

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

RSA No.5855 of 2017 (O&M)
Date of Decision.29.03.2019

Kulwant Singh and anotherAppellants

Vs

Smt. Dalip Kaur and anotherRespondents

2. RSA No.948 of 2018 (O&M)

Kulwant Singh and anotherAppellants

Vs

Smt. Dalip Kaur and anotherRespondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Purshotam Singla, Advocate
for the appellants.

Mr. Anupreet S. Sidhu, Advocate
for the caveator/respondents.

-.-

AMIT RAWAL J.(ORAL)

C.M. No.2338-C of 2018 in RSA No.948 of 2018

For the reasons stated in the application, delay of 45 days in re-filing
of the appeal is condoned.

Application is allowed.

Main cases

This order of mine shall dispose of two regular second appeals
preferred against the decretal of the suit and dismissal of the counter-claim
at the instance of the appellants-defendants.

Respondents-plaintiffs, who were none else but the mother and sister
of the appellants-defendants, sought declaration to be owners in possession
of the land referred to in the head note and in the prayer on the premise that

Atma Singh son of Sewa Singh was owner of the land. He died on 31.07.2007 and during his life time had executed one Will dated 16.10.1998 but the same was rejected by registered cancellation deed dated 5.5.2016. However, defendants managed to get mutation of inheritance bearing No.1139 in their favour.

Defendants opposed the suit and stated that the Will was never cancelled. Even last rites were also performed by them. The alleged cancellation was forged and fabricated and also as per the counter-claim alleged to have become owners of the suit property on the basis of the Will dated 16.10.1988.

Since the parties were at variance, the trial Court framed the following issues:-

“1. Whether the plaintiffs are owners in joint possession of the suit land? OPP

2. Whether the plaintiff is entitled for declaration as prayed for? OPP

3. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP

4. Whether the suit of the plaintiff is not properly valued for the purpose of court fee and jurisdiction? OPD

5. Whether the suit of the plaintiff is not properly valued for the purpose of court fee and jurisdiction? OPD

5-A. Whether Atma Singh deceased executed Will dated 16.10.1988 in favour of the defendants? OPD

5-B. Whether the counter claimants are entitled for declaration on the basis of Will dated 16.10.1987? OPD/CC

5-C. Whether the counter claim is not maintainable at this state?

OPP/CR

5-D. Whether Atma Singh executed a registered revocation deed/cancellation deed dated 05.05.2009? OPP/ CR

6. Relief.”

Plaintiffs in support of pleadings examined eight witnesses and brought on record documentary evidence Ex.P1 to Ex.P9 whereas defendants examined nine witnesses and brought on record. Ex.D1 to D5.

Mr. Singla, learned counsel appearing on behalf of the appellants-defendants/counter-claimants submitted that on plain and simple perusal of the revocation deed Ex.P6 instead of appending signatures at appropriate location, one signature is also appended in middle. It appears that the revocation deed was prepared on the blank paper having signature of Atma Singh. It is not necessary if the said document has been registered, suspicious circumstances would not be in existence. Defendants were not aware of the aforementioned condition as no such notice was received from Atma Singh or from the competent authority. Puran Singh in cross-examination admitted that there was no cutting in the revocation. It was proxy litigation and during pendency of the suit, property was also exchanged and therefore, third party rights have been created.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit. Witnesses are not that expert in saying about the corrections and from the tenor and mode of the signature, it appears that except signature he would not understand the pattern of writing. On perusal of revocation deed Ex.P4, there is little misprint of word ‘us’ and above that there are signatures of Atma Singh. This Court cannot be prevented to examine this aspect and rely on statement of Puran Singh, which was recorded much latter than the revocation.

Appellants cannot derive any benefit as the Will becomes effective only

after the death but during the life time the testator had already taken away right by way of cancellation. In the absence of testamentary document, devolution of the property would be obviously as per natural succession. This Court had come across many cases of cross litigation between siblings on demise of father by challenging the Will but it is a case whether there is cancellation of Will, thus, rightly dismissed.

Puran Singh in his cross-examination stated that he had appended signatures after having understood the contents of the revocation deed read over to him and as well as before the Registrar. Endorsement of the Registrar is also a testimony of such statement. It was submitted that the original revocation deed did not see light of the day which seriously objected to in rebuttal but that objection has not been dealt with.

I am afraid aforementioned argument would not cut ice, for, in counter-claim strict principles of Order 18 Rule 3 CPC would not apply as onus keep on shifting for the counter-claimants are plaintiffs and plaintiffs are defendants. In such circumstances, status of parties shall be of a co-sharer.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, 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.

(AMIT RAWAL)
JUDGE

March 29, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No