

(2010) 05 P&H CK 0105

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Bhajan Singh

APPELLANT

Vs

Gurdarshan Singh and Others

RESPONDENT

Date of Decision: May 3, 2010

Citation: (2010) 159 PLR 498

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

CM No. 5283.C of 2010

1. Appellant has filed this application for placing on record documents Annexure A/1 and A/2. However, in second appeal documents cannot be placed on record like this. No case or prayer for leading additional evidence has been made. The application is completely misconceived. Otherwise also the proposed additional evidence is irrelevant because the same is sought to be produced to depict that Pritam Singh testator used to affix signatures. However, this plea would be discussed in the judgment while disposing the main appeal. The instant application is misconceived and is without any merit and is dismissed.

RSA No. 284 of 2007

2. This is second appeal by Bhajan Singh alias Harbhajan Singh plaintiff No. 2, after plaintiffs i.e. appellant and proforma respondent No. 15 Joginder Singh have remained unsuccessful in both the courts below.

3. Plaintiffs filed suit challenging Will dated 17.6.1997 allegedly executed by their father Pritam Singh in favour of their brother Gurdarshan Singh defendant No. 1. Various other reliefs were also claimed but the central controversy is regarding the aforesaid Will. The plaintiffs also alleged that their father Pritam Singh had earlier

executed Will dated 15.3.1997 in favour of his wife Sham Kaur, mother of plaintiffs and defendants No. 1 and 2.

4. Defendants No. 1 and 13 contested suit and pleaded that defendant No. 1 is owner in possession of the suit property on the basis of registered Will dated 17.6.1997 executed by Pritam Singh.

5. Learned Additional Civil Judge (Senior Division), Sangrur vide judgment and decree dated 22.4.2004 dismissed plaintiffs' suit. First appeal preferred by the plaintiffs has been dismissed by learned Additional District Judge, Sangrur vide judgment and decree dated 4.10.2006. Feeling aggrieved, plaintiff No. 2 only has preferred the instant second appeal.

6. I have heard learned Counsel for the parties and perused the case file.

7. Defendant No. 1 in order to prove the Will examined Sanjiv Goyal, scribe of the Will as DW1, Chhaju Singh attesting witness of the Will as DW2, Gursewak Singh Tehsildar-cum-Sub Registrar as DW4. All of them have proved that the Will was executed by Pritam Singh. Defendant No. 1 also examined Finger Print Expert Navdeep Gupta DW5. He compared disputed thumb impressions of Pritam Singh on the Will with his standard thumb impressions in the record of the Cooperative Bank and gave report that the disputed thumb impressions are of Pritam Singh.

8. In view of aforesaid evidence, both the courts below have concluded that the Will in question stands fully proved.

9. Learned Counsel for the appellant vehemently contended that Pritam Singh used to affix his signatures on documents as is manifest from sale deeds placed on the records and there is no reason why Pritam Singh who was literate affixed his thumb impressions on the Will instead of signatures and therefore, the Will is suspicious. In support of this contention, reliance has been placed on judgment of Division Bench of this Court in the case of Sh. Harbans Singh v. Hardayal Singh and Ors. 1996 (2) PLR 544 and Single Bench judgment of this Court in Smt. Dhan Kaur v. Parkash Singh and Ors. 2007 (2) PLR 326. In those cases, the testator thumb marked the Will instead of signatures. Will was held to be suspicious but not on this solitary ground. Reliance has also been placed on another judgment in the case Prithi Singh v. Saran Singh 2006 (3) PLR 293. In that case there was right hand thumb impression of male testator instead of affixing left thumb impression. The Will was held to be suspicious.

10. I have carefully considered the aforesaid contentions but the same cannot be accepted. The judgments noticed hereinabove are not applicable to the case in hand because there were also other suspicious circumstances surrounding Will in those cases. On the other hand, in the instant case signatures of Pritam Singh appearing on some documents reveal that he was at best a semi-literate person. The signatures have been affixed not in a fluent manner but in hesitant manner like a

primary student. On the other hand, Pritam Singh had also been affixing thumb impressions and not always signatures. Pritam Singh had affixed thumb impressions in Cooperative Bank on the card of specimen signatures. Pritam Singh had also affixed thumb impression in the register of scribe who scribed Will dated 15.3.1997 in favour of Pritam Singh's wife. It would depict that on the Will particularly Pritam Singh affixed thumb impressions because even on the earlier Will executed by him in favour of his wife which has been asserted by the plaintiffs themselves, Pritam Singh has affixed his thumb impression and not signatures. Consequently, Will dated 17.6.1997 cannot be discarded merely on the ground that it has been thumb marked and not signed by the testator.

11. Learned Counsel for the appellant next contended that photograph affixed on the Will is not latest photograph of the testator. However, Will cannot be discarded merely on this ground. In addition to scribe one attesting witness and Registration Authority have appeared in the witness box and have stated that the Will was read over and explained to the testator and he admitted it as correct and thumb marked the same. This evidence is cogent and reliable and has not been satisfactorily rebutted.

12. Learned Counsel for the appellant submitted that no reference has been made in the instant Will to earlier Will dated 15.3.1997 which became redundant because the beneficiary Sham Kaur pre-deceased the testator Pritam Singh. However, merely on this ground the Will cannot be thrown away when the same has been duly proved by leading cogent and reliable evidence. Learned Counsel for the appellant also submitted that only one attesting witness of the Will has been examined and the said witness Chhaju Singh resides on other side of the village. However, his statement cannot be discarded merely on this ground. Chhaju Singh has appeared in the witness box and stated about due execution of the Will by Pritam Singh. Moreover the other attesting witness of the Will could not be examined because he had since died. The contesting defendant No. 1 has produced all the available evidence to prove due execution of the Will.

13. Learned Counsel for the appellant also cited two other judgments of this Court in the cases of Dyal Singh and Anr. v. Meeko and Anr. 2009 (3) PLR 173 and Nobat Ram v. Ramji Lal (dead by LRs.) 2009 (3) PLR 127. However, finding regarding Will being suspicious in those cases was on the basis of facts and circumstances of those cases and the evidence led in those cases. In the instant case, defendant No. 1 has proved due execution of the Will dated 17.6.1997 by Pritam Singh. Both the courts below have recorded concurrent finding about it after appreciation of evidence. The said finding cannot be said to be perverse or illegal so as to call for interference in second appeal. No question of law much less substantial question of law arises for determination in the instant second appeal. The appeal is without any merit and is accordingly dismissed.