

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

(214)**RSA-2233-2015****Date of Decision: 13.12.2022**

Labh Singh and others

.....Appellants

Versus

Narinder Kaur and ors.

....Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Vishal Gupta, Advocate, for the appellants.

Mr. Naveen Batra, Advocate, for the respondents.

HARKESH MANUJA, J.(ORAL)

By way of present appeal challenge has been made to the judgments and decrees dated 31.01.2013 and 24.12.2014, passed by the Courts below, whereby, a decree for declaration along with joint possession and permanent injunction has been passed in favour of respondents/plaintiffs to the extent of 1/5th share out of the estate left by deceased Prem Singh.

Facts leading to the present case are that the property left by deceased Prem Singh became an apple of discord between the parties to the present appeal. Claiming themselves to be the legal heirs of Nachhattar Singh Late son of Prem Singh, respondents/plaintiffs filed a suit for declaration and joint possession as well as permanent injunction seeking 1/5th share left by Prem Singh, besides

even challenging an unregistered Will dated 07.05.2007 executed by deceased Prem Singh in favour of appellants/defendants.

Upon notice, appellants/defendants appeared and filed their written statement relying upon Will dated 07.05.2007 by claiming themselves to be the successors of deceased Prem Singh.

Trial court vide judgment and decree dated 31.01.2013, decreed the suit in favour of respondents/plaintiffs to the extent of 1/5th share in the estate left by deceased Prem Singh being legal heirs of his son Nachhattar Singh based on natural succession, besides discarding the Will dated 07.05.2007 to be surrounded by suspicious circumstances.

Aggrieved against the judgment and decree dated 31.01.2013 passed by the trial Court, the appellants/defendants filed first appeal, however, the same even came to be dismissed by the Court of Additional District Judge, SAS Nagar, Mohali, vide judgment and decree dated 24.12.2014, upholding the findings as regards the Will dated 07.05.2007 being surrounded by suspicious circumstances.

It has been contended on behalf of appellants that the findings recorded by the Courts below as regards the Will in question being surrounded by suspicious circumstance were not well founded. Learned counsel for the appellants submits

that mere none mentioning of some of the natural heirs in the

Will would not tantamount to suspicious circumstance. In this regard, learned counsel for the appellants relies upon the judgments rendered by Hon'ble the Supreme Court in the case of **Savithri & Ors. Vs. Karthyayani Amma & Ors., 2007 (4) R.C.R. (Civil) 749, Leela Rajagopal and others Vs. Kamala Menon Cocharan and others, 2015 AIR (Supreme Court) 107** and a judgment of this Court in the case of **Harpal Singh Vs. Jagdish Singh, 2006(1) R.C.R.(Civil) 114.**

Learned counsel for the appellants further submits that Will has been duly proved on record in accordance with Section 68 of the Indian Evidence Act, 1882 as well as Section 63 of the Indian Succession Act, 1925 and the non-examination of Lambardar who happened to be the second attesting witness cannot be taken to be a suspicious circumstance. Learned counsel for the appellants further submits that in the facts and circumstances of the present case there were sufficient reasons & circumstances available with the testator, not to even disclose the particulars of respondents/plaintiffs in the Will in question as respondent No.1 i.e. the widow of son Nachhattar Singh got remarried and even filed a suit for permanent injunction against him i.e. the testator.

On the other hand learned counsel for the respondents/plaintiffs submits that the non-disclosure of his grand children in the Will by the testator was under the

influence of its beneficiaries i.e. the appellants/defendants. He further submits that the testator was having deep love and affection for his grand children i.e. respondents No.2 and 3 and even filed a petition for seeking their custody from their mother i.e. the respondent No.1.

I have heard learned counsel for the parties and have gone through the paper book as well as the records made available to me by the respective counsels. I am unable to accept the contentions raised on behalf of the appellants. Though, a concurrent finding of fact has been recorded by the Courts below as regards the valid attestation as well as execution of the Will in question, however from the evidence and the circumstances available on record of Will, the same has been validly discarded by the Courts below being surrounded by suspicious circumstances.

In the facts and circumstances of the present case, the Will in question is apparently surrounded by suspicious circumstances. Admittedly the testator filed a petition seeking custody of his minor grand children i.e. respondents No.2 and 3 which shows his love and concern for them as such, there was no reason for him to have not even disclosed/mentioned their names they being his grand children, in the Will in question. Even the name of his own predeceased son Nachhattar Singh, who happened to be the father of respondents No.2 and 3 was not mentioned and this

was under the influence of the beneficiaries and the Will in question was not executed by him with free and sound disposing mind particularly when the same had been scribed by one of the beneficiaries himself. In these circumstances, even the litigation initiated at the instance of respondent No.1 cannot be taken to be as against respondents No.2 and 3 who happened to be the minor grand children. My aforesaid view of holding the Will in question to be surrounded by suspicious circumstances on account of non-disclosure of name of predeceased son and the grand children by the testator is also derived from the judgment passed by Hon'ble the Supreme Court in case of **Joseph Antony Lazarus (Dead) by LRs Vs. A. J. Francis**, 2006(2) RCR (Civil) 570 and relevant part of para 20 thereof, reads as under:

"20. It will be injudicious to suggest, as has been held by the learned Single Judge of the Madras High Court, that there are no suspicious circumstances surrounding the execution and registration of the Will. It is difficult to understand as to why the testatrix omitted to mention two of her sons in the Will although she has taken great pains to mention the fact that the appellant herein and her other son, Cecil Lazarus, had looked after her and had paid all the installments towards the house property, even though Cecil Lazarus had gone to Sharjah as far as back as in 1963 and only the appellant was living with her in the house being the subject matter of the bequest in the Will....."

On the other hand, I have gone through the judgments referred to hereinabove and relied upon by learned counsel for the appellants. All those aforementioned cases

pertain to the facts wherein by virtue of execution of Will one or some of the legal heirs were deprived of their right to succeed their share out of property of the testator and were not the cases wherein one of the legal heirs was not even been mentioned/disclosed in the Will, as being done in the present case and as such they do not apply to the facts and circumstances of the present case.

Besides it, there has been a serious dispute about the signatures of testators over the Will in question. Both the sides have examined their respective handwriting experts, though the Courts below have found it appropriate, not to rely upon the two divergent reports submitted by the two handwriting expert. I find substance in the reasoning recorded by the learned first appellate Court, wherein, the same went on to record that the non-examination of Lambardar-Surender Pal of the same village who was one of the best independent witnesses to prove the signatures of the deceased testator was even fatal to the case of appellants, particularly in the circumstances when the scribe of Will in question i.e. DW-2 Darshan Singh himself was the maternal uncle of the beneficiaries and thus, could not be treated to be an independent person. Accordingly, the will being surrounded by suspicious circumstances was thus rightly discarded by the Courts below. Accordingly, finding no substantial question of law involved in the present appeal, I do not find any illegality or infirmity in the finding of fact recorded vide impugned

judgments and decrees dated 31.01.2013 & 24.12.2014 passed by the Courts below, which thus, calls for no interference. As such, the present appeal is dismissed with no orders as to costs.

Pending applications, if any, shall stand disposed of.

(HARKESH MANUJA)
JUDGE

13.12.2022
anil

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No