

Kehar Singh and Others

Vs

Malkiat Singh and Others

Civil Appeal No. 518 of 1976

(R. M. Sahai, B. P. Jeevan Reddy JJ)

04.09.1992

ORDER

1. This is an appeal by grant of special leave petition by transferees of the land in dispute from one Kehar Singh who is said to have been the owner of it as a will was executed in his favour by one Bachna Singh, the admitted owner of the property. All the three courts including High Court have held against the appellant. It has been found that Bachna had executed a registered will in favour of plaintiff which was genuine, therefore, he was entitled to a decree for possession.

2. It is urged that Bachna Singh having executed a subsequent registered will in favour of the appellant the earlier will in law stood revoked even in absence of any recital to that effect in the will itself. This argument cannot be accepted in view of the findings of fact recorded by all the courts that the will in favour of the appellant was not genuine. Reliance is placed on Ex. D-3, the power of attorney, executed by Bachna Singh in favour of the appellant on the day the will is said to have been executed and it is urged that since the right to sell the property in dispute was given to the appellant, an inference should be drawn against the existence of any earlier will. Although Ex. D-3 does not appear to have been referred as such either before the first appellate court or the second appellate court but the trial court found that since earlier power of attorney executed by Bachna Singh existed in favour of the appellant there could be no occasion to execute a second one. From this an inference was drawn that subsequent power of attorney said to have been executed by Bachna Singh was a document prepared for the specific purpose. The trial court further found that the will in favour of the appellant appeared to be executed in suspicious circumstances which could not be successfully dispelled by the appellant. It could not be pointed out that the circumstances on which reliance was placed for recording the finding were irrelevant. Therefore, the orders of the three courts below cannot be assailed.

3. In the circumstances we do not find any merit in this appeal. It is accordingly dismissed but there shall be no order as to costs.

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