

RSA No. 723 of 1994

RSA No. 725 of 1994

-1-

2024:PHHC:057492

IN THE HIGH COURT OF PUNJAB & HARYANA

AT CHANDIGARH

102

RSA No. 723 of 1994

Date of Decision: 25.04.2024

Surjit Kaur @ Jeto

.....Appellant

Versus

Darshan Singh and others

.....Respondents

RSA No. 725 of 1994

Surjit Kaur @ Jeto

.....Appellant

Versus

Darshan Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Animesh Sharma, Advocate
for the appellant.

Mr. Bhavnik Mehta, Advocate
for respondent No.1.

ANIL KSHETARPAL, J.(ORAL)

1. These appeals were filed in the year 1994 by the learned counsel who was later on elevated to the Bench and has since retired. His briefs are handled by Sh. Animesh Sharma, Advocate, who was working with the learned counsel, who had filed these appeals. These appeals are pending for the last 30 years. On 05.04.2024, Sh. Animesh Sharma, Advocate appeared in the Court on behalf of the appellant.

2. Learned counsel representing the appellant submits that he has prepared the case, however, he has not filed a Power of Attorney on behalf of the appellants.

3. On request of the Court, he has come forward to assist the Court in disposal of the old appeals.

4. With the consent of the learned counsel representing the parties two connected regular second appeals, shall stand disposed of by common order.

5. In substance, the dispute in the present case is about the validity and genuineness of the Will dated 27.06.1983. Sh. Gurbachan Singh is alleged to have bequeathed the suit property, which is 14 marlas plot with construction to his son Sh. Darshan Singh while excluding the other children.

6. The trial Court dismissed the suit on the ground that the Will is surrounded by suspicious circumstances. It was held that the attesting witnesses belong to the different villages, and the Will is not registered. The Court also observed that a house has been constructed on the plot which has not been recited and there are minute contradictions in the statement of PW-6 and the scribe has not been examined.

7. Upon reappreciation of evidence, the First Appellate Court found that the attesting witness of the Will namely Sh. Dalbara Singh has been examined. PW-4 Sh. Tejinder Singh, a colleague of the scribe has been examined who has produced the entry in his register. It was found that Sh. Malik Hargobind, the scribe is unable to appear in the Court due to weak eye-sight. PW-10 Sh. Ranjit Singh, the handwriting and fingerprint expert has also been examined. It is recited in the Will that both the plots were purchased by Sh. Gurbachan Singh, however, the funds were provided by Sh. Darshan Singh. The evidence has also been led to prove that Sh. Darshan Singh alone contributed the purchase money as well as amount spent on the construction of the house. Thus, the First Appellate Court has accepted the appeal.

9. Learned counsel representing the appellant submits that the attesting witnesses were of a younger age and they did not personally know the testator. He submits that the First Appellate Court has erred in reversing the judgment passed by the trial Court.
10. This Court has considered the submissions of the learned counsel representing the parties.
11. It is evident that Sh. Gurbachan Singh while executing the Will has specifically recited that Sh. Darshan Singh had paid the money for the purchase of the plot. The Will is attested by two attesting witnesses. As per Section 68 of the Indian Evidence Act, 1872, the Will is required to be proved by examining one attesting witness. In this case, Sh. Dalbara Singh, the attesting witness has been examined. It is also proved that the entire sale consideration was paid by Sh. Gurbachan Singh on the funds provided by Sh. Darshan Singh and it is Sh. Darshan Singh who had borrowed loan to complete the construction. In these circumstances, the Will shall not become doubtful merely because the testator failed to specify the constructed portion. The intent of the testator is clear and categoric. It is not appropriate for the Courts to interfere with the wishes of the testator unless cogent evidence is led, which give rise to a genuine doubt about the correctness of the Will.
12. Hence, no ground to interfere is made out.
13. Dismissed accordingly.

25.04.2024

(ANIL KSHETARPAL)

Rajeev (rvs)

JUDGE

Whether speaking/reasoned

Whether reportable

Yes

No