

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

RSA No. 5755 of 2015 (O&M)

Date of decision : 19.11.2015

Sham Singh

... Appellant

versus

Kashmir Kaur @ Jasbir Kaur

... Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Ajay Pal Singh Rehan, Advocate, for the appellant.

Rajesh Bindal, J.

The plaintiff is before this Court against concurrent findings of fact recorded by both the Courts below whereby the suit filed by him for declaration that he is owner in possession of the land detailed in plaint and that the defendant has been granted only the limited estate of right to enjoy the use of income of ½ share in the suit land for her livelihood during her life time by virtue of Will dated 13.3.2004 executed by Darshan Singh son of Jagat Singh in favour of the plaintiff with consequential relief of permanent injunction restraining the defendant from proclaiming herself to be owner of the suit land and also restraining her from alienating the suit land by way of sale, exchange etc., was dismissed.

The main issue in the present appeal is as to whether the Will dated 13.3.2004 alleged to have been executed by deceased Darshan Singh, husband of the defendant, in favour of the plaintiff, who is son of sister of Darshan Singh, is a genuine document or not. Both the Courts found the same to be forged and fabricated document and dismissed the suit. The plaintiff could not prove the Will to be a genuine document. The reason given by the executant of the Will therein was that he was suffering from some undisclosed ailment due to which he could not have a child and that he also had a disease due to which he could die at any moment. However, the plaintiff could not prove in evidence that Darshan Singh was suffering

from alleged infertility or any other disease. Darshan Singh was 40 years of age when he died in an accident on 3.10.2004. The Will was an unregistered document. It is not the normal age for execution of Will. The witnesses of the Will are father and uncles of the plaintiff. One of the attesting witness was co-villager, who was never on visiting terms with Darshan Singh. The Will did not have photograph of Darshan Singh when a photocopy of the Will was placed on file. However, when the original Will was produced, it had photograph of Darshan Singh. It has also come in evidence that the Will was not scribed by a regular deed writer. There is no good reason coming on record to oust widow of the deceased from the property owned by him.

Considering the aforesaid factual matrix and that both the Courts below having recorded concurrent findings of fact on appreciation of evidence, which cannot be said to be perverse, in my opinion, no interference is called for in the present appeal. No substantial question of law arises.

Accordingly, the present appeal is dismissed.

19.11.2015
vs

(Rajesh Bindal)
Judge