

RSA No.1352 of 2013

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

RSA No.1352 of 2013

Date of Decision: September 15, 2015

Damandeep

...Appellant

Versus

Jaspal Kaur & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. K.K. Garg, Advocate
for the appellant.

AUGUSTINE GEORGE MASI, J. (Oral):

Challenge in this appeal is to the judgments and decree passed by the Courts below i.e. Civil Judge (Senior Division), Ellenabad, dated 07.10.2011 by which the suit preferred by Ravinder Kaur seeking declaration alongwith consequential relief of permanent injunction, stands dismissed, which has been affirmed by the District Judge, Sirsa on 25.01.2013.

It is the contention of the counsel for the appellant-plaintiff that the Will which has been produced by the respondent-defendants in support of their claim has not been properly proved and there is an unnatural gap between the thumb impression and the writing of the Will. That apart, he contends that the Will has been registered after the death of the propounder of the Will, namely, Shri Jalaur Singh.

An argument has also been raised that Jalaur Singh was not in his

sound disposing mind when the Will is alleged to have been propounded by him and thus, the same was shrouded with suspicious circumstances specially when the name of predecessor-in-interest of the appellant, namely, Ravinder Kaur has not been mentioned therein. He, thus, contends that the findings recorded by the Courts below cannot sustain and deserve to be set aside.

I have given my thoughtful consideration to the submissions made by the counsel for the appellant-plaintiff and with his assistance, have gone through the judgments passed by the Courts below but cannot accept or agree with them.

It is not the requirement of the statute that every time when the Will is propounded, all the persons who are likely to be adversely effected by the said Will, are required to be mentioned in the said Will. Mere non-mentioning of or about the person would not itself be a ground for coming to the conclusion that the Will is illegal. The contention of the counsel for the appellant-plaintiff that the Will is shrouded with suspicious circumstance also cannot be accepted in the light of the fact that the relevant and required evidence has been produced on record dispelling all the suspicious circumstances which are sought to be projected. Thus, finding recorded by the Courts below on this aspect cannot be faulted with.

Another contention which has been raised by the counsel for the appellant-plaintiff is that the suit could not have been held to be not maintainable in the light of the provision of Section 34 of the

RSA No.1352 of 2013

Specific Relief Act, suffice it to say that the findings recorded by the learned First Appellate Court is in accordance with law as a mere suit for declaration simpliciter would not be maintainable without seeking the consequential relief of possession which relief has not been, as a matter of fact, claimed specially when there is no evidence on record that the plaintiff was in joint possession over the suit land.

Both the Courts below have returned concurrent findings which are based on proper appreciation of the evidence brought on record which do not call for any interference by this Court as there is no misreading or non-consideration of evidence nor is there any perversity or illegality in the same.

No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

September 15, 2015

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**