

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No. 973 of 1991 (O&M)
Date of decision: 14.10.2015**

Nasib Kaur

... Appellant

versus

Chand Kaur

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sanjay Majithia, Senior Advocate with
Mr. Inderjeet Singh, Advocate and
Mr. Rajesh Kumar Advocate for the appellant.

K.Kannan, J.

The appeal is by the plaintiff who has suffered dismissal of his claim to the estate of one Banta Singh. The rival claim has been entered by the elder brother of Banta Singh who claimed that there had been a Will in his favour on 12.01.1987. The plaintiff's husband and Banta Singh's wife were brother and sister respectively.

It is an admitted case that Banta Singh died at the hospital and there was evidence to the fact that he had been ill for 5 or 6 days prior to his death. The plaint averment showed that date of death is 21.01.1987.

While considering the Will propounded by the plaintiff, the Court examined the evidence of PW1 who claimed to be the witness. In the cross-examination PW1 stated that Banta Singh did not remain admitted in the hospital at all. He stated that the Will was written on Saturday when the Tehsil's office was not open. The witness stated that Banta Singh came walking on foot. It was brought out in evidence that the Tehsil's office was more than 2 furlongs from his residence. To a suggestion to the witness whether he knew that Banta Singh was admitted in the hospital DW-1, he stated that it was incorrect to even suggest Banta Singh remained admitted. PW-2 who propounded the

Will stated that Will was handed over to her 4 days prior to his death and in the cross-examination she admitted that Banta Singh remained unconscious for 8-10 days and she stated that she took Banta Singh to clinic at Jagraon and later he was taken to hospital. In the cross-examination she admitted that she visited the hospital always for enquiring about the health of Banta Singh but she was not allowed to enter the hospital prior to his death. If he had been unconscious for 8-10 days and he was required to be taken to hospital and she was not being allowed to enter and she could only make enquiries about his health, it is inconceivable that Will could have written. PW1 evidence that he did not even know that Banta Singh was in the hospital is a clear point of the fact that he was not a witness who could have been present at the time of the alleged execution. The scribe and the witness were not examined and the plaintiff gave a convenient answer that had been they won over by the defendant.

As regards the Will propounded by the defendant, the court found that apart from the witnesses, the scribe as well as the registering Clerk and yet another Clerk at the Registrar's office had been examined who spoke cogently about the fact that he was at the hospital and when he expressed intention to execute a Will, the Will was written and registered at Sub-Registrar's office at Jagraon. The plaintiff knew clearly about the Will and that was a reason why even the Will which she propounded, there was a reference about the Will executed in favour of the defendant. Sifting the evidence adduced by both the parties, the Court found the Will executed in favour of the defendant genuine and natural and discounted the validity of the Will propounded by the plaintiff as stricken with gross suspicious circumstances. The quality of evidence tendered by the plaintiff was fragile and the evidence of PW1 literally gave no scope for rendering a favourable finding in favour of the plaintiff. The PW2's evidence about the state of health just before his death were also sufficient to discredit the Will as

Will propounded by her to be genuine. If he was ill for 8-10 days prior to his death, it was inconceivable that he had written a Will just 3 days before his death and handed over the Will to the plaintiff.

It was in evidence that the deceased had some joint accounts in Bank with the plaintiff and she has claimed the amounts as a survivor after the death. The plaintiff claims that there are no claims with regards to the same by the beneficiaries. The claims were to be examined only as under Will for she was not otherwise a legal heir at law. The reasons given by the two Courts below for rejecting the plaintiff's evidence are on proper appreciation of facts and the case involves no substantial question of law for consideration.

There is no merit in the appeal and is dismissed.

(K.KANNAN)
JUDGE

14.10.2015

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