

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

124

**RSA-2922-2015
Date of Decision-06.10.2015**

MANOJ AND ORS.

Appellants

Versus

LAXMAN AND ORS

Respondents

CORAM:HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Chanderhas Yadav, Advocate
for the appellants.

RAJ MOHAN SINGH, J. (ORAL)

[1]. Plaintiffs are in second appeal against the concurrent judgments and decrees passed by the Courts below dismissing the suit for declaration and permanent injunction. Learned Trial Court induced four contentious issues in Para No.12, those are reproduced here as under:-

“(i) No reason for the cancellation of the earlier will has been mentioned in will in question.

(ii) Jai Singh was not in a fit of mind to execute the will and

(iii) Will was drafted on 9.7.2007 and registered on 10.07.2007.

(iv) No original Will has been produced.”

[2]. Will dated 10.07.2007 has been assailed in the suit on the ground that land in question was ancestral land in the hands of Jai Singh and he could not have executed Will in respect of this land on 10.07.2007. Jai Singh died on 18.07.2007. In earlier Will dated 04.04.2007, Bhagat Singh, Dayanand, Laxman and

Nityanand were beneficiaries and in new Will Smt. Murti has also been added. One of the question was, whether original beneficiaries were aggrieved persons or the plaintiffs. Secondly, Krishna died on 18.09.2003 much before execution of Will in question. Plaintiffs have staked their claim on the basis of Krishna being one of the coparcener in the suit land. The arguments as regard to recital in Will Ex.P-7 with regard to Murti being added beneficiaries along with sons has no force because the plaintiffs are not the aggrieved persons in that context in view of fact that original beneficiaries did not make any objection with regard to such an addition. Earlier Will dated 04.04.2007 stood canceled in view of subsequent Will having come into existence.

[3]. As regards second contention, even if Jai Singh was found to be old and weak, that itself is not a ground to presume that he was not in a fit state of mind to execute any Will in question. In such a situation, plaintiff could have produced on record relevant materials to show that testator was not in a fit state of mind for executing Will in question. No such evidence is forthcoming on record.

[4]. As regards third contention, it can be summed up that the Will was drafted on 09.07.2007 and was registered on subsequent day i.e. 10.07.2007. The evidence in the form of DW-1 Dalip Singh who has categorically deposed that the Will was duly read over to Jai Singh and it is only after understanding, Jai Singh put his thumb impression on the Will in question. The Will bears photograph of Jai Singh as well

showing that the testator visited the office of Sub Registrar for getting the Will registered. Endorsement of Sub Registrar at the back of the front page of the Will in question further corroborated such an act of the testator.

[5]. The last ground on which Will has been assailed is that only certified copy of the Will has been produced on record. The witness Dalip Singh has been examined who has stated with reference to Will in question and certified copy of the Will has been produced on record, that itself is not a suspicious circumstance in order to overrule existence of original Will particularly in view of locus of the plaintiffs to file present suit in question.

[6]. Apparently, plaintiffs are sons of Krishna. Krishna did not claim any right in the property of her brother during her lifetime. Subsequent amendment in Hindu Succession Act cannot be treated to be retrospective in nature, rather it has prospective effect. On all the four issues, plaintiffs have failed to adduce cogent evidence. Both the Courts have dealt with the issues in question and have concurrently held that plaintiffs have no case to seek claim over the property which was made subject matter of Will dated 10.07.2007 by Jai Singh.

[7]. No law points worth consideration are involved. Question No.1 is pure question of fact. Question No.2 has been duly answered in preceding para of the order. Questions No.3 and 4 are also questions of fact. Questions No.5, 6, 7 and 8 do not arise at all.

[8]. In view of the fact that there is no perversity in the judgments and decrees passed by the Courts below nor there is any misreading of evidence. Execution of Will is duly proved with reference to evidence on record. No suspicious circumstance can be considered including the one of disinheritance of daughter Krishna in the Will. Non-inclusion of Krishna itself is not a ground to presume that the Will in question is surrounded by the mysterious circumstance.

[9] Reference can be made to **Mahesh Kumar (dead) through LRs Vs. Vinod Kumar and others (2012) 4 SCC 387.**

[10]. Having considered the issues in detail, no illegality can be found in the impugned judgments and decrees passed by the Courts below. Consequently, this appeal is dismissed.

October 06, 2015
prince

(RAJ MOHAN SINGH)
JUDGE