

RSA No.5331 of 2012 (O&M)

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

RSA No.5331 of 2012 (O&M)

Date of decision: 02.07.2019

Ranjit Singh

.....Appellant

versus

Malkiat Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. N.S. Wahniwal, Advocate, for the appellant.

Mr. Param Preet Singh Brar, Advocate, for the respondent.

RAMENDRA JAIN, J. (ORAL)

Appellant-defendant has preferred this Regular Second Appeal laying challenge to judgment and decree of the appellate Court dated 07.05.2012, who, while setting aside the finding of trial Court qua 'will' Ex.D2 in favour of appellant-defendant, declared the same to be surrounded with suspicious circumstances and upheld judgment and decree of the trial Court dated 22.03.2011 on remaining issues.

Briefly, respondent-plaintiff filed a suit for declaration and permanent injunction against the appellant-defendant pleading that 'will' Ex.D2 allegedly executed by Ram Piari in faovur of appellant-defendant was not genuine being surrounded with suspicious circumstances and, therefore, was liable to be set aside.

Trial Court after holing full-fledged trial dismissed suit of respondent-plaintiff vide judgment and decree dated 22.03.2011.

Being aggrieved, respondent-plaintiff approached First Appellate

Court but remained unsuccessful as his appeal too was dismissed vide

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judgment and decree dated 07.05.2012. However, finding of the trial Court qua genuineness of 'will' Ex.D2 executed by Ram Piari was reversed.

Learned counsel for the appellant *inter alia* contends that finding of the First Appellate Court that impugned 'will' Ex.D2 was surrounded with suspicious circumstances is erroneous and illegal, in the absence of any evidence that the same was not executed by its testator Ram Piari with free-will and consent. The Appellate Court failed to appreciate that impugned 'will' Ex.D2 was a registered document and thus there could not have been any doubt about its authenticity and genuineness.

On the other hand, learned counsel for the respondent-plaintiff refuting above submissions, contends that finding of the Appellate Court that the 'will' was surrounded with suspicious circumstance is well-reasoned, being based on appreciation of evidence, because on the alleged date of execution of impugned 'will' Ex.D2 Ram Piari was hospitalised for her heart ailment and thus she was not in a fit state of mind to execute the same. Registration of alleged 'will' after five days of its execution also created suspicion. Even otherwise, there was no reason for testator Ram Piari to execute 'will' in favour of appellant-defendant in exclusion to her other close relatives, including the respondent.

Having given thoughtful consideration to the rival submissions, this Court finds that instant appeal merits acceptance for the reasons to follow.

Impugned 'will' Ex.D2 is a registered document. Therefore, it has more legal sanctity than an unregistered 'will'. Attesting witness of 'will' Ex.D2 namely, Gurdial Singh specifically testified that 'will' was executed

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affixing her thumb impression on the same in his presence and also other witnesses.

Both the Courts below have dismissed the suit of respondent-plaintiff, negating his claim of permanent injunction to declare him as a co-owner of the suit land on the basis of inheritance of testator Ram Piari. Since suit of respondent-plaintiff and appeal as well were dismissed refusing to declare him as owner of the suit land on the basis of 'will', therefore, there was no necessity for the appellate Court to record any finding qua genuineness or otherwise of 'will' in favour of the appellant, which has unnecessarily dragged both sides into further litigation for no reason.

Subject-matter of the impugned 'will' Ex.D2 is very meagre being only 06 kanals of agricultural land, which testator Ram Piari bequeathed upon grandson of her real brother-in-law. In case, 'will' is set aside, respondent-plaintiff would get very meagre share and entire land of Ram Piari would go waste inasmuch as it is told that by this time there would be around 25 co-sharers in the land in question being survivors of 5/6 real brothers-in-law of Ram Piari.

Trial Court has specifically observed that testator Ram Piari was admitted in hospital in the evening of 18.05.2006. No evidence has come on record that on that date during day time Ram Piari was suffering from any serious ailment and was not in a sound disposing mind. She might have executed and thumb marked 'will' Ex.D2 in the day time of 18.05.2006 and fell ill in the evening for which she was admitted in Rajan Hospital, where she remained admitted for two days and discharged on 19.05.2006.

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appearing herself before Sub-Registrar and disclosing that the same was voluntarily executed by her.

Sub-Registrar would not have registered the impugned 'will' Ex.D2 in absence of testator Ram Piari or if there would have been any suspicious circumstance, while registering the same.

No circumstance has been proved on record qua surrounding of 'will' in question with suspicious circumstance except that testator Ram Piari was hospitalised in the evening of the day on which it was executed, for heart ailment. The same cannot be termed from any angle as a suspicious circumstance.

In view of discussion made above and fully convinced with the findings of trial Court, appeal is allowed. Finding of the appellate Court qua 'will' being forged and fabricated document is set aside.

Decree-sheet be prepared accordingly.

July 02, 2019
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No.