

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

RSA No.2141 of 2011(O&M)

Date of decision: 29.5.2019

Ishwar Singh and others

.....Appellants

VERSUS

Dharam Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ashwani Gaur, Advocate for the appellants.

Mr. Harkesh Manuja, Advocate for the respondents.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit filed by the appellants/plaintiffs for declaration with consequential relief of joint possession in respect of land detailed in para 1 (b) of the plaint measuring 37 kanal 8 marlas was dismissed by the trial Court vide judgment and decree dated 27.05.2010 that came to be affirmed in appeal by the Additional District Judge, Sonapat.

Indisputably, there is no dispute between the parties with regard to entitlement to the extent of 1/6th share of Sh. Sant Ram, predecessor in interest of the appellants in land detailed in para 1 (a) of the plaint. The dispute pertains to land measuring 37 kanal 8 marlas, detailed in para 1(b) of the plaint. The land was previously owned by Sh. Dhani @ Dhani Ram. Said Dhani Ram had six sons namely Sant Ram, Dharam Singh, Richhpal, Balbir, Balwan Singh and Karam Singh (since deceased)

represented by defendants No.5 to 9. The appellants have claimed that Sant Ram was entitled to $1/6^{\text{th}}$ share in land measuring 37 kanal 8 marlas on the basis of natural succession. On the contrary, the defendants have set up Will dated 07.12.1997 on the basis whereof Sh. Sant Ram was excluded from inheritance in respect of land measuring 37 kanal 8 marlas though he was given $1/6^{\text{th}}$ share in land detailed in para 1 (a) of the plaint.

Both the Courts have consistently accepted plea of the respondents/defendants that the aforesaid Will was executed by Sh. Dhani Ram in his sound disposing mind and said Dhani Ram admittedly passed away on 21.12.1997.

Counsel for the appellants has assailed concurrent findings in respect of the Will primarily on two counts. The first submission made by counsel is that the Will marked as Ex.D1 cannot be read into evidence as first page of the document is a photocopy and no evidence has been adduced by the respondents/defendants to prove the first page by way of secondary evidence by invoking Section 65 of the Indian Evidence Act, 1872. Another submission made by counsel is that Sh. Dhani Ram was 92 years old at the time of alleged Will dated 07.12.1997 and he died just 14/15 days thereafter and as such, it can safely be inferred that Dhani Ram did not have good health both mental and physical, a valid reason to discard the Will propounded by the respondents/defendants.

Counsel representing the respondents/defendants, on the contrary, has supported consistent findings recorded by the Courts with the submission that it is not open for the Court in second appeal to re-appreciate the evidence and interfere on the premise that a different view is possible. It is further argued that the respondents examined both the

attesting witnesses of the Will namely Ram Chander, Lamberdar and Hawa Singh besides examining Sh. Anup Singh Ruhil, Advocate, scribe of the Will. It is argued with vehemence that all the aforesaid witnesses were cross examined at length but nothing fruitful has been elicited in their cross examination to create a slightest doubt either with regard to mental capacity of the deceased to make a testament much less that the Will in question was not executed by the deceased. In addition, it is argued that one of the plaintiffs namely Ishwar Singh appeared in the witness box and in his cross examination he has admitted that the Will was scribed by Sh. A.S. Ruhil, Advocate on Sunday and the same was signed in the presence of Sh. Ram Chander, Lamberdar and Hawa Singh Ex-Member Panchayat. It is further argued that Ishwar has also admitted that Sant Ram, their father, separated from Dhani Ram and his children in the year 1963 and the said fact has been duly recorded in the Will. The appellants failed to adduce even an iota of evidence that land in dispute was ancestral coparcenary property in the hands of Sh. Dhani Ram when otherwise it has been proved on record that the land was purchased by said Dhani Ram in the year 1963 on the basis of order dated 30.07.1963 passed by the Assistant Collector Ist Grade, Sonapat under Section 18 of the Punjab Security of Land Tenures Act, 1953.

I have gone through the Will Ex.D1 proved by the attesting witnesses namely Ram Chander, Lamberdar and Hawa Singh. The first page of the document does not tally with the second page in its typewriting and the first page is either photocopy or has been prepared with a different typewriter. However, recitals on the first page pertain to distribution of land measuring 32 kanal 4 marlas in respect whereof there is no dispute

between the parties as Sh. Sant Ram got 1/6th share in the said land. The Will in respect of land measuring 37 kanal 8 marlas out of land measuring 53 kanal 8 marlas is on the second page and there is a detailed account as to how that land would be inherited by five sons of the deceased to exclusion of Sh. Sant Ram. It is also mentioned that this land was purchased by Dhani Ram after Sant Ram separated from his father. Since the second page is a complete testament qua land in dispute and conveys wish of the deceased clearly, in the given circumstances, the appellants cannot derive advantage to their contention even if first page of the Will has not been proved by way of secondary evidence.

So far as contention that Sh. Dhani Ram was 92 years old and he died just 15 days after 07.12.1997, appellants failed to produce any evidence much less cogent and convincing that Sh. Dhani Ram was not in sound disposing mind at the time of execution of Will dated 07.12.1997. On due consideration of facts elicited in cross examination of the attesting witnesses and scribe of the Will, it has been proved that the testator, attesting witnesses and one more person who accompanied them to Sonapat travelled some distance on foot to reach the office of Sh. A.S. Ruhil, Advocate, scribe of the Will in question. The mere fact that the testator died 14/15 days after execution of Will dated 07.12.1997 ipso facto does not lead to an inference that either the deceased did not have good health on 07.12.1997 much less he did not have perfect mental health to make a valid disposition of his property. Analyzed from any angle, I do not find any valid reason to interfere in the consistent findings of the Courts more particularly that the appellants have failed to make out a case

that either the judgments suffer from perversity or raise a question of law for determination.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed with costs.

MAY 29, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no