

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

Sr. No.207

RSA-2630-2013 (O&M)
Date of decision: 08.01.2019

Gurmukh Singh @ Gurmukh Ram

....Appellant

versus

Balbir Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Ajay Singla, Advocate,
for the appellant.

Mr. Sandeep K. Sharma, Advocate,
for the respondents.

* * *

DEEPAK SIBAL, J. (Oral)

The appellant filed a suit seeking therein to be declared owner of the property detailed and described in the head note of the plaint (for short – 'the suit property'). He based its claim on two sale deeds dated 17.06.1980 and 15.10.1992 as also a registered Will dated 10.09.1999 executed by Sant Bara Dass. On being put to notice, the respondents, who were the defendants in the suit, appeared before the Trial Court and filed a written statement in which after admitting the execution of the sale deeds dated 17.06.1980 and 15.10.1992 submitted that the appellant got his name inserted in them by misleading the vendor-Sant Bara Dass. Regarding the Will dated 10.09.1999, the respondents submitted that the same was forged

and fabricated.

The Trial Court after sifting the evidence which was led by both the parties, on 11.01.2010 partly decreed the appellant's suit. The claim of the appellant based on the sale deeds dated 17.06.1980 and 15.10.1992 was accepted. However, his claim which was based on the Will dated 10.09.1999 was rejected primarily on the basis of a subsequent Will dated 20.05.2005 by Baba Bara Dass.

The appellant filed an appeal against the aforesaid judgment rendered by the Trial Court which was dismissed on 04.01.2013 occasioning the filing of the present second appeal. The respondents did not file any appeal against the judgment and decree of the Trial Court dated 11.01.2010, thus, accepting the findings with regard to the sale deeds returned in favour of the appellant.

Learned counsel for the appellant submits that both the Trial Court as also the Appellate Court erred in rejecting the case set up by the appellant on the basis of a registered Will dated 10.09.1999 executed by Sant Bara Dass and by accepting Will dated 20.05.2005 set up by the respondents as according to him the latter Will was shrouded with suspicious circumstances as it had been executed just 16 days before the death of the executor as also for the reason that the attesting witness to the Will was the President of the beneficiary society.

Learned counsel for the respondents counters the above submissions by submitting that Will dated 20.05.2005 was a registered Will; there was no evidence produced by the appellant to show that the executor was not in a sound disposing mind at the time of execution of the Will dated 20.05.2005 and that one of the attesting witness namely Ram Saroop was

not the President of the beneficiary society at the time when the Will was executed.

Since the execution of the Will dated 10.09.1999 by Sant Bara Dass in favour of the appellant is not disputed, the only question which remains is whether the latter Will dated 20.05.2005 on which the respondents have placed reliance is genuine and valid?

It is admitted that Will dated 20.05.2005 is a registered document. Its execution was duly proved through the testimony of DW-1 Ram Saroop, who was its attesting witness as also through the testimony of DW-4 Sanjeev Jairath, its scribe. Since the other attesting witness had died, his son appeared before the Trial Court as DW-6 in support of the execution of the Will. Cross-examination of the aforesaid witnesses on behalf of the appellant could not extract anything from them which would support the appellant's case.

On the other hand no evidence was produced by the appellant to prove that the Will in question was forged and in the absence thereof only because the Will was executed 16 days prior to the death of the executant, the same cannot be discarded. Further, for the reason that one of its attesting witnesses was a beneficiary under the Will also cannot be considered to be a suspicious circumstance to discard the Will as no evidence was produced by the appellant to show that on the day when the Will was signed, the said attesting witness was a beneficiary under the same.

In view of the above, no error is found in the concurrent findings of fact returned by both the Trial Court as also the Appellate Court.

No question of law much less any substantial question of law is also found

to arise in the present appeal.

Dismissed.

(DEEPAK SIBAL)
JUDGE

January 08, 2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No