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BHAG SINGH

v.

JASKIRAT SINGH & ORS.

(Civil Appeal Nos. 650-651 of 2003)

DECEMBER 16, 2009

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[P. SATHASIVAM AND ASOK KUMAR GANGULY, JJ.]

- Code of Civil Procedure, 1908 – s. 100 – Second appeal – Substantial question of law, raised as regards validity of two Wills – High Court dismissing the appeal in limine without advertng to factual details, salient features and validity of the Wills – On appeal, held: In view of the two Wills, there exist substantial questions of law to be decided by High Court – Matter remitted to High court to decide the second appeals in the light of the substantial questions of law – Will – Succession Act, 1925 – s. 63(c).*
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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 650-651 of 2003.

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From the Judgment and Order dated 14.5.2002 of the High Court of Punjab and Haryana at Chandigarh in R.S.A. No. 4 & 5 of 2001.

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Manoj Swarup, Akash Deep and Devesh Kumar Tripathi for the Appellant.

K.K. Mohan (N.P.) for the Respondent.

The Judgment of the Court was delivered by

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P. SATHASIVAM, J. (1) These civil appeals were directed against the judgment and order dated 14.05.2002 of the High Court of Punjab and Haryana at Chandigarh in R.S.A. Nos. 4 & 5 of 2001, in and by which the High Court, by separate orders, confirmed the findings recorded by both the Courts

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below and dismissed the second appeals.

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(2) Heard Mr. Manoj Swarup, learned counsel for the appellant.

(3) In view of the questions raised and the course which we are going to adopt, there is no need to refer all the factual matrix in both the second appeals. According to learned counsel for the appellant, though substantial questions of law that arose for consideration before the High Court was to the validity of the Wills dated 07.12.1979 and 11.08.1986, the High Court without advertng to factual details, salient features and validity of those wills dismissed the second appeals without giving adequate reasons.

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(4) It is seen from the materials placed that one Natha Singh owned two houses – one in Punjab and other in Haryana. He bequeathed his house in Gurdaspur, Punjab by way of Will dated 07.12.1979 in favour of his son Bhag Singh, the appellant in both the appeals. It is further stated that he is alleged to have executed another Will dated 11.08.1986 bequeathing his house in Kalka, Haryana in favour of his second son, through his grand son, Jaskirat Singh. It is the further case of the appellant that after the death of Natha Singh, Jaskirat Singh filed Civil Suit against the appellant and his own grandmother for possession of the house at Kalka, Haryana which had been bequeathed to him as per the Will dated 11.08.1986 executed by his grandfather.

(5) It is pointed out that the trial Court as well as the first appellate Court relied upon the Will dated 11.08.1986 even though no attesting witness was examined. This was done merely on the testimony of the scribe. It is further pointed out that the status of scribe cannot be equated to that of an attesting witness. It is further highlighted that Kirpal Singh and Iqbal Singh, brothers of the appellant filed another civil suit in the trial Court against the Appellant seeking declaration to the effect that the appellant and respondents are owners in possession

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- A of the house at Gurdaspur, Punjab having 1/4th share each as legal heirs of deceased Natha Singh. The appellant had defended the suit on the ground that the said house at Gurdaspur, Punjab had been bequeathed to him by his father through Will dated 07.12.1979. It is also highlighted by the
- B appellant that the trial Court and the first appellate Court disbelieving the Will dated 07.12.1979 decreed the suit of the respondents. It is pointed out that the High Court by two separate impugned orders passed on the same day dismissed the second appeals filed by the appellant even though
- C substantial questions of law arose in both the appeals.

(6) Learned counsel for the appellant submitted that in view of the controversy between the parties in respect of the suit properties, particularly, in view of the execution of two Wills, the following substantial questions of law that arose before the High Court were :

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- (i) Whether testimony of a scribe can be treated as testimony of an attesting witness for proving execution of a Will and hence compliance with the statutory requirements of Section 63 clause (c) of the Indian Succession Act, 1925?
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- (ii) Whether High Court could have dismissed the Regular Second Appeals, in limine when mixed questions of fact and law arose as to construction and genuineness of Will affecting substantive rights of the parties?
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- (iii) Whether High Court could have upheld the validity of one Will and rejected the other Will, when contents of one Will referred to the contents of the other Will?
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(7) Learned counsel appearing for the appellant strenuously contended that in the light of the execution of two Wills, compliance with the statutory requirements of Section

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63(c) of the Indian Succession Act, 1925 and the construction and genuineness of the Wills have to be gone into since it affects the substantive rights of the parties, it is but proper for the High Court to deal with the issues in a better consideration than dismissing the same without advertng to any of the relevant materials.

(8) In the light of the controversy and the stand taken by the parties with reference to the Wills dated 07.12.1979 and 11.08.1986, it cannot be said that there is no substantial question of law to be decided by the High Court. In such circumstances and to render substantial justice to both parties, we set aside both the orders of the High Court dated 14.05.2002 and remit the same to the High Court for fresh disposal. We request the High Court to re-hear both the second appeals in the light of the substantial questions of law referred to above and decide the same one way or the other based on the materials available. It is made clear that we have not expressed anything on the merits of the claim made by both the parties and it is for the High Court to consider and dispose of the second appeals by affording opportunity to both the parties as expeditiously as possible uninfluenced by any of the observations made above.

(9) Both the appeals are allowed to the extent mentioned above. No costs.

K.K.T.

Appeals partly allowed.