

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

RSA No. 3704 of 2013 (O&M)

Date of decision : 25.5.2015

Bhagwan Dass and others

... Appellants

versus

Sant Lal and others

... Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Gorakh Nath, Advocate, for the appellants.

Rajesh Bindal, J.

The plaintiffs are before this Court against concurrent findings of fact recorded by both the Courts below, whereby the suit filed by them for declaration and possession was dismissed.

The claim made in the suit was for declaration to the effect that registered Will No. 10 dated 4.5.1991 allegedly executed by Jai Karan father of plaintiff nos. 1 to 4 and the defendants is illegal, wrong and based on fraud and misrepresentation and not binding on the rights of the plaintiffs and proforma defendant nos. 3 and 4 and is liable to be ignored. Defendant nos. 1 and 2 alone cannot claim exclusive right over the suit property. Both the courts below found the Will to be genuine, hence, dismissed the suit and the appeal filed by the plaintiffs.

Learned counsel for the appellants submitted that both the Courts below have failed to appreciate the evidence led by them in support of their case. It was further submitted that deceased Jai Karan had lost his senses due to old age and illness and defendant nos. 1 and 2 never served him during his life time. Their marriage was also performed after the death of Jai Karan. There was no reason for executing Will only in favour of two sons, namely, defendant nos. 1 and 2, ignoring other sons and daughters. The alleged Will is a result of fraud. He further submitted that the Will was surrounded by suspicious circumstances. The same has not been proved by examining the attesting witness, who is alive.

After hearing learned counsel for the appellants, I find no merit in the present appeal. Both the Courts below have concurrently found that Will in question was executed by Jai Karan, who died on 3.5.1994, out of his free will and volition and without any coercion and threat. His wife died on 4.4.2001. The case of the appellants is that they came to know about the Will in September, 2001 when a dispute regarding construction of house arose. They did not challenge the validity of the Will during the life time of their mother, who died on 4.4.2001 as the suit was filed on 7.1.2002.

The attesting witness, who was given up by defendant nos. 1 and 2, was not examined by the plaintiffs in their rebuttal evidence for disproving the contents of the Will. The appellants also failed to discharge the onus by leading cogent evidence that Jai Karan was of unsound mind at the time of execution of Will. They have not produced any such record in support of their case. Rather defendant nos. 1 and 2 have proved the Will by producing DW3 Jagdish Kumar, Deed Writer. The scribe while appearing in the witness box proved the execution and registration of the Will. Another witness DW6 Lakhmi Chand, Retired Tehsildar, deposed that Jai Karan had put his signatures in the presence of the witnesses, and he read over the Will to Jai Karan. The appellants also failed to prove that their mother, after the death of her husband, ever resided with them, whereas defendant nos. 1 and 2 have proved on record the ration card showing that she was residing with them. One of the plaintiffs, Raj Kumar while appearing as PW1 deposed in his cross-examination that the mutation on the basis of Will was sanctioned in favour of defendant nos. 1 and 2. This fact came to their knowledge 1½ years after death of their father, who died on 3.5.1994. The fact of sanction of mutation was told by their mother. Meaning thereby that they had the knowledge of Will in the year 1996, but thought to file the suit in the year 2002.

The aforesaid findings have been recorded by both the Courts below on proper appreciation of the evidence produced on record. No interference in the present appeal is called for as no material produced on record has either been misread or ignored.

Considering the aforesaid factual matrix, I do not find any error in the concurrent findings of fact recorded by both the Courts below. No substantial question of law arises. The appeal is accordingly dismissed.

25.5.2015
vs

(Rajesh Bindal)
Judge