

Dharam Singh

Vs

Aso and Another

Civil Appeal No. 841 of 1981 with SLP (Civil) No. 4758 of 1986

(Ranganath Misra, M. M. Punchhi, S. C. Agarwal JJ)

11.07.1990

ORDER

1. This appeal by special leave is directed against a concurring judgment of the Punjab and Haryana High Court in a second appeal. Special leave petition is directed against the separate judgment of the same High Court in a different second appeal. Parties are close relations. The dispute is over the validity of a will said to have been left by Santu in the year 1960 giving the entire residential house and 4 1/2 acres of agricultural land to the appellant by disentitling his two daughters who are entitled to share in the said property. The appeal relates to the agricultural property while the special leave petition relates to the house.

2. The two attesting witnesses did not support the execution of the will. The trial court relied upon the statement of the registering authority and on the basis of decisions of the Lahore and Punjab and Haryana High Courts found that the will had been proved. The power appellate court reversed the decision by relying upon two decisions of this Court in *M. L. Abdul Jbhar Sahib v. H. V. Venkata Sastri & Sons* and *Seth Beni Chand v. Kamla Kunwar*.

3. We have examined the record and are satisfied that the appellate court and the High Court were right in their conclusion that the Registrar could not be a statutory attesting witness. Therefore, the conclusion that the will had not been duly proved cannot be disturbed.

4. In course of the hearing we suggested to Mr. Jain appearing for one of the plaintiffs that in view of the fact that she had been married no share in the house should be claimed by her. Mr. Jain on instructions has agreed that the decree of the courts below may be modified and the suit in residential house may be dismissed. Accordingly we grant special leave in S. L. P. No. 4758 of 1986 which is taken on board, allow the appeal and set aside the decree of the courts below and dismiss the suit in regards to will has not been properly proved Civil Appeal No. 841 of 1981 has to be dismissed. We direct the parties to bear their own costs.

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