Versus

Balwant Singh & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. I.K.Mehta, Senior Advocate with
Mr. R.K.Dogra, Advocate,
for the appellants.

Mr. Gaurav Chopra, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

The present Regular Second Appeal is directed against the concurrent findings of fact, whereby the suit of the respondent-plaintiff for declaration having become owners in possession of land measuring 132 kanals 3 marlas on the basis of the registered Will dated 03.01.1977 executed by his father Bur Singh, has been decreed by the trial Court and affirmed in appeal.

Respondent-plaintiff claimed the aforementioned declaration on the premise that Bur Singh, during his life time, had bequeathed the property vide registered Will dated 03.01.1977 attested by Kartar Singh and Assa Singh and scribed by Chaman Lal and the defendants had no right, title and interest in the aforementioned property as defendant Nos.1, 2 and 3 (sisters of the plaintiff and daughters of Bur Singh) were married in 1950,

1959 and 1961 respectively. Bur Singh died on 24.02.1985. When defendants asserted the right, plaintiff was construed to file the suit.

Defendants opposed the suit and denied the execution of the Will, which was stated to be forged and fabricated. It was a coparcenary property and bequeathing of the same without legal necessity was not acceptable in law.

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

- “1. Whether Bur Singh deceased, registered and executed a valid Will on 3.1.1977 in favour of the plaintiff. If so to what effect? OPP*
- 2. Whether the plaintiff is entitled to the declaration and injunction prayed for? OPP*
- 3. Relief.”*

Plaintiff, in support of the evidence, examined PW-1 Chaman Lal, Document Writer, PW-2 Dwarka Dass, Registration Clerk, PW-4 Kartar Singh, attesting witness, PW-5 Assa Singh, another attesting witness. On the other hand, defendants examined Pritam Kaur as DW-1 and closed the evidence.

Mr. I. K. Mehta, learned Senior Counsel assisted by Mr.R.K.Dogra, Advocate, representing the appellant-defendant submitted that the judgments and decrees of the courts below are not sustainable in the eyes of law as Will was surrounded by suspicious circumstances as the beneficiary was very much present at the time of execution of the Will and had taken active part in its execution. Son did not attend the last rites and that was the clincher for rejection of the Will. Mutation of inheritance was sanctioned on 20.03.1985 in favour of the siblings/legal heirs of Bur Singh.

The witnesses have not been coherent and consistent nor deposed in terms

of the provisions of Section 63-C of the Indian Succession Act (for short, the Act).

Mr. Gaurav Chopra, learned counsel for the respondent-plaintiff submitted that the death of one of the sisters in 1961 and marriage of defendant Nos.1 and 2 in 1950 and 1959 itself is a ground for deviation from the line of succession as the plaintiff was the only serving son. The mutation was sanctioned at the back of the plaintiff without disclosing the Will. There was no active partition. Deposition of witnesses reveals that they had seen each other while attesting the Will on the directions of the testator and, thus, urged for dismissal of the appeal as no Substantial Question of Law arises for determination.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the appellant-defendant, much less involvement of any substantial question of law.

None of the witnesses have categorically given a testimony regarding the participation of plaintiff being the beneficiary of the Will. The statements of PW-4 Kartar Singh and PW-5 Assa Singh, when read during the course of the hearing, suffices the compliance of provisions of Section 63-C of the Act. They have been categoric and coherent with regard to the execution of the Will as well the direction of the testator. The factum of marriage of defendant Nos.1 and 2 in 1950 and 1959 is also admitted. It is a common practice amongst the Hindu families to execute the Will bequeathing the property in favour of the sons. From the cumulative reading of the aforementioned evidence and the concurrent findings, I am of the view that there is no illegality or perversity in the findings under challenge.

No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

April 11, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No