

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.58 of 2010 (O&M)

Date of Decision:01.03.2019

Satya Narain

...Appellant(s)

Versus

Jai Narain and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.R.K.Gupta, Advocate for the appellant.
Mr.Amit Kumar Jain, Advocate for respondents No.1 to 3.

ANIL KSHETARPAL, J.

The defendant-appellant is in the regular second appeal against the judgments passed by the courts below.

Defendant Satya Narain claims to be adopted son of Late Shri Chet Ram, who was not having any natural child. Satya Narain is son of brother of Chet Ram. Satya Narain has also propounded a testament dated 18.05.1990, which was registered after the death of testator-Chet Ram.

The learned first appellate court has found that the execution of the testament has been proved, however, it is surrounded by suspicious circumstances.

In this case, both the parties have filed their respect applications for permission to lead additional evidence. The plaintiffs wish to produce on record a copy of the judgment passed in a criminal case, whereas the defendant-appellant seeks permission to produce affidavit dated 28.03.1979 of Chet Ram, wherein Satya Narain has been admitted to be adopted son, legal heir and nominee. In the alleged affidavit of Chet Ram,

it has been stated that pensionary benefit would also go to his adopted son, i.e. Satya Narain.

Keeping in view the fact that the estate of Chet Ram, who was a police official died on 7.3.1998 is in dispute and Satya Narain on the one hand is claiming the estate on the basis of adoption as well as a testament in his favour apart from an affidavit which has been sought to be produced by way of additional evidence and on the other hand the plaintiff-respondent/Jai Narain claims to be Class-II heir, being adopted son of Lakhi, another brother of Chet Ram, it would be more appropriate if the applications filed by both the parties for additional evidence are allowed and the learned trial court is directed to re-decide the matter after permitting the parties to lead further evidence, if required. Hence, both the applications are allowed.

Still further, the defendant has claimed that the suit was not maintainable in the present form, being barred under the proviso to Section 34 of the Specific Relief Act, however, it would not be appropriate to return any finding since this Court has already decided to remit the matter back. However, it would be open to the parties to make all the submission in support and in defence of the case. Needless to observe that the learned trial court would make a sincere effort to dispose of the suit as early as possible. However, it is made clear that any observations made in the impugned judgments of the courts below and the judgment of this Court would not come in the way of the court while deciding the suit.

In view of the above, the Regular Second Appeal is allowed. The judgments and decrees passed by the courts below are set aside. Pending application(s), if any, shall also stand disposed of, in terms thereof.

Both the parties through their counsels are directed to appear
before the concerned Court on 20.03.2019.

01.03.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No