

A PARSINI (DEAD) THROUGH LRS.

v.

ATMA RAM AND ORS.

FEBRUARY 22, 1996

B [K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Will—Genuineness of—Daughter laying claim over the property of father—Trial court and appellate court denying the relief upholding the genuineness of the will—In High Court Single Judge setting aside the judgment and granting the decree—Division Bench restoring the decree of the trial court—Genuineness of will—Considering all the facts and circumstances trial court and appellate court recording a finding—Single Judge not right in reversing the finding of fact—Division Bench had rightly gone into the question within the parameters of law—No interference warranted.*

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1608 of 1979.

From the Judgment and Order dated 2.4.79 of the Punjab & Haryana High Court in L.P.A. No. 521 of 1975.

E E.R. Kumar for P.H. Parekh for the Appellants

Ms. S. Janani for the Respondents.

The following order of the Court was delivered :

F This appeal by special leave arises from the judgment dated April 2, 1979 of the Punjab & Haryana High Court in L.P.A. No. 521 of 1975. The Division Bench of the High Court has gone into the genuineness of the Will executed by Bhagwana on October 15, 1957. Bhagwana died on September 2, 1958. The appellant laid claim over the property of her father. G The trial Court and the appellate Court upheld the Will and denied the relief. Learned single Judge in Second Appeal No. 451 of 1972 by order dated September 16, 1975 set aside the judgment and granted the decree. In the Letters Patent Appeal the Division Bench restored the decree of the trial Court dismissing the suit. Thus, this appeal by special leave.

H Learned counsel for the appellant, after elaborate preparation of the

facts, though of complicated nature, has contended that in the first litigation between the collaterals the appellant, the appellant was not a party. The courts below, having held that there is no proof of collateralship, ought not to have gone into the genuineness of the Will and record a finding in that behalf. Even otherwise, the finding does not find the appellant a party to the earlier suit. In this suit, admittedly, however, the Will was not produced and one of the testators was not examined. Learned single Judge of the High-Court found that the execution of the Will was shrouded with suspicious circumstances.

The burden is on the propounder of the Will to remove all the doubts regarding the genuineness of the Will and, therefore, the Division Bench, the trial Court as also the appellate Court were not right in cognising the Will. Having considered the contention with reference to the evidence on record and the findings recorded by the Division Bench and also the trial Court and the appellate Court, we are of the view that the view taken by the Division Bench cannot be said to be unwarranted. It is the case of the respondents that the Will was lost. Consequently, permission was given to lead secondary evidence and on the basis thereof, secondary evidence was laid by the parties and the witnesses were examined in proof of the Will and in rebuttal thereof. The trial court and the appellate Court have considered all the facts and circumstances and have recorded a finding that the Will was executed by Bhagwana in favour of Atma Ram respondent No. 1.

On a finding of fact, though the learned single Judge could go into the question of law, he confined his consideration in a second appeal under a limited parameter. It would appear that the learned single Judge trenched as if he was the first appellate court and considered the evidence by himself and came to the conclusion that the genuineness of the Will had not been proved. The Division Bench, therefore, has rightly gone into the question within the parameters of law and held that the learned single Judge was not right in reversing the finding of fact recorded by the trial Court and the appellate Court. Thus, we consider that there is no substantial question of law warranting interference.

The appeal is accordingly dismissed.

G.N.

Appeal dismissed.

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