

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

**RSA No.4886 of 2016 (O&M)
Date of Decision.11.01.2019**

Mohan Singh (since deceased) through LR's and another ...Appellants

Vs

Baba Jagtar Singh Dear Kar Sewa Baba Jiwan Singh and others
...Respondents

2. RSA No.4905 of 2016 (O&M)

Mohan Singh (since deceased) through LR's and another ...Appellants

Vs

Harcharan Singh and others ...Respondents

3. RSA No.5111 of 2016 (O&M)

Mohan Singh (since deceased) through LR's and another ...Appellants

Vs

Gurnam Singh and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Premjit Kalia, Advocate
for the appellants.

Mr. Harsh Aggarwal, Advocate
for the caveator-respondent No.1.

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AMIT RAWAL J. (ORAL)

This order of mine shall dispose of three appeals preferred by the appellants-plaintiffs against the judgment and decree of the lower Appellate Court whereby suit of the plaintiffs claiming declaration with regard to the land measuring 63 kanals 13 marlas, consisting of his share and share of Kanso alleged to have been bequeathed in his favour by virtue of registered Will dated 06.09.1971, has been dismissed.

The plaintiffs claimed declaration of the aforementioned land as Kanso during her lifetime actually was owner of 1/3rd share though inadvertently in the revenue record recorded as owner of half share. Defendants are none else but sons and grandsons of Kanso but the plaintiff is grandson of brother of Kanso.

Mr. Premjit Kalia, learned counsel appearing on behalf of the appellants submitted that one of the attesting witness of the Will had been examined and therefore, there was compliance of Section 68 of the Indian Evidence Act and Section 63(c) of the Indian Succession Act. Execution of the Will is always deviation from the line of natural succession, therefore, the trial Court rightly decreed the suit but the lower Appellate Court committed illegality and perversity by holding the Will to be suffering from suspicious circumstances. The plaintiffs had also become owners regarding share of Joginder Kaur through adverse possession and pleaded the ouster but the lower Appellate Court negated the Will.

Notice of motion.

Mr. Harsh Aggarwal, Advocate accepts notice on behalf of the respondents. He does not dispute the proposition qua share, as the suit property included share of the appellants but sought declaration qua share of Kanso to be devolved as per the testamentary documentary. In view of such fact, finding of law arrived at by the lower Appellate Court i.e. dismissal of the suit would be confining only to share of Kanso, which the plaintiffs had allegedly to have derived from the Will.

I have heard learned counsel for the parties, appraised the

paper book and of the view that there is no force and merit in the submissions of Mr. Kalia, for, finding of fact and law arrived at by the lower Appellate Court in holding the Will to be suffering from suspicious circumstances is as per evidence on record as contents of the Will revealing strained relation of Kanso with the children were found to be incorrect. She inherited the property from her father. Plaintiff Mohan Singh and his father were present at the time when the Will was scribed and therefore, there was active participation of the beneficiary which is one of the strong reason to believe that the Will was suffering from suspicious circumstances. As noticed above, the entire property was included whereas revenue record reflected the share of the Kanso as 1/3rd share though inadvertently mentioned as half share.

In view of aforementioned circumstances, I do not find any illegality and perversity in the judgment and decree rendered by the lower Appellate Court, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed. It is made clear that dismissal of suit would be confining to share of Kanso only.

(AMIT RAWAL)
JUDGE

January 11, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No