

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1497 of 2016 (O&M)

Date of Decision: February 20, 2019

Bawa Singh & others

...Appellants

Versus

Ajit Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.RPS Cheema, Advocate,
for the appellants.

Mr. B.S.Mann, Advocate for
Mr. Balbir Singh Jaswal, Advocate,
for the caveator/respondent Nos.1 to 3.

AMIT RAWAL, J. (Oral)

Appellant-defendants are in Regular Second Appeal against the judgments and decrees of the courts below, whereby the suit for declaration and joint possession with respect to the suit land was partly decreed holding the Will dated 01.01.1986 and second Will dated 19.01.2009 executed by Gurdip Kaur in favour of defendant No.2 to be null and void and the sale deed and consequential mutation have been set-aside.

The dispute revolves around the estate of Bhagga Singh alias Bhag Singh. Bhagga Singh alias Bhag Singh had two sons, namely, Inder Singh and Thakar Singh and three daughters, i.e., Gurdip Kaur, Kartar Kaur and Thakar Kaur, though only Gurdip Kaur was impleaded as a party. Bhagga Singh, who had died intestate, never executed the Will propounded by the defendants and, therefore, being co-sharers in possession on the

demise of Bhagga Singh in view of the natural succession, sought the relief as aforementioned. The defendants propounded the Will and stated that it was executed in the presence of the witnesses and duly registered.

Since the parties were at variance, the trial Court framed eleven issues including the issue of relief. The plaintiffs, in support of their pleadings, examined four witnesses and brought on record documents Ex.P1 to Ex.P28, whereas the defendants examined ten witnesses, including DW-3 Mohinder Singh, the alleged attesting witness of the Will, who turned hostile and other witness Subegh Singh did not come forward.

Mr. RPS Cheema, learned counsel representing the appellant-defendants submitted that by virtue of the Will, Bhagga Singh had bequeathed 2/3rd share in favour of his divorced daughter and 1/3rd share in favour of the children as Thakar Singh, during his life time, had already separated. Plaintiffs are none else but the children of Thakar Singh. DW-3 Mohinder Singh, when appeared in the witness box, earlier stated in favour of the defendants, but thereafter turned hostile. The tenor and mode of the cross-examination revealed that he was an attesting witness of the Will which was submitted for registration.

As regards the other witness, an application for summoning of the witness was submitted and despite that, the courts below did not take steps as required under Order 16 Rule 10 CPC. Appellant-defendants had discharged the onus as per the provisions of Section 68 of the Indian Evidence Act. The factum of Gurdip Kaur being divorced was not denied, thus, the Will was as per the existing state of affairs.

I have heard the learned counsel for the appellant-defendants and appraised the paper book.

Mohinder Singh DW-3, after having turned hostile, in cross-examination conducted by the plaintiffs submitted that he alone had gone to the office of the Sub Registrar as the testator did not accompany him and thereafter he also, through a specific question, admitted that he had not appeared and was not present at the time of the registration of the sale deed. He was further emphatic that Bhagga Singh did not append his thumb impression on the endorsement before him and Subegh Singh, the other witness. There would have been force in the argument of Mr.Cheema had the order closing the evidence of the defendants in the absence of the examination of other attesting witness being challenged as per the provisions of Order 43 Rule 1A CPC. In such circumstances, I am of the view that the findings of fact and law arrived by the courts below cannot be said to be suffering from illegality or perversity. No ground for interference is made out, much less involvement of any substantial question of law.

Resultantly, the appeal is dismissed.

February 20, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No