(2012) 08 P&H CK 0296

High Court Of Punjab And Haryana At Chandigarh

Case No: Case No. Regular Second Appeal No. 3663 of 2012

Sudesh and others	APPELLANT
Vs	
Ran Singh and Others	RESPONDENT

Date of Decision: Aug. 21, 2012

Acts Referred:

- Evidence Act, 1872 - Section 68
- Succession Act, 1925 - Section 63

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

Bench: Single Bench

Advocate: Narender Hooda, with Kewal Krishan, for the Appellant;

Final Decision: Dismissed

Judgement

L. N. Mittal, J.
Defendant No. 1 and legal representatives of defendant No. 2, having failed in both the courts below, have filed this second appeal. Suit was filed by respondent No. 1-plaintiff Ran Singh challenging alleged Will dated 18.05.1994 of Sube Ram and the consequent mutation No. 4411 dated 30.01.1999 sanctioned on the basis thereof in favour of defendants No. 1 and 2. Consequential relief was also sought.

2. Defendants No. 1 and 2 defended the Will in question. It was pleaded that it was voluntarily executed by Sube Ram in their favour. Legal representatives of defendant No. 3 admitted the claim of the plaintiff, whereas defendant No. 4 was proceeded against ex-parte.

3. Learned Additional Civil Judge (Senior Division), Rohtak, vide judgment and decree dated 07.11.2009, partly decreed the plaintiff''s suit declaring the impugned Will and consequent mutation being illegal and null and void and not binding upon plaintiffs and defendants No. 3 and 4. First appeal preferred by defendant No. 1 and legal representatives of defendant No. 2 has been dismissed by learned Additional District Judge, Rohtak, vide judgment and decree dated 08.06.2012. Feeling

aggrieved, defendant No. 1 and legal representatives of defendant No. 2 have filed this second appeal.

4. I have heard learned senior counsel for the appellants and perused the case file.

5. Counsel for the appellants vehemently contended that copy of the Will, retained in the registration record, has signatures of attesting witnesses and its certified copy was proved by the Registration Clerk, who brought the registration record of the Will and proved its certified copy, which was admitted in evidence without any objection. It was pleaded that the Will has also been proved by its attesting witness Dilbagh Singh (DW-4). Counsel for the appellants also emphasized that Dalbir (PW-2) has admitted the execution of the Will by Sube Ram.

6. I have carefully considered the aforesaid contentions, but the same cannot be accepted. It goes without saying that Registration Clerk could not prove the execution of the Will. He did not even state about signatures or thumb impressions of the testator on the Will, but only stated that copy of the Will in the registration record purported to be bearing signatures of the attesting witnesses including Lambardaar. However, this evidence is not sufficient to prove the execution of the Will. Dilbagh Singh (DW-4) - attesting witness of the Will, has also not duly proved the execution of the Will because even the registration record was not there when this witness was examined. Without seeing the original copy of the Will in the registration record, the witness could not have proved its execution. Thus, mandatory requirement of Section 68 of the Indian Evidence Act, 1872 read with Section 63 of the Indian Succession Act, 1925 has not been complied with to prove due execution of the Will.

7. In addition to the aforesaid, the original Will has not seen the light of the day. Admittedly, no permission to lead secondary evidence of the Will was sought. Consequently, certified copy of the Will could not be admitted in evidence.

8. The contention that Dalbir (PW-2) admitted the execution of the Will is also misconceived and devoid of merit. Admittedly, Dalbir was not present when the Will was allegedly executed. Consequently, his so-called admission carries no probative value to prove execution of the Will. On the contrary, he also stated that he did not know if Sube Ram had executed the Will. He, however, added that later on, he learnt that Sube Ram had executed the Will. Thus, his so-called admission is nothing, but mere hear-say, which has no evidentiary value.

9. It is thus manifest that the alleged Will has not been proved in accordance with law. Additionally, there are so many suspicious circumstances surrounding the Will, as noticed by the courts below, which have not been explained by the beneficiaries of the Will i.e. defendants No. 1 and 2. It has come in evidence of the contesting defendants themselves that defendants No. 1 and 2 accompanied the testator Sube Ram for execution of the Will and actively participated in execution of the Will. Defendants No. 1 and 2 alleged that they were rendering services to the testator

and the Will was executed in lieu thereof. However, it has been admitted by defendant No. 1 Vijit Singh that testator Sube Ram had sold some land for meeting his expenses. It would depict that defendants No. 1 and 2 were not rendering services to the testator. Age of Sube Ram was also 75 years at the time of execution of the Will. Thus, he was very aged person. There has been unnatural disposition of the property by Sube Ram under the alleged Will. Of course, Will is executed to deviate from natural inheritance. However, there has to be satisfactory explanation for the deviation. There are many other suspicious circumstances recorded by the courts below to discard the Will.

10. For the reasons aforesaid, I find that the impugned Will, set up by defendants No. 1 and 2, has not been proved in accordance with law and the same is also surrounded by so many suspicious circumstances, which have not been explained satisfactorily. Some of the said suspicious circumstances, if considered individually, may or may not be sufficient to discard the Will, but if all the suspicious circumstances noticed by the courts below are considered collectively and cumulatively, the same are certainly sufficient to discard the Will. Concurrent finding recorded by the courts below to discard the Will, therefore, does not suffer from any perversity or illegality nor it is based on misreading or misappreciation of evidence. There is, therefore, no ground to interfere with the said finding. No question of law, much less substantial question of law, arises for adjudication in this second appeal. The appeal is devoid of merit and is accordingly dismissed in limine.