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MAJOR SINGH

v.

RATTAN SINGH (DEAD) BY LRS. AND ORS.

DECEMBER 10, 1996

B

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

*Code of Civil Procedure, 1908 : Section 100.*

*Second appeal—Question of law—Power of High Court to interfere.*

C

*Will—Execution not disputed—Question whether will was executed in normal circumstances—Suit filed by respondent for declaration on the basis of will—Dismissal of suit by Trial Court—Affirmation by first Appellate Court—Trial Court and first Appellate Court relying upon two suspicious circumstances—One will was not produced at the earliest point of time—Two*

D

*evidence of attestators was not reliable—On second appeal High Court held rejection of testimony of attestator-witnesses was not correct—Appeal before Supreme Court—Held—When the courts below had rejected and disbelieved the evidence on the ground that the propounder had not properly discharged his duty, it is the duty of the High Court to consider whether the reasons given*

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*by the courts below were sustainable in law—The High Court has rightly found that the reasons given by the courts below were flimsy—Thus there was substantial question of law that has arisen for consideration and the High Court has rightly considered the question.*

F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 718 of

1986.

From the Judgment and Order dated 11.7.85 of the Punjab & Haryana High Court in R.S.A. No. 2830 of 1980.

M.L. Verma, Seeraj Bagga and Ms. S. Bagga for the Appellant.

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Ujjagar Singh, A.K. Sanghi and J.M. Khanna for the Respondents.

The following Order of the Court was delivered :

H

This appeal by special leave arises from the Judgment of the learned Single Judge of the Punjab & Haryana High Court, Chandigarh, made on

July, 11, 1985 in SA No. 2830/80.

The admitted facts are that the respondents Rattan Singh & Daulat Singh were brothers. Daulat Singh had executed a Will on January 11, 1974 under Ex. PA bequeathing his property to Rattan Singh who died on January 19, 1974. It would appear that the appellant is a predecessor-in-title of his sister, Dayal Kaur, Rattan Singh & Daulat Singh had three sisters by name Rallo, Dayal Kaur and Inder Kaur. Dayal Kaur got mutated the properties to the extent of 1/3rd share to each of the sister in the mutation proceedings. Subsequently, the respondents filed a suit for declaration on the basis of the Will. The Trial Court dismissed the suit. On appeal, it was confirmed. As stated earlier, in the second appeal, the High Court allowed the appeal and decreed the suit as prayed for. Thus this appeal by special leave.

Learned counsel for the appellant has contended that the High Court could not interfere under Section 100, CPC since the *suspicious features* of the Will are questions of facts. The Trial Court and the appellate Court had considered the suspicious feature and were not inclined to interfere. It is the duty of the propounder of the Will to establish that Will was validly executed removing all the suspicious features satisfying conscience of the Court. In that behalf, the High Court was not justified in interfering in the second appeal as there was no substantial question of law for decision under Section 100 CPC. It is seen that it is an admitted position that Rattan Singh, on coming to know that his brother was unwell, had gone from Calcutta to see him. After his coming, the Will came to be executed and the execution of the Will also was not disputed. The only question is: whether the Will came to be executed in the normal circumstances? The courts below relied heavily on two suspicious features, namely, the Will was not produced at the earliest point of time, it was produced sometime before the trial. Secondly, the attestators were disbelieved on two grounds, namely, that Hari Singh, one of the attestators had not disclosed that the Will was not executed when the mutation was effected in his presence. The High Court has explained that the mutation was not properly proved and that there was no reason to disbelieve that fact. The High Court had perused the original as well as the photocopy of the Will produced in the Trial Court in the first instance. The High Court has found that there is no interpolation in the original Will. Therefore, the rejection of the evidence of the attestator, Hari Singh's evidence was found to be not correct. As

- A regards the other attestator-witness, by name Gurdev Singh, it was disbelieved on the ground that he filed a suit in a litigation against Jeet Singh. It was hardly a ground to disbelieve the evidence of the attestators evidence. Under these circumstances, when the courts below had rejected and disbelieved the evidence on the ground that the propounder had not properly discharged his duty, it is the duty of the High Court to consider whether the reasons given by the courts below were sustainable in law. In view of the above reasoning of the Trial Court as affirmed by the appellate Court, necessarily the High Court requires to go into that question to test the reasons. In this perspective, the High Court has rightly gone into that question and found that the reasons given by the courts below are flimsy.
- B Thus there is substantial question of law that has arisen for consideration and the High Court has rightly considered the question. We are entirely agree with the High Court.
- C

The appeal is dismissed. No costs.

D T.N.A.

Appeal dismissed.