

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 981 of 1989 (O&M)

Date of Decision: 29.03.2022

Smt. Santosh and Others

... Appellant(s)

Versus

Smt. Ram Dulari and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Ajay Jain, Advocate
for the appellant(s).

Dr. Parveen Hans, Advocate
for the respondent No.2 to 8

Anil Kshetarpal, J.

1. While assailing the concurrent findings of facts, arrived at by both the Courts below, the defendants have filed the present appeal.

2. Some facts are required to be noticed.

3. Late Sh. Surja was the owner of the property in question. He died issue-less and his wife pre-deceased him. In other words, he did not leave behind any Class-I heir. Late Sh. Rameshwar Dass (the plaintiff) filed a suit for grant of decree restraining the defendants from interfering in the possession over the agricultural land measuring 30 kanals and 3 marlas, which had fallen to the share of late Sh. Surja. The plaintiffs claim that late Sh. Surja had executed a testamentary disposition in favour of late Sh. Rameshwar Dass (his nephew).

4. The defendant No. 1 and 2 contested the suit and pleaded that

late Sh. Surja did not execute any testamentary document.

3. Both the Courts below, on appreciation of evidence, have found that the execution of the Will has been proved in accordance with Section 63 of the Indian Succession Act, 1925 and the Will has been proved in accordance with Section 68 of the Indian Evidence Act, 1872 (hereinafter referred to as “the 1872 Act”). Both the attesting witnesses, namely Chanda alias Chandu Lal as well as Maha Singh, Sarpanch of the village, were examined by the plaintiff.

4. Heard the learned counsel representing the parties and with their able assistance, perused the paper-book and the record of both the Courts below.

5. The learned counsel representing the appellants has contended that the original Will has not been produced in accordance with Section 68 of the 1872 Act and in view of the writing dated 05.05.1982 (Ex.D1), it is evident that late Sh. Surja Ram did not execute the Will.

6. As regards the first argument, it would be noted that the original Will is very much a part of the record of the trial Court. It is a different matter that the exhibit has been marked on the photocopy thereof. The original Will is available on pages 91 to 93 of the record, which is thumb marked by late Sh. Surja and signed by both the attesting witnesses.

7. The next argument of the learned counsel representing the appellants is also without substance because this Court, with the able assistance of the learned counsels, has read the depositions of PW.3-Maha Singh and PW4-Chandu, both the attesting witnesses, respectively. They have stated that the Will was typed on the instructions of late Sh. Surja and thereafter, the testator thumb marked the Will. The attesting witnesses signed

in the presence of the testator as well as in the presence of each other. Thus, the execution of the Will stands proved.

8. The last argument of the learned counsel representing the appellant is based upon a writing dated 05.05.1982. Late Sh. Surja died on 24.01.1982. He bequeathed the agricultural land as well as the residential house in favour of his nephew late Sh. Rameshwar Dass. As per the writing, some portion of the residential house was given to Daya Ram in lieu of ₹1,000/-. Such a writing does not affect the validity of the Will. The beneficiary under the Will, after having become the owner, can dispose of the property in whatever manner he likes. The writing will have no effect on the bequest in the absence of any clause to the contrary.

9. In view of the above, no ground is made out to interfere. Hence, the present appeal is dismissed.

10. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

March 29, 2022

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No