

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

RSA No.4063 of 2014 (O&M)
Date of decision : 15.03.2019

Jai Singh

...Appellant

Versus

Lachhman Dass and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arun Singal, Advocate for the appellant.

Mr. Saurabh Girdhar, AAG, Haryana.

Mr. Sudarshan Kumar, Advocate for
Mr. Deepak Balyan, Advocate for respondent No.3.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

Learned counsel appearing for the appellant has raised two contentions:-

- 1) Registered Will dated 30.01.1997 allegedly executed by Chhoti has not been proved in accordance with Section 68 of the Indian Evidence Act, 1872 in the present suit.
- 2) There was a consent judgment and decree passed on 29.05.1993 in

favour of the plaintiff-appellant with respect to land measuring 7 kanals 19 marlas and Will would not operate qua the land which was not owned by the testator at the time of death.

Plaintiff-Jai Singh is disputing the validity and correctness of the registered Will executed by late Smt. Chhoti who had left behind four sons-Jai Singh, Lachhman Dass, Pyare Lal, Prem Singh and a daughter-Angoori Devi. There was another litigation instituted by Prem Singh on 02.11.1992 against Pyare Lal and Lachhman. In the aforesaid suit, a specific issue was framed with regard to the validity of the Will executed by Smt. Chhoti dated 30.01.1997. As per Will, Pyare Lal and Lachhman are beneficiaries who were defendants in the aforesaid suit. Learned Court while deciding issue No.1-A held that the execution of the Will has been proved.

Argument of the learned counsel for the appellant is to the effect that since the Will has not been proved in the present suit and the appellant was not party to the previous suit, therefore, the findings on the validity of the Will arrived at in the previous suit cannot be treated as final.

Argument of learned counsel for the appellant although appears to be attractive on first blush, however, on close scrutiny, has no legs to stand. Prem Singh was having same interest as appellant-Jai Singh has. In the aforesaid litigation, the execution of the Will has been proved. There is neither any allegation nor any evidence that the aforesaid judgment was result of collusion between Prem Singh on the one hand

and Lachhman and Pyare Lal on the other hand. Parties in the aforesaid suit contested the litigation and the Court found that the Will has been proved in accordance with Section 68 of the Indian Evidence Act, 1872. Once there is no assertion or evidence to the effect that the previous judgment was result of any collusion and the interest of the plaintiff in the present suit and the plaintiff in the previous suit was common with respect to the Will, this Court cannot ignore the judgment which has been passed after contest.

Still further, late Smt. Chhoti died on 19.06.1998 and the property was transferred on the basis of the Will. The present suit has been filed after a period of more than 10 years i.e. 19.07.2008. There is no explanation as to why the plaintiff did not stake his claim immediately. Although, learned counsel appearing for the appellant has submitted that the plaintiff was in service in Haryana Roadways, therefore, he did not come to know of the fact, however same is not acceptable because once plaintiff was in service of Haryana Roadways and the property is situated also in Haryana. It is not possible to accept that the plaintiff did not know of the litigation or he did not know of the registered Will left behind by Smt. Chhoti.

With regard to second contention of the learned counsel, it may be noted that there is neither any issue nor any discussion on the second contention i.e. the decree passed in favour of the plaintiff against Smt. Chhoti. The Will of Smt. Chhoti would operate only with respect to the property owned by late Smt. Chhoti at the time of her death.

However, since, there is no adjudication on this aspect, therefore, the plaintiff would be at liberty to stake his claim on the basis of alleged judgment and decree as this Court in the absence of any issue or the finding, is not in position to finally opine about the same.

With these observations, the present Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

15.03.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No