

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

**RSA No.463 of 1988 (O&M)
Date of Decision.01.03.2019**

Jeon Singh (D) through LRs and another ...Appellants

Vs

Sher Singh (dead) through LRs ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sapan Dhir, Advocate
for the appellants.

Mr. J.S. Brar, Advocate
for the respondents.

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AMIT RAWAL J. (ORAL)

The appellants-defendants are in regular second appeal against the concurrent finding of fact whereby suit of the respondent-plaintiff for possession of half share of agricultural land measuring 160 kanals 14 marlas was decreed by the trial Court and affirmed in appeal before the lower Appellate Court.

The respondent-plaintiff instituted the suit for possession in respect of half share of agricultural land measuring 160 kanals 14 marlas on the premise that he was already owner of 1/4th of total land measuring 160 kanals 14 marlas and claimed possession of half share which was owned by Prem Singh deceased, who died issueless leaving behind widow, mother, brother and sister. The plaintiff was his third degree collateral as Uttam Singh father of defendants died during the life time of deceased Prem Singh. On demise of Prem Singh, plaintiff approached the Patwari for mutation but was informed that mutation was sanctioned in favour of the defendants on

the basis of some Will. In fact, plaintiff was the only legal heir of Prem Singh and entitled to his share.

Defendants opposed the suit, however, did not deny that Prem Singh died issueless but claimed inheritance on the basis of Will dated 7.7.1981.

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

- “1. Whether the plaintiff is the only heir of Prem Singh deceased and as such he is entitled to his estate for possession of the suit land? OPP*
- 2. Whether Prem Singh deceased executed a Will dated 7.7.1981 in favour of the defendants? OPD*
- 3. Relief.”*

The plaintiff in support of the evidence examined four witnesses and tendered documents Ex.P1 to P6 whereas the defendants examined six witnesses and brought on record Ex.D1 and D2.

The trial Court decreed the suit which was affirmed by the lower Appellate Court.

Mr. Sapan Dhir, learned counsel appearing on behalf of the appellants submitted that both the Courts below negated the evidence that deceased Prem Singh was living with defendants. The execution of Will owing to close relationship and bondage making them beneficiaries is recognized in law. In support of the aforementioned, relied upon decision rendered by this Court in

Daljinder Singh Vs. Harbans Kaur 2001(2) RCR (Civil) 294. It is

not material that the Will is required to be registered once the execution of the same was natural one and leaves no room for suspicion. To buttress this argument, reliance was laid to the judgment rendered by Hon'ble Supreme Court in **Madhukar D. Shende Vs. Tarabai aba Shedage 2002(1) RCR (Civil) 724**. Active participation of the beneficiary cannot be a ground for suspicion. Both the courts below have, abdicated in relying upon the aforementioned circumstances. Defendants did not play any fraud or misrepresentation upon Prem Singh, thus, urges this Court for setting aside the concurrent finding of fact.

Mr. J.S. Brar, learned counsel appearing on behalf of the respondent submitted that on bare perusal of Ex.D1, it is evident that the Will had been written on the blank paper thumb marked by Prem Singh and an attempt had been made to adjust by decreasing spacing. Diwan K.S. Puri, document expert of the defendants opined that disputed thumb impression were not fit for definite opinion and whatever thumb impression was acquired did not correspond with the specimen thumb impression. In such circumstances, defendants failed to dispel the suspicious circumstances. Defendants also failed to place on record any material qua rendering of alleged service to the deceased, thus, urges this Court for upholding the judgments and decrees under challenge.

I have heard learned counsel for the parties, appraised the paper book, records of Courts below and of the view that following substantial questions of law arise for determination by this Court:-

(i) Whether the concurrent finding of fact suffers from

any illegality and perversity?

(ii) Whether the defendants have been able to dispel the suspicious circumstances?

A perusal of the Will Ex.D1 from the naked eye would reveal attempted to be written with hand on blank paper, which already had thumb impression of the deceased, as in starting of the Will, there is spacing amongst lines and from middle till end, there reduction of spacing. If at all, the testator was alive at the relevant point of time, contents of the Will could have been taken to the second page. Non registration of the Will, though cannot be a ground for discarding the Will but the Court cannot shut its eyes by looking into tenor and mode. The onus to prove the Will is always upon the propounder, even if plaintiff assailed the same. Handwriting expert of the defendants could not prove thumb impression of Prem Singh. The report reveals that he was not able to compare the thumb impressions as thumb mark was not clear for comparison and another clear thumb mark was not according to the specimen thumb impression.

Ordinarily, the person, who has been rendered services would definitely as a gesture of goodwill and proprietary bequeathes his estate but it was obligatory upon the defendants to establish said fact by placing on record direct and cogent evidence, which is conspicuously wanting, therefore, ratio decidendi culled out and relied upon by the counsel appearing for the appellants-defendants pales into insignificance. It was not the case of the plaintiff that Prem Singh was not residing with defendants but it cannot be lost sight of

the fact that as it was not stated in the written statement that Prem Singh was residing with the defendants. In such circumstances, voter list Ex.D2 and ration Card Mark DX would be immaterial.

N.K. Jain, PW4, document expert compared the standard thumb impression marked S1 to S3 available on the mortgage deed dated 20.11.1973 and opined that disputed thumb impression Ex.D1 did not belong to one person. Once the tenor and mode of the Will as noticed above on perusal creates suspicion, mutation, on the basis of Will was, thus, not sustainable and tenable in the eyes of law.

In view of such circumstances, the substantial questions of law are decided against the appellants-defendants and in favour of the respondent-plaintiff. I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)

JUDGE

March 01, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No