

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

RSA No.3435 of 2016 (O&M)

Date of decision:04.04.2019

Jeeto and others

Vs.

... Appellants

Gurmukh Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Karan Nehra, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

C.M.No.4702-C of 2019

The application is allowed subject to all just exceptions.
Certified copies of the statements and cross-examinations recorded before
the trial Court are taken on record.

RSA No.3435 of 2016 (O&M)

The present regular second appeal is directed against the
concurrent findings of fact and law whereby suit of the appellant-plaintiffs
asserting the right in the property measuring 11 marlas out of khasra
numbers 108/2(19-18), 108/1(0-7) (1/36 share) and as well as challenge to
the order dated 09.01.2004, has been dismissed by the trial Court and
affirmed in appeal.

The plaintiffs claimed the aforementioned relief on the basis of
un-registered Will dated 24.12.1986 allegedly executed by Mangal Singh

who was owner of the property. Mangal Singh out of love and affection and the services rendered bequeathed his share in favour of the plaintiffs during his life time, as he died on 12.4.1987.

The defendants opposed the suit and stated that Will was forged and fabricated. On merit, it was stated that Mangal Singh never executed any Will during his life time. Gurdev Singh forged and fabricated the alleged Will in his favour.

The plaintiffs in support of the pleadings examined five witnesses including one attesting witness Harbans Singh, deed writer PW3 and brought on record Ex.P1 to Ex.P11. On the other hand, defendants examined two witnesses and brought on record Ex.D1 to Ex.D5.

Mr. Karan Nehra, learned counsel appearing on behalf of the appellants submitted that both the Courts below abdicated in non-suited the plaintiffs by discarding the Will which has been proved as per the provisions of Section 68 of Indian Evidence Act and Section 63(c) of Indian Succession Act. Vide civil miscellaneous application, examination-in-chief in the shape of affidavits of both Jaswinderjit Singh, deed writer and Harbans Singh have been placed on record. Attention of this Court has been drawn in this context. In fact, onus was fully discharged but the defendants failed to rebut the same.

I have heard the learned counsel for the appellants, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Nehra.

It would be in the fitness of things to extract the examination-in-chief of Harbans Singh and Jaswinderjit Singh, deed writer as well as provisions of Section 63(c) of Indian Succession Act. The same read as under:-

Examination-in-chief of Harbans Singh

“ I, Harbans Singh son of Amar Singh resident of village Mansurwal Dona, Kapurthala do hereby solemnly affirm and declare as under:-

1. That I know the parties very well.
2. That on 24.12.1986 Mangal Singh son of Wasta caste Boria resident of Mansoorwal Dona, Distt. Kapurthala had executed a Will in favour of Gurdev Singh son of Sham Singh resident of village Mansoorwal Dona. Jaswinder Singh Deed Writer scribed the Will as per instructions of Mangal Singh. After scribing the Will, he read over and explain the contents of Will to Mangal Singh in the presence of Marginal witnesses including myself and Satnam Singh r/o Mansoorwal Dona, Distt. Kapurthala. Mangal Singh scribed the Will dated 24.12.1986 after admitting its contents to be correct. He signed in Urdu language. I and Satnam Singh sign the Will as marginal witnesses. The deed writer made an entry regarding the Will in his register. At the time of execution of the Will Mangal Singh son of Wasta was having good health and was mentally and physically alert. The original Will is Ex.P3.”

Examination-in-chief of Jaswinderjit Singh, Deed Writer

“I, Jaswinderjit Singh Deed Writer, license no.52 Tehsil Complex, Kapurthala, do hereby solemnly affirm and declare as under:-

1. That I am working as deed writer in Tehsil Complex, Kapurthala.
2. That on 24.12.1986 Mangal Singh son of Wasta caste Boria resident of Mansoorwal Dona, Distt. Kapurthala had executed a Will in favour of Gurdev Singh son of Sham Singh resident of village Mansoorwal Dona. I scribed the Will as per the instructions of Mangal Singh. After scribing the Will, I read over and explained the contents of Will to Mangal Singh in the presence of marginal witnesses Sarpanch Harbans Singh and Satnam Singh both of Mansoorwal Dona, Distt. Kapurthala. Mangal Singh scribed the Will dated 24.12.1986 after admitting its contents to be correct. He signed in Urdu language. Sarpanch Harbans Singh and Satnam Singh signed the Will as marginal witnesses. I made entry regarding the Will in my register at serial no. 526. I have brought the original register with me. Mangal Singh also signed in my register. The original Will is Ex.P3.”

“Section 63(c) of Indian Succession Act

© The Will shall be attested by two or more witnesses, each of

whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

On conjoint reading of the aforementioned, it leads to irresistible conclusion that there is no compliance of aforementioned provisions as Harbans Singh did not state that he signed in the presence of the testator or the other witness signed in his presence. The aforementioned view of mine is derived from the ratio decidendi culled out by the Hon'ble Supreme Court in **Janki Narayan Bhoir Vs. Narayan Namdeo Kadam 2003(1) RCR (Civil) 409**. No other evidence has been placed on record to establish that the plaintiffs had relation with Mangal Singh claiming title in the property. The onus is always upon the propounder who is none else but the appellants.

As an upshot of my findings, arguments of Mr. Nehra have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

April 04, 2019

savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No