

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

Regular Second Appeal No.327 of 2013 (O&M)

Date of decision: **09**.09.2015

Subhash Chander

... Appellant

versus

Smt. Geeta Chopra alias Sangita and others.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: None.

K.Kannan, J.

CM No.920-C of 2013

For the reasons stated in the application, delay in refiling
the appeal is condoned.

Application stands disposed of.

Regular Second Appeal No.327 of 2013 (O&M)

1. The 2nd defendant in suit is the appellant before this
court. The 1st, 2nd defendant and the plaintiff are the children born to
Satya Wati wife of Sant Ram. The suit is with reference to a house
property that Satya Wati owned. The plaintiff's suit was on the basis
of a Will said to have been executed by Satya Wati making the
disposition of the property in favour of the plaintiff through an
instrument made on 08.01.1988. Satya Wati died on 18.08.1997.

The Will was attested by two persons as required in law and

registered on the same day. It recites the fact that one of the sons had gone away to Delhi and yet another person was also staying away and it was only the plaintiff who was with her and taking care of her in her old days as explaining the choice of bequest in favour of the plaintiff.

2. Just before her death, the 1st defendant had actually moved into the house in one portion and the plaintiff would aver that the defendants 1 and 2 joined together and instituted a suit for injunction against the plaintiff and threatened that the plaintiff and her husband, who was a heart patient, were responsible for causing the mother's death. The scope for such imputation was on account of the fact that the mother had died in an accidental fire incident at home and the defendants were said to have obtained a document from the plaintiff after the institution of their suit on 13.09.1997, cancelling the Will and forsaking her right under the instrument. The plaintiff would contend that she never attended the court on any hearing in the suit filed by defendants 1 and 2, but the defendants had brought about some impersonation to make it appear as though the Will had been cancelled. The suit came to be therefore filed for a declaration that the property belonged to the plaintiff as per the Will and for possession of two rooms at the back at the ground floor and the barsati portion that had been taken over by the 1st defendant. The defendants 2 to 5 were the tenants inducted by Satya Wati

during her lifetime.

3. The crucial issue was the genuineness of the Will and the plaintiff had proved by calling a witness and the scribe. The scribe also produced the register which he maintained recording the fact of the execution of the Will on the day of what was stated in his register. The court found the reasons for disinheriting the son to be natural, upheld the Will, also taking note of the fact that the deceased had lived nearly 8 years after the execution and there was nothing suspicious about either the recitals or the genuineness of the Will. Adverting to the genuineness of the agreement under which the plaintiff was said to have forsaken her interest and admitting to the Will as being cancelled, the trial Court observed that a Will can be cancelled only by the testator in the manner set forth under law and it could not have been cancelled by the plaintiff after the death of the mother had ensued. The court observed that succession cannot stand in vacuum and if a property had been inherited by the plaintiff under a bequest, she could not have given up her right in the property otherwise than under a registered instrument as required under Section 17 of the Registration Act. The court, therefore, found no value for the alleged agreement dated 13.09.1997 and decreed the suit. The appellate court confirmed the same.

4. The appeal had been filed in the year 2013 and at every stage, there had been only pleas for adjournment or at many

instances, there was not even representation for the appellant. I have, therefore, proceeded to examine the file to see whether the case involved any substantial question of law for consideration. I find that the two courts below have given cogent reasons for upholding the Will propounded by the plaintiff. I find that the appellant has not even made reference about the so-called agreement under the terms of which the Will was said to have been cancelled in the grounds of appeal. Evidently, the appellant has taken the findings rendered in that regard to be final and unimpeachable.

5. There is no merit in appeal and I find no scope for intervention in second appeal. Second appeal is dismissed.

(K.KANNAN)
JUDGE

09.09.2015

sanjeev