

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

**RSA No.5987 of 2017 (O&M)
Date of decision:10.04.2019**

Bharpur Singh

Vs.

... Appellant(s)

Kartar Kaur and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.S.Grewal, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The present regular second appeal is directed against the concurrent findings of fact and law whereas suit of the respondent-plaintiffs claiming inheritance on the basis of natural succession qua the estate of Kirpal Singh, husband of plaintiff no.1 and father of defendants, has been decreed by the trial Court and affirmed in appeal and decreeing the counter claim set up by defendants no.4 to 7.

It was alleged that Kirpal Singh was the owner of the land, died on 03.11.2010. The defendants managed to obtain the mutation on the basis of the impugned Will dated 13.10.2010. The mutation was stated to be forged and as a result of mis-representation as he was 100 years of age and was not keeping good health to execute the Will. The earlier Will dated 24.08.2007 executed in favour of Gurtej Singh, Mewa Singh and Harjinder Singh but since they were not looking after him, the same was cancelled on

02.08.2010. In such circumstances, there was no occasion to execute the Will in favour of the defendants in short span of two months. In fact, defendant no.1 was disowned by Kirpal Singh on 18.10.2001 vide publication in newspaper. Moreover, Kirpal Singh was residing separately with his wife and un-married daughter. Even the complaint qua forcible custody of Kirpal Singh by the defendants was submitted. Bhog ceremony and funeral ceremony were performed by them alongwith defendants no.4 to 7.

Defendants no.1 to 3 opposed the suit and alleged that Kirpal Singh during his life time executed the registered Will dated 13.10.2010 as he used to reside with them during his life time and due to pressure, he cancelled the Will dated 24.08.2007 resulting into second Will. Bhog ceremony was performed by them. Kirpal Singh had already been given land measuring 1200 square yards to the plaintiffs no.1 and 2.

Defendants no.4 to 7 opposed the suit and alleged that they were the owners in possession of 4/10 share in the share of Kirpal Singh being legal heirs. They also set up a counter claim by reiterating the stand taken by other defendants in the written statement and alleged that they alongwith plaintiffs and defendants are natural heirs and defendants no.1 to 3 obtained the mutation no.20607 on the basis of alleged Will which was not binding upon them.

Plaintiff No.3 in support of the aforementioned pleadings examined herself and brought on record Ex.P1 to Ex.P13, Mark P1 to Mark 24. On the other hand, defendants examined six witnesses and brought on

record the documentary evidence.

Learned counsel appearing on behalf of the appearing on behalf of the appellant submitted that DW1-Jagtar Singh stated that Kirpal Singh was not suffering from any ailment and he was hale and hearty. There was no suspicious circumstances allegedly opined by the Courts below. The plaintiffs did not deny the possession of the plot measuring 1200 square yards and construction thereon. Kirpal Singh was residing with the defendants. The plaintiffs miserably failed to prove the jointness with Kirpal Singh. The attesting witness DW1 in cross-examination stated that Will was not scribed in his presence, cannot be fatal.

I am afraid the aforementioned arguments are not sustainable, for, in cross examination, the aforementioned witness categorically stated that Kirpal Singh was living with the plaintiffs and voter card and ration card are the testimony of the same and many other suspicious circumstances noticed by the Courts below, for, earlier Will was cancelled in August 2010, therefore, there was no occasion for execution of second Will few months thereafter in favour of the defendants who were also beneficiary of the previous Will. All these factors if read in cumulative lead to irresistible conclusion that Kirpal Singh had no intention to deny the succession of the property to the plaintiffs.

As an upshot of my findings, arguments of Mr. Grewal, have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 10, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No