

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

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RSA-2857-2018 (O&M)

Date of Decision: 10.01.2024.

Ranbir Singh

...Appellant.

Versus

Gurdev Singh and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. K.K. Garg, Advocate
for the appellant.

Sukhvinder Kaur, J.

The instant Regular Second Appeal has been filed against the concurrent findings recorded by both the Courts below.

2. Brief facts as per plaint are that Chhano Devi, mother of the parties to the suit, was recorded as owner of land measuring 8 Kanals being 32/437th share out of land measuring 109 Kanals-03 Marlas, comprised in Khewat No.16/16 Kittas 17, situated within the revenue estate of village Sarsa, Tehsil Pehowa, District Kurukshetra, vide Jamabandi for the year 2004-2005 and Brij Lal, father of the parties, was owner of land/bara measuring 10 Marlas being 10/13th share out of total land 13 Marlas comprised in Khewat No.17//17, Khatoni No.31, Khasra No.359(0-13), situated within the revenue estate of village Sarsa, Tehsil Pehowa, vide Jamabandi for the year 2004-2005. Above said Chhano Devi and Brij Lal died on 05.09.1999 and 11.02.1997 respectively and parties to the suit being brother and sisters are their legal representatives. However, in the death

certificate, name of Brij Lal was wrongly recorded as Birju Devi. Both Chhano Devi and Brij Lal during their lifetime had bequeathed all their movable and immovable properties including suit land in favour of plaintiff vide wills executed on the same day i.e. 09.01.1989. Thus, plaintiff became absolute owner of the suit land and requested Halqa Patwari to enter and sanction mutation in his name, who assured to do so. But in the year 2011, plaintiff came to know that suit land still stands in the name of his parents. On 07.01.2011, plaintiff gave an application to Tehsildar Pehowa for entering mutation, however, that application got misplaced and thereafter another application in this regard was given on 11.01.2012 but revenue officials refused to do the needful.

3. The trial Court vide judgment and decree dated 24.03.2014 dismissed the suit of the plaintiff and the First Appellate Court vide judgment dated 03.11.2017, dismissed the appeal preferred by the plaintiff. Hence, the present Regular Second Appeal.

4. Learned counsel for the appellant/plaintiff has contended that the Courts below failed to draw a positive inference to the effect that the deceased parents of the appellant had clear intention of bequeathing their respective properties to the appellant by executing the Wills and they wished to disinherit the other heirs from the same. He has further contended that the disputed Wills were executed with sound mind and free will, by his parents in his favour and plaintiff is owner in possession of the suit land by virtue of these Wills. The plaintiff had duly proved these Wills by examining the attesting witness to the Wills. He has further contended that once defendant No.1 has admitted the thumb impression of Smt. Chhano

Devi and Brij Lal on the Wills then the onus shifted on the defendants to prove on record that Wills were fabricated.

5. I have heard learned counsel for the appellant and gone through the record thoroughly.

6. From a combined reading of Section 63 of Indian Succession Act, with Section 68 of Indian Evidence Act, it is made out that the person propounding the Will has got to prove that the Will was duly and validly executed. For that purpose, besides proving the signatures on the Will, it is also to be proved that the attestation was also made properly as required by Clause (c) of Section 63 of the Indian Succession Act.

7. In the instant case, Will Ex.P-1 bears the thumb impressions of Smt. Chhano Devi and Will Ex.P-2 bears the thumb impressions of Brij Lal. Both these Wills have been witnessed by Kalyan Singh son of Hira @ Kakkar. Again as per the mandatory provision of law, Will is required to be attested by two or more witnesses. But in the present case, on the Wills except Kalyan Singh, no other person has signed as attesting witness. PW2 Sat Parkash Gupta, Deed Writer and PW3-Sat Parkash, Deed Writer have nowhere deposed in their depositions that they had signed the Wills with the intention of attesting the same. So these witnesses have identified their signatures on the said Wills only being the Scribes and not as one of the attesting witnesses. Thus, the statutory requirement of the Wills having been attested by two witnesses has not been fulfilled.

8. Besides this, these Wills are also surrounded by suspicious circumstances. Both these Wills were executed by parents of the appellant on the same day bequeathing their properties in favour of the plaintiff.

Though these were got scribed by deed writers who were working at Kaithal Tehsil Complex, yet these Wills were not got registered by testators for the reason best known to them, which is a suspicious circumstance. PW1 Kalyan Singh has deposed that the disputed Wills were executed on stamp papers, whereas the Wills Ex.P-1 and Ex.P-2 have been executed on the plain papers. Regarding thumb impressions of Smt. Chhano Devi and Brij Lal on the said Wills, the defendants have taken the plea that their thumb impressions were obtained on some blank papers, on the pretext of using these thumb impressions in Civil Case. The fact that both Chhano Devi and Brij Lal were illiterates is duly corroborated by thumb impressions of testators imposed on the disputed Wills. So both these Wills are enveloped with suspicious circumstance.

9. Though, wills are dated 09.01.1989 the same had not been produced before any Revenue Authority and were produced only after about 22 years when the plaint was filed, which again is a suspicious circumstance.

10. For the reasons recorded above, the present Regular Second Appeal does not raise any question of law much less substantial question of law and is dismissed.

11. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

10.01.2024.

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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No