

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

RSA No.8 of 2006 (O&M)
Date of decision : 25.01.2019

Kewal Singh and others

...Appellants

Versus

Surjit Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. C.S. Jattana, Advocate for the appellants.

Mr. G.S. Sandhu, Advocate for respondent Nos.1 and 2.

ANIL KSHETARPAL, J. (ORAL)

Although, the Court is very reluctant in remitting the old cases back, however, certain cases does not leave this Court with any other option.

Dispute is with regard to the validity of a registered testament dated 18.09.1996 allegedly executed by Gurdial Singh @ Ujjagar Singh who is also alleged to be known as Gurcharan Singh as asserted by the defendants.

Learned trial Court on appreciation of the evidence found that the testament has been proved in accordance with law. Hence, decreed the suit.

Learned First Appellate Court has passed a strange judgment. This Court is compelled to record that it is a strange judgment as no reason whatsoever has been given. From paras 10 to 18, the First Appellate Court has noticed respective arguments of the counsel and thereafter in para 19, without giving any reason has recorded a finding that the registered testament is surrounded by the number of suspicious circumstances. Thereafter, once

again in paras 20, 21 and 22, arguments of respective counsels have been noted. In para 23, the Court records that Gurcharan Singh was never adopted by Bhola Singh. No reasons in support of conclusion have been given as to how the Court has come to such conclusion. Once again in paras 24, 25, 26 and 27, the Court has noticed the arguments of the learned counsel and in para 28, the Court concludes that there was no Will executed by Gurdial Singh. This is the entire discussion of the First Appellate Court. Paras 19, 23 and 28, which are extracted as under:-

“19. After considering argument raised by the counsel for both the parties regarding the execution of the Will, I find that the Will dated 18.9.96 Ex.P1 alleged by the plaintiffs is surrounded by a number of suspicious circumstances and thus the same is not a voluntary outcome of the disposition of the mind of testator Gurdial Singh and thus the same was never executed by him in favour of the plaintiffs and the same is a forged and fabricated document. So issues No.1 and 3 are decided in favour of defendants No.1 and 2 and finding given by the trial Court on both these issues otherwise in favour of the plaintiffs is reversed.

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23. After giving thoughtful consideration to the submissions made by the counsel for both the parties and going through the record of the entire case. I come to the definite conclusion that Gurcharan Singh was never adopted by Bhola Singh and issue No.2 is accordingly decided against the plaintiffs and in favour of defendants No.1 and 2 the finding given by the trial Court otherwise are reversed.

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28. Keeping in view the findings on the above issues and above discussion, I come to conclusion that since no will was ever executed by Gurdial Singh alias Ujjagar Singh in favour

of the plaintiffs and thus they are not entitled to inherited the property of Gurdial Singh alias Ujjagar Singh left by him after his death.”

A reading of the judgment passed clearly proves that the First Appellate Court has not decided the appeal in accordance with mandate of Section 96 read with Order 41 of the Code of Civil Procedure. The First Appellate Court being last Court for appreciation of facts and law is required to critically analyze the reasons given by the trial Court and after re-appreciating the evidence give its own verdict supported by reasons. In the present case, unfortunately reading of the judgment passed by the First Appellate Court does not establish that the First Appellate Court followed the aforesaid mandate.

Accordingly, judgment under appeal is set aside. Case is remitted back to the learned First Appellate Court to re-decide the appeal without being influenced by the judgment which has been set aside or the observations made by this Court.

In view of what has been observed above, the present Regular Second Appeal is disposed of.

Parties through their counsel are directed to appear before the First Appellate Court on 18.02.2019.

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

25.01.2019

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No