

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

RSA No.5050 of 2014 (O&M)

Date of Decision:20.02.2019

Dharam Pal and others

...Appellant(s)

Versus

Sanjay Kumar and others

...Respondent(s)

RSA No.673 of 2009 (O&M)

Sanjay Kumar and another

...Appellant(s)

Versus

Dharam Pal and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.C.B.Goel, Advocate for the appellants in
RSA No.5050 of 2014.

Mr.Sanjiv Gupta, Advocate for the appellants in
RSA No.673 of 2009 and for the respondents in
RSA No.5050 of 2014.

Mr.Karan Nehra, Advocate for
respondents no.1 to 3 and 5 to 8 in RSA No.673 of 2009.

ANIL KSHETARPAL, J.

CM-11913-C-2014

The application is allowed, subject to all just exceptions. Legal heirs as mentioned in para 2 of the application are permitted to be brought on record only for the purpose of prosecuting the appeal. Amended memo of parties is also taken on record.

Main case

By this judgment, RSA Nos.5050 of 2014 and 673 of 2009 which are although arising from two separate suits but raising a common question, are being disposed of.

The parties are same and the property in dispute is common. Successors of Siri Ram are contesting this litigation claiming their right over the property left behind by Siri Ram. Sanjay Kumar and Sunil Kumar, grandsons of Siri Ram, claimed the property on the basis of testament dated 13.5.1999, whereas the other party claimed over the property on the basis of natural succession. Siri Ram was having six sons and a daughter apart from a wife. He executed a registered testament in favour of his grand sons Sanjay Kumar and Sunil Kumar. The first suit was filed by heirs of Siri Ram on 14.9.1999, seeking declaration claiming that the testament dated 13.5.1999 is forged and fabricated. The registered testament has been proved on examination of attesting witness Amar Nath, DW-2, Scribe-Dhani Ram, DW-1 and Siri Niwas, Nambardar as PW-3. No doubt, Siri Niwas, the second attesting witness, has been examined by the plaintiff in rebuttal, however, he admits his signatures on the registered testament, although, he has stated that Siri Ram was lying on the bed. The execution and registration of the testament has been proved through examination of both the attesting witnesses and Scribe. The testament is having photograph of the executant correctness whereof is not disputed. The photograph has been pasted on the front page as well as at the time when it was registered on the reverse of the front page. No evidence has been led to prove that Siri Ram did not thumb mark the testament. Siri Ram apart from his thumb impression has also signed the testament in a manner that half of his

signatures are on the paper on which the testament has been scribed and half of the signatures are on the photograph which has been pasted on the front page.

Learned counsel appearing for the plaintiffs-appellants in a suit for declaration has submitted that execution of the testament is not proved, in accordance with Section 63 (C) of the Indian Succession Act, 1956.

This Court has carefully read the statement of Amar Nath, attesting witness, who has been examined as DW-2. He has submitted that the testament was scribed in his presence and Scribe had read over the testament to the executant. Thereafter Siri Ram had put his thumb impression on the testament. He had also put his signatures on the testament as an attesting witness and he recognises his signatures on Ex.D1, the testament. Thereafter another attesting witness namely Siri Niwas, Nambardar, had attested the Will. In cross-examination when suggestion was given to him, he has stated that the testament was executed in his presence. He further stated that when testament was presented for registration everyone once again signed. In these circumstances, the attestation of the testament has been proved in accordance with law. Therefore, there is no error in the judgment passed by the courts below .

Now let us deal with the suit for injunction which was filed subsequently. The suit for injunction was filed by the beneficiaries under the testament. An issue on the validity of the testament was also framed in this suit. The learned trial Court decreed the suit, whereas the learned first appellate court has reversed the finding.

As regards the validity of the testament, the same has been upheld while discussing RSA No.5050 of 2014. The learned first appellate

court has held that the plaintiffs have failed to prove their exclusive possession. It may be noted that the plaintiffs have been recorded in possession as is clear from the jamabandi for the year 2007-08 as also Khasra Girdawari Ex.P2. Other heirs have never come into the possession of the property, as there is no revenue record to support their claim on possession.

Learned counsel for the other natural heirs has claimed that the plaintiffs had to stand on their own legs. No doubt, the plaintiffs had to stand on their own legs. The plaintiffs have not only proved execution and registration of the testament but have also proved their possession. However, the other legal heirs have failed to establish that they are in possession of the property.

Accordingly, RSA No.5050 of 2014 is dismissed, whereas RSA No.673 of 2009 is allowed, reversing the judgment of the learned first appellate court and restoring the judgment and decree passed by the learned trial court. Pending application(s), if any, shall also stand disposed of, in terms thereof.

20.02.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No