

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

**RSA No.6399 of 2017 (O&M)
Date of Decision.01.03.2019**

Dalbir and others

...Appellants

Vs

Same Ram

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Harkesh Manuja, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

The present regular second appeal is directed at the instance of the appellant-defendants against the judgment and decree of the lower Appellate Court whereby suit of the respondent-plaintiff dismissed by the trial Court, has been decreed.

The dispute is amongst plaintiff Same Ram and Dalbir, Dilawar sons of Daya Nand and Davender and Narender son of Jagbir, who are none else but nephews of Same Ram. Rama Nand had three sons Desh Raj, Shish Ram and Jaswant. Plaintiff asserted that Jaswant Singh was his uncle and recorded as owner in possession of 293/998 share of land comprising Khewat No.161, Khata No.164, 165 measuring 49 kanals 18 marlas situated in village Kasanda, Tehsil Khanpur Kalan, District Sonapat (hereinafter referred to as the suit property). He suffered a paralytic attack and ultimately succumbed on 18.01.2011. During his lifetime on 24.02.1977 executed a registered Will bearing No.124/3 qua movable and immovable property in the name of plaintiff and his brothers Daya

Nand and Jagbir to the extent of 1/3rd share each. Since the

defendants wanted to grab his land, took undue advantage of ill-health and filed civil suit No.344 dated 3.8.2010 titled as “Dalbir and others vs. Jaswant Singh” alleging acquisition of the property in the family settlement held in January, 2010.

Defendants opposed that suit and stated that the suit land was joint Hindu Family Property of late Jaswant Singh and being their children was given to them. In the aforementioned suit plaintiff submitted an application under Order 1 Rule 10 CPC for impleading Jaswant Singh as party but during the pendency of the suit he died, therefore, the suit was withdrawn on 3.6.2011.

Defendants produced the cancellation deed dated 14.5.2010 and Will No.17/3 dated 14.5.2010 was propounded to which objections were filed by the plaintiff.

Defendants opposed the suit and filed written statement and stated that Jaswant Singh out of his own free will and in good senses revoked the previous Will No.124 dated 24.02.1977 and executed fresh Will in faovur of the defendants whereby Same Ram was disinherited.

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

“1. Whether the plaintiff is entitled to a decree for declaration to the effect that plaintiff and late Daya Nand and now their LRs and Jagbir the brothers of the plaintiff are owners in possession having 1/3rd share each of land of late Jaswant son of Sh. Rama Nand on the basis of Will dated 24.02.1997 and further declaring the alleged cancellation deed No.18/3 of 14.05.2011 and alleged Will No.17/3 of 14.5.2011 and mutation No.1660

based upon it as illegal, null and void and not binding upon the rights of the plaintiff? OPP

2. Whether the plaintiff is entitled to a decree of joint possession of 1/3rd share qua the land of late Jaswant? OPP

3. Whether the plaintiff is entitled to decree for permanent injunction restraining the defendants from alienating the suit land or from creating any type of encumbrances over the same on the basis of mutation No.1660? OPP

4. Whether the suit filed by the plaintiff is not maintainable in the present from? OPD

5. Relief.”

The trial Court dismissed the suit by holding that the revocation was in accordance with law but the appeal as indicated has been allowed, resulting into decree of the suit.

Mr. Harkesh Manuja, learned counsel appearing for the appellants in support of the memorandum of appeal submitted that DW3 Ajay, attesting witness of the Will not only proved the fact that the testator was in conscious state of mind at the time of execution of the Will and the ingredients of Section 63(c) of the Indian Succession Act have been proved. The statement of Ajay had been categorical that Jaswant Singh had been living with the defendants and no suggestion in cross-examination has been put, thus, evidence remained uncontroverted/unrebutted, was *per se* liable, to be taken as admission. There was no suspicious circumstance. Plea of family settlement was of passing reference just to doubly sure acquisition qua estate of Jaswant Singh. No doubt the previous Will had accorded ownership to all the three brothers including Same Ram to

the extent of 1/3rd share but out of love and affection, which remained uncontroverted, the Will aforementioned was executed. The lower Appellate Court being the last court of fact and law, thus, abdicated in reversing the well reasoned judgment of the trial Court. The execution of Will has been proved in accordance with provisions of Section 68 of the Indian Evidence Act, thus, urges this Court for setting aside the finding under challenge.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit for the simple reason that if at all the family settlement was entered into in January 2010, there was no occasion for Jaswant Singh for revoking the previous Will and execute fresh Will dated 14.05.2010. During the course of hearing, cross-examination of DW3 was read out in the evidence and is deciphered as no suggestion was put in cross-examination with regard to the fact that Jaswant Singh was living with the defendants but said part cannot be looked into in isolation because witness to a specific question in cross-examination stated that he did not know at how many places he appended signatures, much less, the testator. If the witness was not aware of this, ingredients of Section 63(c) of the Indian Succession Act remained unproved. The testator as per the previous Will had actually distributed his share of land in faovur of three persons i.e. plaintiff and his two brothers. No reasons have been assigned as to how line of succession/inheritance deviated. Jaswant Singh at the time of execution of revocation deed and subsequent Will Ex.D1 and D2 was aged 95 years. The plaintiff though managed to file the suit against

Jaswant Singh as defendants were in the process of obtaining collusive and consent decree but the same was withdrawn for the reason that Jaswant Singh expired during the pendency of the suit. Ex.D2 the subsequent Will is conspicuously silent qua assigning reasons regarding beneficiaries of the previous Will.

In view of such circumstances, I do not find any illegality and perversity in the judgment and decree rendered by the lower Appellate Court being the last Court of fact and law, 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 01, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No