

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

1. RSA No.3934 of 2004 (O&M)
Date of decision : 24.01.2019
Gurdial Singh and others ...Appellants

Versus

Amar Singh and others ...Respondents

2. COCP No.1013 of 2006 (O&M)
Date of decision : 24.01.2019
Niranjan Singh ...Petitioner

Versus

Gurdeep Singh and others ...Respondents

3. COCP No.1354 of 2006 (O&M)
Date of decision : 24.01.2019
Niranjan Singh ...Petitioner

Versus

Gurdip Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Kaushal, Sr. Advocate with
Mr. A.P. Setia, Advocate for the appellants.
(In RSA No.3934 of 2004)
for the petitioner (In both the contempt petitions)

Mr. Amarjit Markan, Advocate for respondent Nos.1 to 14.
(In RSA No.3934 of 2004)

Mr. Pardeep Goyal, Advocate and
Mr. Harish Goyal, Advocate for respondent Nos.15 and 16.
(In RSA No.3934 of 2004)
for respondent Nos.1 and 2 (In both the contempt petitions)

Ms. Anju Sharma Kaushik, DAG, Punjab.

ANIL KSHETARPAL, J. (ORAL)

By this judgment, RSA No.3934 of 2004, COCP Nos.1013 and
1354 of 2006, shall stand disposed of.

These petitions for initiation of contempt proceedings which have

been mentioned as COCP are only concerning violation of interim order passed by this Court, therefore, these contempt petitions are being disposed of by a common judgment.

Plaintiffs-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below dismissing their suit for declaration claiming to be the owners in possession of the property on the basis of the testament (Will) dated 24.12.1988 allegedly executed by Jagat Singh in favour of his six sons and a widow excluding two married daughters.

Both the Courts have given following reasons to disbelieve the testament:-

1. The testament for the first time was produced in the Court after a period of approximately eight years, although after the death of Jagat Singh, the mutation proceedings were contested by the parties including brothers and the aforesaid testament was never produced nor even orally propounded by the brothers.
2. The beneficiaries under the Will i.e. brothers had appeared before the authorities but had stated that there was no testament executed by Jagat Singh.

This Court has heard the learned counsel for the parties at length.

Learned Senior Counsel appearing on behalf of the appellants has submitted that the testament dated 24.12.1988 was a natural testament as both the sisters were married and settled in their respective families. He further submitted that the testament has been proved by examining PW6 and PW7, the attesting witnesses including the Scribe and, therefore, the execution of the Will is proved by the Testator.

Although, learned Senior Counsel appearing on behalf of the appellants has made sincere attempt to persuade this Court to take a different view, however, keeping in view the findings of fact and particularly when the explanation furnished for late production of the Will i.e. after a period of eight years, keeping in view that it is unregistered testament, cannot be said to be a valid explanation particularly when the beneficiaries under the Will had appeared before the authorities while sanctioning the mutation and never propounded the Will. Still further, the mutation proceedings were referred to the Assistant Collector, Ist Grade as a contested mutation and all the natural heirs appeared before the Assistant Collector, Ist Grade but not even any of them orally stated that Jagat Singh had left behind any testament. It is well settled that propounder is not only required to prove the due execution of the testament but he is or they are also required to clear and explain the suspicious circumstances surrounding the testament. In the present case, this Court as well as both the Courts have arrived at a conclusion that beneficiaries/propounders have failed to discharge their onus.

In view thereof, the present Regular Second Appeal is dismissed.

In the contempt petitions, referred to above, complaint is with respect to violation of interim orders and, therefore, they are also disposed of in terms of the abovesaid judgment.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

24.01.2019

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No