
(2010) 07 P&H CK 0069
In the Punjab And Haryana At Chandigarh

Sukhbir Singh and Another	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 19-07-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 18
Transfer of Property Act, 1882 — Section 3

Citation : (2010) 07 P&H CK 0069

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Alok Singh, J.—Present petition is filed challenging order dated 28.5.2010 whereby the Executing Court has directed that all the 9 legal heirs of the deceased - Shish Pal, decree holder, shall be entitled to compensation amount in equal share i.e. 1/9th share each.

2. Brief facts of the present case are that land of Shish Pal was acquired under the Land Acquisition Act. Award was passed on 26.9.1998. Shish Pal made a reference u/s 18 of the Act, which was decided by the Addl. District Judge, Faridabad vide award dated 20.9.2000, whereby fixing the market value @ Rs. 400/- per sq. yard along with statutory benefits. During the pendency of the reference, Shish Pal expired on 14.11.1998, leaving behind three sons (present petitioners), widow - respondent No. 2 herein and daughters - respondents No. 3 to 7. After the award, one of the sons of Shish Pal, namely, Mahinder commenced execution bearing Execution No. 9/2001 and the other two sons commenced execution bearing Execution No. 17 of 2001. The case set up before the Executing Court by the sons, is that Shish Pal executed a will dated 12.7.1985 in favour of all the three sons excluding the widow and daughters. The Executing Court framed issue to the fact as to whether Shish Pal ever executed a valid will in favour of his three sons or not. Both the parties were given opportunity to lead evidence in favour and against the alleged will. The

Executing Court while placing reliance on the Judgment of the Apex Court in *Pentakota Satyanaryana v. Pentakota Seetharatnam* 2006 (1) CCC 563, *Gurdial Kaur and Ors. v. Kartar Kaur and Ors.* 1998 (3) LJR 154 and in *Smt. Jaswant Kaur Vs. Smt. Amrit Kaur and Others*, , held that to prove valid will, suspicious circumstances must be explained. The Executing Court in paragraph 20 of the Judgment observed that attestation of will is not proved. The District Judge further observed that there was no occasion for Shish Pal to exclude his widow and daughters.

3. Learned Counsel for the petitioners vehemently argued that findings of the District Judge on the question of attestation is not correct. He further states that one of the attesting witnesses Badan Singh is son-in-law of Shish Pal, husband of one of the respondents, hence his testimony should not be discarded.

4. I have carefully examined the record. "Attested" is defined u/s 3 of the Transfer of Property Act, 1882, which reads as under:

"attested", in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgment of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary.

5. To prove attestation, there should be two or more attesting witnesses; attesting witnesses must have seen the executant signing the document and must have seen other persons signing the document in the presence of the executant; or attesting witnesses must have received personal acknowledgement from the executant about his signatures; the executant had signed the document after understanding the contents thereof; and the attesting witnesses had signed the document in the presence of the executant.

6. From the perusal of the record, it seems that Badan Singh has not stated on oath that will was ever read over to Shish Pal. It was also not stated by Badan Singh that Shish Pal ever signed the will after understanding the contents thereof. Badan Singh, one of the attesting witnesses also did not state as to whether other attesting witnesses signed the will in his presence or not. Ingredients of attestation are totally missing. Moreover, the most suspicious circumstance as to why Shish Pal has deprived his widow and daughters, has not been explained.

7. While exercising revisional jurisdiction, this Court is not supposed to re-assess the evidence. This Court can disturb the Judgment of the lower Court, if any perversity, manifest error of law or jurisdictional error is pointed out. In the present case, finding recorded by the trial Court is on the basis of the evidence

available on the record. No perversity, manifest error of law or jurisdictional error is pointed out.

8. Dismissed.