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

RSA No.3002 of 2018 (O&M)
Date of Decision: 16.07.2019

Karamjit singh and others

...Appellants

Versus

Balwinderjit Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. C.M. Munjal, Advocate, for the appellants.

RAMENDRA JAIN, J. (ORAL)

Unsuccessful plaintiffs have knocked the door of this Court by way of instant Regular Second Appeal against judgment and decree of the lower appellate Court dated 19.01.2018, affirming the judgment and decree of the trial Court dated 30.11.2015 whereby suit of appellants-plaintiff for declaration was dismissed.

Briefly, appellants-plaintiff claiming themselves owners qua suit land measuring 74 kanals 5 marlas out of total land of 122 kanals 5 marlas owned by deceased Baljit Singh, who was their real brother, on the basis of 'will' dated 28.07.2000 registered on next date, allegedly executed by deceased Baljit Singh, four months prior to his death, along with their mother, namely, Gurbachan Kaur, who was later on transposed as respondent No.5, filed a suit for declaration against the respondents, which after holding trial was dismissed by the trial Court vide judgment and decree dated 30.11.2015.

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Being dissatisfied, appellants-plaintiff approached first appellate Court, but remained unsuccessful as their appeal too was dismissed vide judgment and decree dated 19.01.2018.

Learned counsel for the appellants *inter alia* contends that finding of appellate Court that none of the attesting witnesses and scribe supported the case of appellants-plaintiff, is completely perverse and illegal, because attesting witness, namely, PW7 Mohinder Singh categorically testified that 'will' Ex.P3 was executed by deceased Baljit Singh in his presence. Both the Courts below have failed to appreciate that 'will' Ex.P3 in favour of appellants-plaintiff was proved beyond any shadow of doubt dispelling all alleged suspicious circumstances and, therefore, they ought to have decreed the suit of the appellants-plaintiff. Appellate Court also failed to appreciate that transposing of mother of the appellants-plaintiff as respondent No.5 related to insignificant aspect of the case without affecting the merits.

Having given thoughtful consideration to the submissions made by learned counsel for the appellants, this Court finds the instant appeal completely devoid of any merit for the reasons to follow.

No question of law much less substantial has been raised in this Regular Second Appeal. Therefore, same is held not maintainable.

Appellants-plaintiff staked their claim on the basis of 'will' Ex.P3 executed by Baljit Singh on the ground that respondent No.1, his wife allegedly did not have cordial relations with deceased Baljit Singh. She throughout the life of her deceased husband Baljit Singh kept on fighting with him. Resultantly, at one point of time Baljit Singh had filed a divorce

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petition, but remained unsuccessful and thereafter his appeal too was dismissed, but before this Court a compromise had arrived at between respondent No.1 and her deceased husband Baljit Singh, whereby she had to stay with her husband. However, in utter violation of the said compromise, respondent No.1 never came forward to live with her deceased husband. Therefore, deceased Baljit Singh having fed up with the conduct of his wife executed 'will' Ex.P3 in favour of his brother and sisters, who are none else, but appellants-plaintiff and also in favour of his mother and children giving specific shares out of his land measuring 122 kanals 5 marlas to them.

However, appellants-plaintiff could not prove their above claim beyond any shadow of doubt. Rather, even they could not dispel suspicious circumstance in execution of 'will' Ex.P3 in their favour inasmuch as PW2 Gulzar Singh, one of the attesting witnesses did not turn up to face his cross-examination. As a result of which his statement was rightly discarded, whereas PW7 Mohinder Singh another attesting witness also could not face test of his cross-examination successfully. This witness instead of dispelling suspicious circumstances in his cross-examination created suspicion over the 'will' Ex.P3 by admitting that for registration, impugned 'will' was produced before the Sub-Registrar in lunch hours and no photograph of its executer Baljit Singh was taken.

It has come on record that at the relevant time, registration of documents was used to be done through computer, but it was not explained as to why 'will' in question was not registered with the help of computer and registered manually. There is ample evidence on record that on 29.07.2009 i.e. the date of registration of 'will' Ex.P3 many sale deeds Ex.D5/A to D5/E

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were registered with the help of computer. Plea taken by the appellants-plaintiff coupled with the statement of Sub-Registrar and other witnesses that 'will' was manually registered on account of non-functioning of computer at the given time, instead of helping appellants-plaintiff creates suspicion about the execution and registration of 'will' inasmuch as it was bounden duty of the Sub-Registrar to wait till the time his computer, which was being used for registration of documents, becomes functional. It is unexplained as to what was the hurry with the Sub-Registrar to register the 'will' in question manually, when in routine documents were being registered with the help of computer. This fact in itself is sufficient to draw inference that 'will' Ex.P3 was not registered in ordinary circumstances, rather was surrounded with suspicious circumstances.

It is also unexplained on the file that when children of deceased Baljit Singh i.e. respondents No.2 and 3 were very much alive, in that eventuality what was the necessity for him to bequeath certain share of his property in favour of his brother, sister and mother, who finally did not support appellants-plaintiff, rather acted against them. Depriving the children of their legitimate right qua entire property of their deceased father vide 'will' Ex.P3 in favour of the appellants-plaintiff, is extra-ordinary circumstance, which ought to be proved by the appellants beyond any shadow of doubt for which they miserably failed, except pleading that deceased Baljit Singh was not having cordial relations with his wife respondent No.1 and for that reason he executed 'will' in favour of appellants-plaintiff bequeathing some of his share in their favour. This plea of the appellants is not sufficient to dispel the suspicious circumstances

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surrounding 'will' Ex.P3 in view of above fact that deceased had two children alive at the time of his death i.e. respondents No.2 and 3. There is no evidence on the record that children of deceased were also not taking care of their deceased father by siding with their mother.

PW6 Gurpartap Rai testified that on 29.07.2009 i.e. the date of registration of 'will' Ex.P3, deceased Baljit Singh was medically examined at 9.00 a.m., 12.00 noon, 3.00 p.m., 5.00 p.m. And 9.00 p.m. This witness further clarified that deceased Baljit Singh was administered medicine on the preceding date as well as on 29.07.2009 as he was admitted in their hospital. Statement of this witness proves beyond doubt that on the alleged date of execution and registration of 'will' deceased Baljit Singh was hospitalised and was regularly attended throughout the day and night by the doctor. It is unexplained as to in what circumstances he was allegedly taken out of the hospital before the scribe and Sub-Registrar on the next date for the registration of alleged 'will' Ex.P3. Even PW4 Resham Singh, who allegedly scribed 'will' Ex.P3, in his cross-examination admitted that he had executed the 'will' at the instance of Karamjit Singh and Mohinder Singh, appellant No.1 and attesting witness PW7, and its testator never affixed his signatures or thumb mark in his presence. Above deposition of this witness has again clearly established on the file that alleged 'will' Ex.P3 was fully surrounded with suspicious circumstances being not executed and registered in ordinary manner.

It can also be presumed that testator may not be in sound disposing mind and good health at the time of alleged execution and registration of 'will' Ex.P3 being hospitalised.

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Finding of the first appellate Court that none of the witnesses supported the appellants, is not cryptic, rather is based on appreciation of evidence. That apart, siding of mother of the appellants in favour of respondents during the pendency of suit, who according to the appellants was given some share through 'will' Ex.P3 by the testator Baljit Singh, is a material fact which has rightly weighed in the minds of both the Courts below, negating the claim of the appellants.

I have gone though the judgments of both the Courts below and find no illegality or perversity in the same.

Dismissed.

(RAMENDRA JAIN)
JUDGE

July 16, 2019
R.S.

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No

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